

**HERITAGE KEY HOMEOWNERS ASSOCIATION, INC.**

**POLICY RESOLUTION CONCERNING: Violations of the Covenants**

**WHEREAS**, Article I, Section 1.3 of Heritage Key Homeowners Association (“Association”) Declaration of Covenants, Conditions and Restrictions (“Declaration”) requires that every Owner and occupant of a Unit, and their respective guests, occupants, visitors and invitees shall comply with the Governing Documents; and

**WHEREAS**, Article I, Section 1.3 of the Declaration empowers the Association’s Board of Directors (“Board”) to adopt, additional covenants, conditions, and restrictions that may be imposed on all or any portion of the Community; and

**WHEREAS**, Article III, Section 3.2 (a) of the Declaration empowers the Association’s Board of Directors (“Board”) to change (i.e. modify, cancel, limit, create exceptions to or add to) the Rules and Regulations; and

**WHEREAS**, Article VII, Section 7.4 (a) of the Declaration provides the Board with the power to impose sanctions for violations of the Association’s Declaration and Rules and Regulations (“Governing Documents”) subject to the Notice and Hearing procedures as set forth in the Bylaws; and

**WHEREAS**, Article VII, Section 7.4(a)(i) of the Declaration authorizes the Board to impose monetary fines assessed against the violator of the Governing Documents; and

**WHEREAS**, Article VII, Section 7.4(a)(ii) of the Declaration authorizes the Board to suspend the voting rights of any Owner for the violation of the Governing Documents until such violation is cured; and

**WHEREAS**, Article VII, Section 7.4(a)(iii) of the Declaration authorizes the Board to suspend the violator’s and any guest or invitee of the violator’s the use of any recreational facilities in the Common Maintenance Area; and

**WHEREAS**, Article III, Section 3.23 of the Bylaws provides that the Association may impose fines as permitted by law for violations of the Governing Documents except with regard to assessments. The alleged violator must be given notice and an opportunity to be heard before certain suspensions or charges may be imposed; and

**WHEREAS**, the Board deems it to be in the best interests of the members to establish procedural safeguards that comply with the Bylaws and that help ensure consistency of enforcement *when imposing certain suspensions or assessing violation charges*; and

**WHEREAS**, Article V, Section 5.2 of the Bylaws authorizes the Board to appoint a Covenants Committee consisting of three persons to serve as a hearing tribunal pursuant to Section 3.23. The Covenants Committee shall be comprised of members that are not Directors, Officers, or employees of the Association or the spouse, parent, child, brother, or sister of a Director, Officer, or employee of the Association; and

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT,** the foregoing recitals incorporated herein, the Board of Directors does hereby form the Covenants Committee and adopts the following policies and procedures:

**A. Application of this Resolution.** This Resolution is applicable to all alleged violations of the Governing Documents for which the Board is contemplating imposing violation charges against an Owner or suspending an Owner's right to use the Recreational Facilities. The notice and hearing procedures in this resolution are not prerequisites for taking any other type of enforcement action available to the Association. Owners are responsible for violations by their family members, tenants, guests and invitees, as may be applicable. Article III, Section 3.23 of the Bylaws specifies the authority and responsibilities of the Board concerning Fines.

**B. Informal Resolution of Complaints.** The Association's Directors or Officers or other authorized agent, and all Owners have the authority to request an Owner, tenant, guest, invitee or resident to cease or correct any act or omission that appears to be in violation of the Governing Documents. In the interest of cooperation and good relations between neighbors, efforts should be made to try to resolve alleged violations of the Governing Documents informally and cooperatively. In many cases, residents may not be aware that their conduct violates the Governing Documents and neighbor-to-neighbor resolution is often sufficient to resolve disputes. The Board may also direct the Community Manager to send a "friendly reminder" letter to a non-compliant Owner prior to taking more formal action as set forth below.

**C. Notice of Violation.**

(1) Formal action by the Association may be initiated by the Board, Covenants Committee, or Community Manager upon written request of an Owner or resident, or on the Board's own initiative.

(2) If the Covenants Committee or the Community Manager determines that a violation exists, a written Notice of Violation shall be sent to the Owner, by hand-delivery or by first-class mail to the Owner's address of record with the Association. If the violation is by a tenant, the Board may also send the notice of violation to the tenant at the Unit address.

(3) The Notice of Violation shall contain the following information (attached as *Exhibit 1* is a sample Notice of Violation):

- (a) The Owner's name.
- (b) A description of the alleged violation.
- (c) The action required to abate or correct the alleged violation.
- (d) A request or demand that the alleged violation be abated or corrected within 14 days of the date of the Notice or such other time period as may be appropriate under the circumstances, in the discretion of the Board or Community Manager.
- (e) A statement to the effect that if the Owner fails to abate or correct the violation within the stated time period or if the Owner has the same violation within the next 12 months, the Board may impose sanctions or suspend the Owner's privileges after notice and an opportunity to be heard.
- (f) The proposed fine to be imposed.

- (g) A statement that the proposed fine shall be imposed as contained in the Notice unless the alleged violator challenges the violation within 14 days of the notice.
- (h) A statement that if the alleged violator would like a hearing on the violation, then he or she must submit a request in writing to the Covenants Committee within 14 days of the date of the Notice of Violation.

**D. Notice of Hearing**

(1) If the alleged violator does not request a hearing on the violation, the alleged violator shall be deemed to have waived his or her right to have a hearing on the violation. The Board shall review the violation and determine what sanctions, if any to be imposed. The Board also has the power to schedule a hearing, even if not requested by the alleged violator.

(2) If the alleged violator properly requests a hearing (or if the Board schedules a hearing at its own motion), the Covenants Committee shall schedule the hearing and a Notice of the Hearing shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association at least fourteen (14) calendar days prior to the hearing.

(3) The Notice of Hearing shall contain the following information (attached as *Exhibit 2* is a sample Notice of Hearing):

- (a) The alleged violator's name.
- (b) The alleged violation.
- (c) The date, time and location of the hearing before the Covenants Committee
- (d) The sanctions that may be imposed after the hearing, including the amount of monetary penalties and privileges/rights that may be suspended by the Covenants Committee.
- (e) The alleged violator shall be given a reasonable amount of time to address the Covenants Committee and to provide evidence and witnesses on his/her behalf
- (f) The alleged violator has the right to be represented by counsel at the hearing.

(4) Hearing Scheduling and Continuances. The hearing shall be scheduled at a reasonable time and place within the Covenants Committee's discretion. The Covenants Committee, in its discretion, may grant a continuance if a continuance request is received in writing two (2) day(s) prior to the hearing date. A continuance request must describe the reasons for the request and be submitted to the Community Manager at the Heritage Key Villas office located at 2089 Heritage Key Boulevard, Kissimmee, Florida 34744. If a continuance is granted, notice of the new date and time may be either hand-delivered or mailed by first-class mail to the alleged violator at his or her address of record. However, it is ultimately the alleged violator's responsibility to contact the Covenants Committee or Community Manager prior to the originally scheduled hearing date to determine whether a continuance request was granted. In addition, if

the alleged violator requests a new hearing date that is less than fourteen (14) calendar days from the date that the notice is sent, the alleged violator explicitly waives the fourteen (14) day notice requirement.

**E. Hearing Procedures.**

(1) The hearing shall be conducted by the Covenants Committee to afford the alleged violator a chance to present his or her position regarding the alleged violation(s) of the Governing Documents. The alleged violator shall be given reasonable opportunity to be heard. However, if the alleged violator fails to appear at the hearing at the scheduled time, the Board may deem the allegations to have been admitted.

(2) Any defects in the hearing notice shall be deemed waived by the alleged violator if the alleged violator appears or is represented at the hearing (not including an appearance solely to object to notice).

(3) Presiding Officer. The Covenants Committee shall select a member of the Committee to preside over the hearing. At the beginning of the hearing, the presiding officer should explain the general procedures by which the hearing is to be conducted, including for example, the time limits for presentations.

(4) Conducting the Hearing/Legal Representation. The Covenants Committee may determine the manner in which the hearing will be conducted, so long as the procedures are otherwise consistent with the Bylaws and the provisions of this Resolution. The hearing need not be conducted according to technical judicial rules relating to evidence and witnesses. Alleged violators have the right to be represented by an attorney at the hearing, but attorney representation is not required. An alleged violator's failure to have an attorney at the scheduled hearing shall constitute a waiver of such right for purposes of the hearing.

(5) Executive Session. The hearing shall be conducted in executive session unless the Owner requests that the hearing be open to other Owners, and further provided that the presiding officer may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. Regardless, the Covenants Committee may allow witnesses and/or complaining parties to make presentations to the Covenants Committee during the hearing.

(6) Hearing Report. A written statement of the results of the Hearing and the fine, if any imposed, shall be filed with the minutes of the Covenants Committee's meeting.

**F. Decision/Notice of Hearing Results.**

After all presentations have been made within the allotted time period, the Covenants Committee shall deliberate in executive session and then (in open session) decide the matter by majority vote of the members of the Covenants Committee participating in the hearing; if additional time is needed to reach a decision, the Covenants Committee may continue the hearing to an announced date and time, with no further written notice required (or, if the date and time is not announced at the hearing, then the Association will send advance written notice of the continuance date and time to the alleged violator, by hand delivery or first-class mail). Within seven (7) calendar days after the hearing (including any continuances), the Covenants Committee or Community Manager shall notify the alleged violator of the Covenants Committee's decision

in writing, by hand-delivery or by certified mail, return receipt requested, to the alleged violator's address of record with the Association and a copy of the Hearing Report will be forwarded to the Board., (attached as *Exhibit 3* is a sample Notice of Hearing Results).

**G. Sanctions.** Pursuant to the Declaration, the Bylaws, and this Resolution, the Covenants Committee has the authority to:

(1) Assess charges for violations of the Governing Documents. Any violation charges assessed for violations of the Governing Documents shall be in amounts authorized by the Declaration and in accordance with Florida Statute 720.305. Florida Statute 720.305 is subject to change by the Florida Legislature. Violation charges shall be treated as an assessment against the Owner's Unit for the purposes of collection and filing of liens. Such amounts also shall be the personal obligation of the Owner. Currently, Florida Statute 720.305 provides that for each single violation, a charge of up to \$100.00 can be assessed; or for violations of a continuing nature, a charge of up to \$100 per day can be assessed for up to 10 days or until the violation ceases, whichever occurs first; and/or

(2) Suspend an Owner's voting rights and right to use the Community Facilities. The Covenants Committee may suspend an Owner's voting rights and the rights of the Owner or Resident to use all or any portion of the Community Facilities (with the exception of any streets or access ways) for the violation of the Governing Documents not to exceed 60 days or until such violation is cured in accordance with the Act. A suspension applies to the Owner and that Owner's family members, guests and tenants, unless the Owner is explicitly informed otherwise in writing by the Covenants Committee, Board or Community Manager.

(3) **Other Remedies.** This Resolution shall not be interpreted to prevent the Association from exercising any other remedies (other than the imposition of monetary charges and the suspension of privileges) authorized or available under the Declaration or the Governing Documents. The exercise of any one or more remedies shall not constitute an election of remedies.

**H. Records.** The Covenants Committee, Board or Community Manager should endeavor to keep copies of all correspondence related to violations in the Owner's file or in a separate file specifically for violations, and a record of each hearing or related meeting will be kept; a form similar to that attached hereto as *Exhibit 4* may be used but any record of the findings is sufficient.

**Resolution effective: January 1, 2015**