

# **OWNERS ASSOCIATION OF ELK MEADOWS ESTATES, INC.**

## **Covenant Enforcement Procedure Policy**

The following covenant enforcement procedure policy was adopted by the Board of Directors of Owners Association of Elk Meadows Estates, Inc. ("Association") pursuant to C.R.S. § 38-33.3-209.5, at a meeting of the Board of Directors.

**Effective Date:** November 15, 2022.

NOW, THEREFORE, it is resolved that the Association does adopt the following policy regarding the covenant enforcement procedures of the Association:

### **I. GENERAL TERMS**

#### **1. Definitions.** As used in this Policy:

- a. The term "Board" shall mean the Board of Directors, any committee of the Board, or any other body established by the Association's governing documents such as, but not limited to, an independent architectural control committee.
- b. The term "Owner" used in this policy shall refer to the Owner of record. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission.
- c. The term "Governing Documents" shall include the Association's Declaration, Bylaws, Articles of Incorporation, Rules and Regulations, Policies, and Resolutions.
- d. The term "Notice of Violation" shall refer to the notice sent in the manner and containing the information as required in Article III or Article IV herein.
- e. The term "Continuing Violation" shall mean any violations that do not threaten public safety or health and are either: 1) uninterrupted by time for a period of more than sixty (60) days from the Notice of Violation, or 2) occur on more than three separate occasions within a period of sixty (60) consecutive days from the Notice of Violation.
- f. The term "Courtesy Notice" shall refer to any communication other than a Notice of Violation, in whatever manner or form, to an Owner notifying the Owner of a violation of the Association's Governing Documents.

**2. Enforcement, Scope, and Terms.** Pursuant to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates, recorded on October 17, 2019, at Reception No. 223995 in the Clerk and Recorder's Office of Ouray County, Colorado, and any supplement or amendment thereto ("Declaration") and pursuant to the Colorado Common Interest Ownership Act ("Act"), the Association or any member of the Association, or both, may bring an action to enforce the terms of the Association's covenants and rules. The collection of delinquent assessments shall be governed by the Association's Collection Policy, except to the extent that the

Association desires to suspend an Owner's membership privileges for the non-payment of assessments, in which case the suspension procedure set forth herein shall apply, but it shall not apply to the Association's efforts to collect the assessments. All capitalized terms not herein defined shall be as defined as in the Declaration.

3. **Purpose.** The Association's primary objective is to uphold the terms of the Declaration and other governing documents that benefit the community at large. To the extent that a neighbor-to-neighbor dispute exists that is not a violation of the Association's governing documents, the Board encourages the neighbors to resolve the dispute in an informal and cooperative manner if possible.

## **II. INITIAL COMPLAINT**

1. **Complaint of Alleged Violation.** In the event that a claimed violation of the Association's governing documents is brought to the Board's attention through a written complaint, the Board shall review the written complaint. A complaint submitted to the Board shall include the following:

- a. The name, address and telephone number of the complainant.
- b. The Lot Owner's/Resident's name and Lot number of the address of the Lot against whom the complaint is being filed.
- c. The specific details and description of the alleged violation, including the date, time and location of the alleged violation.
- d. If possible, photographs showing the alleged violation.
- e. The signature of the complainant and the date on which the complaint is made.

The Board may, but need not, review claimed violations that are submitted anonymously or verbally. The Board may also prosecute alleged violations of the Association's governing documents without receipt of a written complaint if one or more of the Board members or the Association's manager or agent, if any, have personal knowledge of an alleged violation.

2. **Initial Determination After Receipt of Complaint.** After the Association receives a complaint or otherwise becomes aware of an alleged violation as set forth above in Section 1 of this Article, the Association, either through the Board or the Association's manager, shall take the following action:

- a. Determine whether there is sufficient information to support an alleged violation of the declaration, bylaws, covenants, or other governing documents of the association; and
- b. Determine whether the alleged violation threatens the public safety or health

3. **Designated Contact.** An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to the alleged violation. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices any time communications are sent out. To identify a designated contact, an Owner must complete the attached Designated Contact Form, a blank copy of which is attached to this Policy and return it to the Association by (a) certified mail, return receipt requested, and (b) e-mail.

4. **Language Preference.** An Owner may notify the Association if the Owner prefers that correspondences and notices sent to the Owner by the Association regarding the Owner's alleged violation be in a language other than English. If the Owner does not notify the Association of a language preference, then the Association shall send all correspondences and notices to the Owner in English. If the Owner does notify the Association of a language preference, then the Association shall send all correspondences and notices related to the Owner's alleged violation to the Owner in English and in the language identified by the Owner as the Owner's preferred language. NOTICE: The Association's obligation to provide notice and correspondence in a language other than English is expressly limited to notices and correspondences about an Owner's alleged violation that are sent to the Owner. The Association is not obligated to provide notices and correspondences to the Owner related to any other subject matter in a language other than English. To identify a preference that correspondence and notices from the Association be made in a language other than English, an Owner must deliver a written language preference request to the Association by certified mail, return receipt requested.

### **III. VIOLATIONS THAT THREATEN THE PUBLIC SAFETY OR HEALTH**

If the Board or manager reasonably determines the violation threatens the public safety or health per Article II, Section 2:

1. **Notice of Violation.** The Association will promptly provide a written Notice of Violation, in English and in any language for which the Owner has indicated a preference, to the Owner and the Owner's Designated Contact. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission. The Association may, but need not, send a notice to the person causing the violation if such person is not also an Owner.

2. **Content of Notice of Violation.** The Notice of Violation shall:

- a. State with reasonable detail the circumstances of the claimed violation as known by the Board or manager;
- b. State the action or actions required to cure the alleged violation;
- c. State the interval upon which fines may be levied for the violation;
- d. Inform the Owner that the Owner shall have seventy-two (72) hours to cure the violation before the Association may pursue fines;
- e. Provide the Owner an opportunity for a hearing before the Board to refute the complaint as provided in Article V below; and
- f. Contain the last date by which a request for hearing must be received by the Association, which will be no less than ten (10) days from the date the Notice of Violation is mailed by certified mail, return receipt requested, or hand delivered, whichever occurs first.

3. **Means of Sending the Notice of Violation.** In addition to sending the notice to any Designated Contact, the notice of violation shall be sent to the Owner at the address registered with the Association, and if no such address is registered, then to the address of the Owner's Lot within the Association's community. All notices shall be sent by registered or certified mail, postage prepaid. The Association, upon the written request of the Owner delivered to the Association personally,

by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Association, will mail the notice of violation to another address as set forth in the Owner's written request.

4. **Inspection.** After the seventy-two (72) hour notice period expires, the Association may, to the extent permitted under the Association's governing documents and/or the law, inspect the Lot or area where the violation is alleged to have taken place to determine whether or not the violation has been cured.

- a. If the Association determines that the violation has not been cured, the Association may proceed to fine the Owner and/or pursue legal action as needed and/or pursue all other remedies allowed in the Association's governing documents or at law.
- b. If the Association determines that the violation has been cured, the Association shall notify the Owner, in English and any other language that the Owner has indicated a preference, that the Owner will not be fined.

5. Requesting a hearing does not preclude or prevent the Association from entering the Lot to conduct necessary measures to abate the violation(s) as described in this Article VI of this policy to the extent permitted by the Declaration.

6. Nothing in this Article III shall preclude the Association from assessing any costs incurred by the Association in either remediation of the violation or repair of damage to the Common Elements or one or more Lots.

#### **IV. VIOLATIONS THAT DO NOT THREATEN THE PUBLIC SAFETY OR HEALTH**

If the Board or manager reasonably determines the violation does not threaten the public health or safety per Article II, Section 2:

1. **Notice of Violation.** The Board shall send a notice, in English and in any language for which the Owner has indicated a preference, to the Lot Owner and the Owner's Designated Representative. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission. The Board may, but need not, send a notice to the person causing the violation if such person is not also an Owner.

2. **Content of Notice of Violation.** The notice of violation shall:

- a. State with reasonable detail the circumstances of the claimed violation as known by the Board;
- b. State the action or actions required to cure the alleged violation;
- c. State the interval upon which fines may be levied for the violation;
- d. Provide the Owner an opportunity for a hearing before the Board to refute the complaint as provided in Article V below;

- e. Contain the last date by which a request for hearing must be received by the Association, which will be no less than ten (10) days from the date the Notice of Violation is mailed by certified mail, return receipt requested, or hand delivered, whichever occurs first;
- f. Inform the Owner that the Owner has an initial thirty (30) day period in which to cure the violation, or the Association may, after conducting an inspection and determining the Owner has not cured the violation, fine the Owner; and
- g. Inform the Owner that the Association may continue to fine and also pursue legal action against the Owner if the violation remains uncured after a second thirty (30) day period and inspection by the Association.

**3. Means of Sending the Notice of Violation.** In addition to sending the notice to any Designated Contact, the Notice of Violation shall be sent to the address registered with the Association, and if no such address is registered, then to the address of the property within the Association's community owned by the Owner. All notices shall be sent by certified mail, return receipt requested.

**4. Uncured Violation after Initial Thirty (30) Days.** Upon the expiration of the thirty (30) days and unless the Owner has provided satisfactory visual evidence that the violation has been cured prior to that date, the Association shall inspect the Lot within seven (7) days. If the Association's inspection determines that the violation has not been cured, the Association may issue fines to the Owner, and a second thirty (30) day period to cure shall commence. The Association may, but is not required to, send a second Notice of Violation. The Association also may, but is not required to, send a Courtesy Notice of the uncured violation to the Owner.

**5. Uncured Violation after the Second Thirty (30) Days** Upon the expiration of the second thirty (30) day cure period and unless the Owner has provided visual evidence that the violation has been cured prior to that date, the Association shall inspect the Lot within seven (7) days. If the Association's inspection determines that the violation has not been cured, the Association may take legal action and/or continue to fine the Owner.

**6. Courtesy Notices.** At any time, the Association may, but is not required, to send a Courtesy Notice of the violation informing the Owner of the violation. The Association may send the Courtesy Notice in any manner chosen by the Board.

**7. Cured Violations:** For any violation that does not threaten public safety or health that is deemed cured either by the Owner submitting notice of the cure to the Association with satisfactory visual evidence and subsequently verified by the Association or as determined by the Association, the Association shall notify the Owner, in English and in any language for which the Owner has indicated a preference, that the violation is cured, that the Owner will not be further fined for the violation, and state any outstanding fine balance that the Owner still owes the Association.

## **V. FAIR AND IMPARTIAL FACT-FINDING HEARING AND DETERMINATION**

1. If the Owner charged with a violation timely responds in writing and requests a hearing, a hearing shall be set and written notice of the date, time, and place of hearing shall be provided to the Owner.

2. If a hearing is held, it will include a fair and impartial fact-finding process concerning whether the violation occurred and whether the Owner is the one who should be held responsible for the violation.
3. The hearing will be held before the Board or a committee having authority to make a decision but the people making the decisions shall not have any direct personal or financial interest in the outcome. A decision maker will not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association.
4. If the Owner does not respond in writing with a request for a hearing within the time frame set forth in the Notice(s) of Violation, then the Board or committee will make its determination based on the facts available and the Board or committee may impose a fine or penalty.
5. The procedure to be followed at a hearing shall be as follows:
  - a. The President of the Board or committee chair or their designee shall be the chairperson of the meeting (“Chair”). The Chair shall conduct the hearing and shall recognize people prior to them speaking and shall direct them to stop speaking as the chair deems appropriate. At the conclusion of the hearing, the Board or committee may, but need not, make a final decision at the hearing. In any case, the Board or committee shall send written notice of its decision to the Owner within a reasonable time after the meeting. Any fine, penalty, or suspension of privileges shall not take effect until at least five (5) days after the decision.
  - b. If any person present at the hearing continues to speak or continues to be disruptive during the remainder of the meeting, the decision maker may vote to adjourn the hearing. In the alternative, or in addition to adjourning the hearing, the chair, in the exercise of his/her reasonable discretion shall be entitled to contact law enforcement and request that the disruptive person be removed from the hearing.

## **VI. FINE INTERVAL SCHEDULE**

1. **Violations that Threaten the Public Health and Safety.** The Board or committee shall exercise its discretion with regard to the amount of any particular fine levied. The Association may impose a fine every other day.
2. **Violations that Do Not Threaten the Public Health and Safety.** The Board or committee shall exercise its discretion with regard to the amount of any particular fine levied but shall be limited to the following fine schedule in cases of violations which, in the Association's sole discretion, do not threaten the public health and safety:
  - a. **First Violation** of the Governing Documents occurring within a one calendar year period, uncured after the Association’s inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Notice of Violation establishing that the violation has not been cured: fine not to exceed \$100.00;

- b. **Second Violation** of the Governing Documents occurring within a one calendar year period of the first violation, uncured after the Association's inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Second Notice of Violation establishing that the violation has not been cured: fine not to exceed \$150.00;
  - c. **Third and Subsequent Violations** of the Governing Documents occurring within a one calendar year period of the Second Violation, uncured after the Association's inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Third (or subsequent) Notice of Violation establishing that the violation has not been cured: fine not to exceed \$250.00; and
  - d. **Continuing Violations** of the Governing Documents as defined in Article I herein: a fine imposed every other day not to exceed \$500.00 in total for the violation.
3. The above-listed fine schedule shall not limit the Association's ability to assess the Owner for any damages including but not limited to costs incurred by the Association to cure the violation arising from the Owner's violation of the governing documents.
4. Notwithstanding anything in this policy to the contrary, the Association shall have the right, at any time and without proceeding through the steps outlined herein and without regard to the fine schedule, to take the following action as the Board deems appropriate and if allowed by the governing documents of the Association:
- a. Enforce the provisions of the governing documents through court action;
    - i. For a threat to public health and safety, after 72 hours following Owner's failure to comply after receiving written Notice of the Violation as described in Article I herein above.
    - ii. For any other violation, after the Notice of Violation and the two thirty (30) day cure periods have elapsed with the violation not having been cured pursuant to Section 4 and 5 of Article IV herein above.
  - b. Suspend the Owner's membership privileges, voting privileges, and/or rights to use the Common Elements.
  - c. Exercise self-help.
  - d. Request that the court appoint a receiver to take possession of the Lot and exert control over the Lot in accordance with the court's order.
5. Nothing in this section constitutes an election of remedies nor precludes the Board from levying fines as set forth above while at the same time seeking injunctive relief for violations of a continuing nature or violations that affect the health, safety, or welfare of the residents or the property pursuant to the Act. The prevailing party to any action shall be entitled to recover its costs, expenses and reasonable attorneys' fees.

6. All notices and correspondences shall be mailed to the address of the Lot owned by the Owner that is within the Association's community. However, upon the registration/written request of the Owner delivered to the Association by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Association, the Association will mail notices and other correspondence to another address as set forth in the Owner's written request.

7. Failure of the Association to enforce its governing documents pursuant to this Policy shall not constitute a waiver of the right to enforce the same thereafter.

8. This Policy shall control the actions of the Association and Owners from the effective date of this Policy and going forward. This policy shall replace all previous policies, rules, and regulations regarding the subject matter of this Policy from the effective date of this Policy and forward, subject to the right of the Board to amend this Policy. Any transactions or conduct that occurred prior to the effective date of this Policy, but which were related to the subject matter of this Policy, shall be controlled by the policy, rule or regulation that was in effect at the time the conduct or transaction occurred or was supposed to occur.

9. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

**CERTIFICATION:** The undersigned hereby certifies that the foregoing Covenant Enforcement Procedure Policy was adopted and made part of the minutes of the meeting of the Board of Directors of the Association conducted on November 15, 2022, 2022.

Owners Association of Elk Meadows Estates, Inc.

By: signatures on file

EMHOA Board: Stephanie Kissner, Andrew Temple, Eddie Kemper, Willy Krois, Maggie Guscott

(Printed Name & Title)

This policy has been reviewed by the Board of Directors (no amendments necessary), February 26, 2023.  
Board signatures on file



**Owners Association of Elk Meadows Estates, Inc.**  
**Covenant Enforcement Policy**  
**Designated Contact for Covenant Violation Form**

An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to the violation. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices anytime communications are sent out. To identify a designated contact, an Owner must complete this Designated Contact Form and return it to the Association by (a) certified mail, return receipt requested, and (b) e-mail. Such notice is required due to the increased cost a designated contact imposes upon the Association.

Category	Information
Owner Name	
Owner Property Address	
Owner Mailing Address (if different from Property Address)	
Owner Telephone Number	
Owner E-mail Address	
Designated Contact Name	
Designated Contact Mailing Address	
Designated Contact Telephone Number	
Designated Contact E-mail Address	

By and through this Designated Contact Form, the Owner identifies the Designated Contact set forth above to be contacted by the Association, its agents, and representatives, on the Owner's behalf for purposes of contact related to the violation.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_