

**LOS COCOS
HOME OWNER'S ASSOCIATION
A California Nonprofit Mutual Benefit
Corporation**

ENFORCEMENT PROCEDURE

SEPTEMBER 2022*

* Adopted: September 27, 2022

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN OR MILITARY STATUS, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (p) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

LOS COCOS HOME OWNER'S ASSOCIATION ENFORCEMENT PROCEDURE

This document is the Los Cocos Home Owner's Association's (hereafter referred to "Association") enforcement process ("Enforcement Procedure"). The entities engaged in enforcing the Association's Second Amended and Restated Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), Bylaws, Articles of Incorporation ("Articles"), Restated Rules and Regulations ("Rules") and Architectural Guidelines / Landscape Guidelines ("Guidelines") (hereafter, collectively, "Governing Documents") are:

Board of Directors — The Board of Directors is charged with overseeing the enforcement of the Association's Governing Documents. It has the authority to do the following: conduct violation hearings, impose Special Enforcement Assessments and Special Reimbursement Assessments, including, but not limited to, fines, cause violations to be remedied, suspend common area privileges, use of the recreational facilities and/or any other privilege of any Member or Person deriving rights from any Member ("Membership Privileges"), and promulgate Rules and Guidelines.

Architectural Control Committee (hereafter, "Architectural Committee") — The Architectural Committee is charged primarily reviewing and approving proposed architectural and landscape modifications and to recommend Board action for potential architectural and landscape violations, and to promulgate Guidelines. In the absence of an Architectural Committee, the Board shall serve in such capacity.

For the purposes of this Enforcement Procedure, the following definitions shall apply:

- The term Special Enforcement Assessment/Special Reimbursement Assessment shall mean any monetary fine and/or any reimbursement assessment including the recovery of costs incurred including but not limited to attorney's fees.
- The term *violation* shall mean and include any failure to follow and/or observe the Association's Governing Documents.
- The term *recurring violation* shall mean any violation of the Association's Governing Documents which has a definite commencement and cessation, but has occurred more than once. Examples of recurring violations are: (1) violation of leash rules regarding pets on more than one occasion; and (2) violation of parking rules on more than one occasion.
- The term *continuous violation* shall mean any violation of the Association's Governing Documents which is ongoing and has not ceased for a period of time. Examples of continuous violations are: (1) a poorly-maintained Residence/Lot; and (2) retaining an improvement at the Owner's Residence/Lot in violation of the Association's governing documents. Upon the Owner's curing the violation, the Association may, but is not obligated to, waive any portion or all of the monetary fine (Special Enforcement Assessment/Special Reimbursement Assessment) imposed for a continuous violation.

The Enforcement Procedure related to any disciplinary action shall be as indicated below.

STEP 1. INITIATION.

- If a **Violation Report** is completed by a homeowner, a Board member, the Association's Manager, Architectural Committee member, or another designated representative of the Association, the Violation Report will be verified as set forth in Step 2.

STEP 2. VERIFICATION

Verification of a Violation Report for **non-architectural violations** is accomplished by a review of the Association's Governing Documents and/or inspection by the Association's Manager, Board of Directors, Architectural Committee or other designated Association representative. Verification of a Violation Report for **architectural violations** is accomplished by a review of the Association's Governing Documents and/or a recommendation by the Architectural Committee. *Violation* shall be defined as an act in direct conflict with the Association's Governing Documents, and/or local, county or state requirements.

STEP 3. DOCUMENTATION

A. FOR NON-ARCHITECTURAL VIOLATIONS

1. The Association has the following three options for enforcing non-architectural violations:
 - A **Warning Notice** is completed by the Association's Manager or his/her designated representative and forwarded to the violating homeowner (hereinafter *Violator*). At the discretion of the Board or Association's Manager, this step may be skipped if, based on the seriousness of the violation, more immediate action is warranted; or
 - If the violation persists after the Warning Notice has been issued OR if the Board or Association's Manager determines to proceed directly to a **Violation Notice**, said Violation Notice is sent to the Violator, stating a deadline by which to cure the violation; or
 - If the violation warrants immediate action, an **Expedited Hearing Notice** is sent to the Violator, stating a date, time and place where the Violator may be heard before the Board of Directors.
2. If a **Violation Notice** is sent and the Violator fails to take the necessary action by the deadline given, a **Hearing Notice** will be sent to the Violator, setting forth the date, place and time upon which the Violator may be heard before the Board of Directors.
3. Failure to appear at any hearing, could result in immediate discipline including, but not limited to, imposition of a Special Enforcement Assessment/Special Reimbursement Assessment, and/or suspension of Membership Privileges. Association must give at least fifteen (15) days' written notice of the hearing to the Violator before any action is taken, pursuant to the Association's Governing Documents.

B. FOR ARCHITECTURAL VIOLATIONS

1. Examples of architectural violations are:
 - a. Owner of the property has not submitted the requisite application, related documents and plans and/or the requisite fees to the Architectural Committee or the Association, if appropriate, or secured requisite written approval from the Association.
 - b. Owner of the property has obtained prior approval but has not complied with the approved final plans and specifications of the proposed work.
 - c. Owner has failed to maintain his/her/its Residence/Lot or other areas which Owner is responsible to maintain.

2. The Association has the following three options for enforcing architectural violations:

- A **Warning Notice** is completed and forwarded to the violating homeowner (hereinafter *Violator*). At the discretion of the Board of Directors or the Association's Manager, this step may be skipped, and the Association may proceed directly to a **Violation Notice** or an **Expedited Hearing Notice**; or

- If the violation persists after the Warning Notice has been issued OR if the Board of Directors or Association Manager determines to proceed directly to a **Violation Notice**, said Violation Notice is sent to the Violator, stating a deadline by which to cure the violation; or

- If the violation warrants immediate action, an **Expedited Hearing Notice** is sent to the Violator, stating a date, time and place where the Violator may be heard before the Board of Directors.

3. If a **Violation Notice** is sent and the Violator fails to take the necessary action by the deadline given, a **Hearing Notice** will be sent to the violating homeowner, setting forth the date, time, and place where the Violator may be heard before the Board of Directors.

4. Failure to: (1) appear at any hearing; and/or (2) comply with a written **Violation Notice** could result in immediate discipline including, but not limited to, imposition of a Special Enforcement Assessment/Special Reimbursement Assessment and/or suspension of Membership Privileges. Association must give at least fifteen (15) days' written notice of the hearing to the Violator before any action is taken, pursuant to the Association's Governing Documents.

STEP 4. HOMEOWNER HEARING PROCEDURE

A. **Findings of Fact and Recommended Action:** The Board of Directors must make specific findings as it relates to the violation of the Governing Documents. **NOTE:** If no violation is found, then no remedy is required, and the Association would then issue a Ruling Notice pursuant to Step 4.C below.

B. **Remedies of the Board of Directors.** If it is determined a violation has taken place, the Board of Directors may take any or all the following actions:

1. **Special Enforcement Assessment/Special Reimbursement Assessment** — Even if the violation is not of a continuing nature and does not lend itself to a self-help remedy, the Board of Directors still has the authority to impose a Special Enforcement Assessment/Special Reimbursement Assessment for failure to comply with the provisions of the Governing Documents or to reimburse the Association for damage caused to the common area. The Board of Directors may only impose a Special Enforcement Assessment/Special Reimbursement Assessment after providing notice and hearing to a Violator, pursuant to the minimum requirements set forth herein. The following Special Enforcement Assessment/Special Reimbursement Assessment structure is based upon two (2) components: (1) a reasonable determination of the costs (i.e. attorneys' fees, property management fees, etc.) expended by the Association in performing its functions in enforcing the Governing Documents, and 2) the imposition of monetary fines for violation of said Governing Documents.

The Special Enforcement Assessment/Special Reimbursement Assessment structures are detailed in Paragraph 4.D below.

2. Right and Authority to suspend Membership Privileges for violations of the Governing Documents and/or for any period during which the Member is delinquent in the payment of any assessment,

fine or monetary penalty, or as otherwise provided in the Governing Documents.

3. **Self-Help Remedy for Continuing Non-Architectural Violations** — If the violation of the Governing Documents continues and can be cured through a self-help remedy, the Board of Directors has the right to demand correction of the continuing violation and a date certain upon which a homeowner must comply (a reasonable period of time shall be given to the homeowner) *via* the Notice of Ruling. The Notice should further indicate that if the homeowner fails to comply within the time provided by the Association, the Association would bring the homeowner into compliance and charge the cost of same to the homeowner as a Special Enforcement Assessment/Special Reimbursement Assessment.

4. **Self-Help Remedy for Continuing Architectural Violations** — If it is determined a violation has taken place, the Board of Directors shall make findings of fact and request corrective action (removal, replacement, repair and/or modification) by the Violator. If corrective action is not taken by the Member and the violation can be cured through a self-help remedy, the Ruling Notice shall further indicate that if the Member fails to comply within the time provided, the Association shall bring the Member into compliance and charge the cost of same to the Member as a Special Enforcement Assessment/Special Reimbursement Assessment. **However, any demand letter which requires the Association to go onto a Members' Lot to rectify the violation should be reviewed and sent by Association's counsel.** *For example, if a homeowner's Residence/Lot is becoming an eyesore for lack of maintenance, the Association can provide written notice to the violating homeowner that he/she must provide the appropriate maintenance and that he/she is in violation of the Governing Documents. The Notice would further provide that the owner has a specific (and reasonable) period of time to correct the deficiency. If the owner fails to correct said deficiency within the specified time given by the Association, the Association could then proceed with the maintenance and charge the cost to the homeowner as a Special Enforcement Assessment/Special Reimbursement Assessment.*

5. **Other Potential Remedies / Sanctions** — Notwithstanding anything set forth herein, the Board of Directors in its discretion shall have the power to require any other applicable remedy and/or sanction for as long as it deems necessary, provided, however, that said remedy/sanction is in accord with the Association's Governing Documents and law. If the violation is of such a serious nature that potential legal action is contemplated, the Association's corporate counsel should be consulted for determination whether Internal Dispute Resolution ("IDR") and/or Alternative Dispute Resolution ("ADR") should be offered to the Violator (as well as consideration of other potential remedies).

C. **Ruling Notice.** Regardless of what remedy is chosen, even if no violation is found, the Association must mail to the Violator a **Ruling Notice** within fifteen (15) days after the date of the hearing. If it is ruled that a Special Enforcement Assessment/Special Reimbursement Assessment shall be imposed against the Violator, then the Association must give notice of the ruling to the Violator and request payment of such assessment within thirty (30) days after the Ruling Notice is mailed. This is to be recorded in the Executive Session minutes or regular minutes, whichever is applicable.

D. **Special Enforcement Assessment/Special Reimbursement Assessment Structure.** If any Member's failure to comply with the provisions of the Governing Documents results in the Association's expenditures of monies or incurs costs related to the action or non-action of a Member, the Association may levy a Special Enforcement Assessment/Special Reimbursement Assessment against such Member. Additionally, the Association may levy fines as Special Enforcement Assessments/Special Reimbursement Assessments consistent with Tables 1, 2 and 3 below.

The amount of the Special Enforcement Assessments/Special Reimbursement Assessments may be amended from time to time by the Board of Directors. The present structure of the Association for Special Enforcement Assessments/Special Reimbursement Assessments for violations of the Governing Documents shall be as

follows:

Table 1: Special Enforcement Assessments/Special Reimbursement Assessments for Violation of the Governing Documents	
First Violation	Costs incurred by the Association, if any, as well as a monetary fine up to \$250.00
Recurring Violation for a Second Time	Costs incurred by the Association, if any, as well as a monetary fine up to \$500.00
Recurring Violation for a Third or More Times	Costs incurred by the Association, if any, as well as a monetary fine up to \$750.00 plus possible legal action
Continuous Violation	Costs incurred by the Association, if any, as well as a monetary fine up to \$750.00 PLUS an amount up to \$40.00 per day from the date of the first notice of violation until violation is cured.

In addition to the Special Enforcement Assessments/Special Reimbursement Assessments described in Table 1 above, the Board of Directors may levy the following Special Enforcement Assessments/Special Reimbursement Assessments for architectural application violations, which may be added to any other Special Enforcement Assessments/Special Reimbursement Assessments.

Table 2: Special Enforcement Assessments/Special Reimbursement Assessments for Architectural Application Violations	
Special Enforcement Assessments/Special Reimbursement Assessments for commencing Architectural Improvement without <ul style="list-style-type: none"> • Architectural Committee Approval and/or • Submitting Application (even if Improvement is within Guidelines)	First Violation - Up to \$2,000.00 plus legal costs and any other remedies available to the Association Second and Subsequent Violations - Up to \$5,000 plus legal costs and any other remedies available to the Association
Special Enforcement Assessments/Special Reimbursement Assessments for failure to follow submitted and approved plans and specifications and/or make corrections upon notice	First Violation - Up to \$2,000.00 plus legal costs and any other remedies available to the Association Second and Subsequent Violations - Up to \$5,000 plus legal costs and any other remedies available to the Association

In addition to the Special Enforcement Assessments/Special Reimbursement Assessments described in Tables 1 and 2 above, the Board of Directors may levy the following assessments for violation of the governing documents relative to rental/tenancy requirements and advertisement of short term rentals, and which may be added to any other Special Enforcement Assessment/Special Reimbursement Assessment.

Table 3: Special Enforcement Assessments/Special Reimbursement Assessments for Violation of the Rentals Rules and Regulations and/or the Minimum Rental Period Requirements (i.e. leasing and/or advertising)	
First Violation	Costs incurred by the Association, if any, as well as a monetary fine up to \$3,000.00
Recurring Violation for a Second Time	Costs incurred by the Association, if any, as well as a monetary fine up to \$5,000.00
Recurring Violation for a Third Time or More	Costs incurred by the Association, if any, as well as a monetary fine up to \$7,500.00 plus possible legal action
Continuous Violation	The applicable Table 3 fines PLUS an amount up to \$100.00 per day from the date of the first notice of violation until the violation is cured PLUS possible suspension of common area privileges including, but not limited to, use of recreational facilities.

E. Collection of Special Enforcement Assessments / Special Reimbursement Assessments. Pursuant to the Association's collection policy and the CC&Rs, if a Special Enforcement Assessment/Special Reimbursement Assessment was levied for failure to comply with the Governing Documents or as a reimbursement assessment imposed for costs incurred by the Association in repair of damage to the Common Area and is not paid within thirty (30) days after mailing the Ruling Notice, then the Association may suspend the Owner's Membership Privileges after notice and hearing as set forth in the Association's Collection Policy.

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