

SUNSET PLACE ASSOCIATION OF CARLSBAD
GOVERNING DOCUMENTS ENFORCEMENT POLICY

Adopted July 12, 1994

Whereas, Article III of the Declaration of Covenants, Conditions and Restrictions ("CC&R's") provides for the conduct of the affairs of the Association in accordance with the Governing Documents; and

Whereas, Article VII, Section 1.(b) of the Bylaws provides for the adoption of rules and regulations by the Association; and

Whereas, the CC&R's define the Governing Documents to mean and include: the CC&R's, the Articles of Incorporation, the Bylaws of the Association, and rules and regulations for members as established by the Association from time to time ("Governing Documents"); and

Whereas, for the benefit and protection of the Association and the individual Member, the Board deems it desirable to establish and operate by a procedure to assure due process in cases where there is a question of compliance by a Member or his tenants with the provisions of the Governing Documents thereby attempting to minimize the necessity of seeking action in or through a court of law, and

Whereas, it is the intent of the Board to establish procedures for the Board and any Committee of the Board where they must take action relative to compliance by an individual with the provisions of the Governing Documents.

THEREFORE the following procedure is adopted:

I. VIOLATIONS OF THE GOVERNING DOCUMENTS

Section 1. Actions required prior to initiation of formal process. Any Member, Committee, or agent of the Association shall request that a Member or resident of the Project cease or correct any act or omission which is or appears to be in violation of the Governing Documents. Such informal request must be made before the Special Resolution process is initiated.

Section 2. Written Complaint. If the actions described in Section 1 prove unsuccessful, the Special Resolution process shall be initiated upon the filing of a written complaint by any resident, by a Member, or by a Board member with the Secretary of the Board. The complaint shall consist of a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged so that the respondent may understand and prepare his defense to a specific factual situation ("Complaint").

The Complaint shall specify the exact provisions of the Governing Documents which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts. Further, the Complaint must contain as much specifics as are then available as to: time, date, location, persons involved, and the like so that the Complaint may be investigated by the Board.

Section 3. Service of Complaint. Upon the filing of a Complaint, the Secretary shall assign the Complaint a Special Resolution number and serve a copy of the Complaint on the Respondent by any of the following means: (i) personal delivery, (ii) express mail, or (iii) both first class and registered or certified mail, return receipt requested, and addressed to the Respondent at the most recent address appearing on the records of the Association. Service shall be effective on the date of actual delivery or the third day after mailing if delivery has not been effected prior to that date. The Complaint shall be accompanied by a postcard or other written form of Notice of Right to Defend (see Exhibit B).

Section 4. Notice of Hearing. Along with service of the Complaint, the Board shall serve a Notice of Hearing, as provided in this Section. Service shall be effected at least 10 days prior to the date scheduled for the hearing. The Notice of Hearing shall be substantially in the form attached hereto as Exhibit A but may include additional information.

Section 5. Notice of Defense. Service of Complaint and Notice of Hearing shall be accompanied by a Notice of Right to Defend. The Notice shall be accompanied by a copy of this Policy or state that the Respondent may:

- (1) Attend a hearing before the Board as hereinafter provided;
- (2) Object to the Complaint upon the grounds that it does not state acts or omissions upon which the Board may proceed;
- (3) Object to the form of the Complaint on the grounds that it is so indefinite or uncertain that the Respondent can not identify the violating behavior or prepare a defense; or
- (4) Admit to the Complaint in whole or in part. In which event the Board may make a determination as to whether it will waive a hearing and simply impose a penalty, if any, or it will conduct a hearing to determine the appropriate penalty.

Any objection to the form or substance of the Complaint must be received by the Board within 10 days of its service upon the Respondent. The Board shall make its determination and notify all parties within 10 days of the receipt of an objection. If the Complaint is insufficient, the complaining party shall have 7 days within which to amend the Complaint to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the Board that the Complaint is still insufficient after being so amended, then the matter shall be dismissed.

Section 6 Amended or Supplemental Complaints before Submission. At any time prior to the hearing date, the Board may file or permit to be filed an amended Complaint. All parties shall be notified thereof in the manner provided above. If the amended Complaint contains new charges, the Board shall allow the respondent a reasonable time to prepare a defense.

Section 7 Discovery. Upon written request to the other party, made prior to the hearing and within 15 days after service of the Complaint, either party is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party and (2) inspect and make a copy of any statements, writings and investigative reports relevant to the subject matter of the hearing. However this section does not authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney work product. Any party claiming his request of discovery has not been complied with shall submit a written petition to compel discovery with the Board. The Board shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

Section 8 Constraints on the Board. It shall be incumbent upon each member of the Board to make a determination as to whether he or she is able to function in a disinterested and objective manner in considering the case before the Board. Any member incapable of objective consideration of the case shall disclose such to the Board and remove himself from the proceedings, and have it so recorded in the minutes.

In any event, the respondent may challenge any member of the Board for cause. In the event of such a challenge the Board, acting without the challenged member, shall determine the sufficiency of the challenge.

Section 9 Hearing. The following rules shall govern the hearing of any matter coming before the Board pursuant to these sections:

- (1) Whenever the Board has commenced to hear the matter and a member is forced to withdraw prior to a final determination, another member of the Association shall be selected by lot to replace the withdrawing member.
- (2) Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association.

(3) Each party shall have the right to: call and examine witnesses, introduce exhibits, examine opposing witnesses, and rebut evidence against him. Either party may be called as a witness by the opposing party, whether or not he has previously testified, and examined as if under cross-examination.

(4) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Generally any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence in civil actions. Hearsay evidence shall never be sufficient in itself to support a finding.

(5) Neither party must attend the hearing. At the request of either party or the Board the hearing may be conducted in executive session.

(6) At the beginning of a hearing the President shall explain the rules and procedures by which the hearing is to be conducted. Generally each principal is entitled to make an opening statement, starting with the Complaint. Then each party is entitled to produce evidence, witnesses, and testimony and to examine the witnesses of the opposing party. Then each party is entitled to make a closing statement. Any party may waive the right to exercise any part of these processes, and the Board is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted.

Section 10. Decision. After all testimony and documentary evidence has been presented to the Board, the Board shall vote upon the matter, rendering a written decision within 10 days.

II. DISCIPLINE MONETARY PENALTY SCHEDULE
FOR
SUNSET PLACE ASSOCIATION OF CARLSBAD

The Sunset Place Association of Carlsbad has adopted the following Discipline monetary penalties:

	FIRST OFFENSE	SECOND OFFENSE
1. Not Improving Landscaping	\$ 100.00	\$ 200.00
2. Failure to Maintain Landscape	50.00	100.00
3. Parking Violation	25.00	50.00
4. Failure to Leash Dogs	10.00	25.00
5. Failure to Pick up and Discard Pet Feces	10.00	25.00
6. Major Car Repairing in Project	25.00	50.00
7. Storage of trash or piles of wood within street or Common Area view	10.00	25.00
8. Failure to receive Board approval of plans before commencing additions or architectural improvements	1000.00	2000.00

The Board of Directors will assess monetary penalties for those matters not set forth above ranging from \$25.00 to \$10,000.00. All penalties will be levied only after a hearing is held, as specified above, at which the Member will be given an opportunity to appear.

The fine for third offenses and each additional occurrence will be determined by the Board and will follow the increment structure indicated above.

Offenses for separate rules or sections of the Governing Documents shall each start at the warning stage (Section 1. above).

A monetary fine for a continuing violation on a lot shall not be assessed more often than once for any one calendar month or portion thereof during which the violation existed. No monetary fine may be assessed for a period prior to the date of the earliest informal notice pursuant to Section 1. above.

SUNSET PLACE ASSOCIATION OF CARLSBAD
NOTICE OF RIGHT TO DEFEND

Date: _____

Dear Homeowner:

Re: Special Resolution No. _____

As part of the SUNSET PLACE ASSOCIATION OF CARLSBAD GOVERNING DOCUMENTS ENFORCEMENT POLICY approved by the Board of Directors, you are entitled to object to any written complaint which has been received by the Board and which in turn has received a Special Resolution Number and for which a hearing has been scheduled. Please refer to Article I., Section 5, Notice of Defense in the Policy, a copy of which has been provided with this Notice.

The above referenced Complaint concerns your property, if you wish to object, you have ten (10) days to do so.

In any event, please acknowledge receipt of the Complaint and acknowledge your right to contest that matter before the Board by signing and returning this Notice.

By: _____

Date: _____

SUNSET PLACE ASSOCIATION OF CARLSBAD
NOTICE OF HEARING

Date: _____

Dear Homeowner:

Attached you will find a written complaint which has been filed with the Board and assigned Special Resolution Number _____

You are hereby notified that a hearing will be held before the Board at _____ on the _____ day of _____ at _____

upon the charges made in the complaint served upon you herewith. You may, but need not be present at the hearing. You may present any relevant evidence and you will be given full opportunity to examine all the evidence or witnesses which may be presented at the hearing. You are entitled to have produced books, documents or other items in the possession of the Association or the complainant by applying to the Board.

If you can show good cause as to why you can not attend the hearing on the date or time set, the hearing will be rescheduled, once. You must suggest three alternative times and dates on which you will be available. The Board will select the alternative time and date and conduct the hearing with or without your attendance.

The Board may be contacted by writing:

Thank you,
SUNSET PLACE ASSOCIATION OF CARLSBAD
