

## **FINES SCHEDULE/RIGHT TO HEARING**

### **China Falls Homeowners Association**

Pursuant to Article 6, Section 6.1 of the First Amended & Restated Declaration and Covenants, Conditions, Restrictions, Easements and Reservations of the China Falls Homeowners Association (the "Association") and R.C.W. 64.38.020, the following written Rules and Regulations are adopted in order to further and foster compliance by owners with the provisions and requirements of the CC&Rs, the Bylaws and Rules & Regulations (hereinafter collectively the "governing documents") of the Association. These rules are intended to provide additional incentive for compliance by owners who violate the requirements and provisions of the governing documents, not supplant or amend them, and in the event of an inconsistency or conflict between these Rules and the governing documents of the Association, the governing documents provisions will supersede and apply.

#### **I. Violations, Investigation and Fines**

##### **A. Introduction**

Washington statute R.C.W. 64.38.020(11), provides that an association can levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners, for violations of the governing documents of the Association.

##### **B. Investigation/Notice of Violation**

1. **Investigation:** When a possible violation is reported to or otherwise becomes known to the Association, it will be investigated by the Board or its designated representative(s), and a determination made as to whether a violation has occurred.
2. **Notice of Violation:** If a violation is found, written notice of the violation will be sent or delivered to the offending owner giving them a deadline date for compliance. The deadline given in such notice letters will be a reasonable time period within which to correct the violation and fully comply. In each case or matter, the Board will consider the nature of the violation, the circumstances of the owner and the property, and what it will take to correct the non-compliance in order to determine a reasonable time period deadline to give the owner to comply. If such Notice warns that fines will be imposed if compliance does not occur by a certain date, the Notice will also inform the owner of the right to request a hearing concerning the imposition of fines, pursuant to the provisions below in section IV.

### C. Rule – Legal Action

If the owner does not timely comply and correct the violation cited in the notice, the Association may assess or levy fines against them and the lot according to the Fine Schedule as set forth in Section II below. Additional fines may continue to be assessed while the legal action is in process, if the owner continues to violate the requirements of the governing documents. Under Section 6.2, all attorneys' fees and costs shall be awarded to the prevailing party and recoverable from the losing party in any action, lawsuit or other proceeding involving the issue or recovery of fines and/or the enforcement of the governing documents.

Notwithstanding anything to the contrary herein, in the Board's discretion, legal action may be taken against the violating owner at any time after a compliance deadline is given to owner, and nothing in these Rules is intended to waive or otherwise modify the Association's legal right(s) to take other enforcement measures in order to secure or achieve compliance.

### II. Schedule of Fines

If an owner violates any provision(s) of the governing documents and does not comply after reasonable notice and within the deadline given by the Association, fines may be imposed and accrue as follows:

1<sup>st</sup> offense = Friendly warning to the owner and/or occupant;

2<sup>nd</sup> offense = **\$75.00**; and

3<sup>rd</sup> and each subsequent offense = **\$200.00 per day or per incident**, with no limit to the number of fines assessed for incidents or conduct occurring within a twelve-month period.

Some violations involve an intermittent offense or conduct, for example, repeat parking violations or trash can collections, the Association may impose fines per incident after reasonable friendly warning to the owner.

The Association is also entitled to reimbursement of any expenses incurred to ensure or enforce compliance with violations, for example landscape fees paid to maintain landscaping standards or other third-party fees to conduct investigations, etc.

### **III. Collection of Fines and Expenses**

The Association will bill the violating owner the applicable fines and Expenses at such time and for such periods as the Association considers reasonable.

All fines and Expenses imposed by the Association upon an owner which remain unpaid for thirty (30) days after being invoiced to owner shall automatically constitute a lien on the Lot and all its improvements, and may be handled and foreclosed upon in the same fashion as if it were a lien for unpaid assessments under the Association's governing documents and the laws of the State of Washington. The Association may file a formal lien with the county in order to further protect its interests regarding the unpaid fine(s). The amount of the lien shall include interest, attorneys' fees, and all costs and expenses, incurred by the Association in the imposition and collection of such unpaid fine(s).

### **IV. Request for Hearing/Opportunity to be heard**

#### **A. Introduction**

Any owner found by the Board to be in violation of governing documents provisions or requirements may request a hearing to offer a defense to, or to explain extenuating circumstances regarding, the violation(s) and imposition of fines.

#### **B. Deadline for Owner Requesting a Hearing/Waiver of Hearing Right if Untimely Request**

The last letter or communication by the Association to owner with final deadline for compliance and a notice that fines will commence shall also specify the following information:

1. owner has the right to request a hearing solely for the purpose of disputing the validity or basis of being fined;
2. a reasonable deadline by which owner must notify the Board in writing that he or she requests a hearing;
3. if owner does not timely give written notice to the Board requesting a hearing, owner waives the right to a hearing.

The deadline for requesting a hearing and the waiver of the right to hearing for failure to timely meet the deadline is intended to bring a definitive closure to the hearing request period, so that an owner cannot unreasonably obstruct or delay implementation or collection of the imposed fines by requesting a hearing after collection or enforcement efforts begin.

### **C. Request for Hearing/Required Information**

The owner must complete a written Request for Hearing which shall be mailed or delivered to the Association. The appeal request must contain the following:

1. Owner's name and address;
2. Owner's reasons, basis and defense for the hearing;
3. A copy of all supporting documentation;
4. The name(s) of any attending witnesses or other collaborating guests;
5. The owner's signature and date of the Request for Hearing.

### **D. Hearing Procedures**

1. The owner will be sent confirmation by the Association of its receipt of the Request for Hearing.
2. The Board will appoint and assemble a minimum of three (3) (or more at the Board's discretion) current members of the Association and/or the Association's Board of Directors, or appoint and name a representative designated by the Board to act as a Review Board (the "Review Board") within seven (7) calendar days following receipt of a written Request for Hearing complying with the information requirements set forth above.
3. No later than ten (10) calendar days following the formation of the Review Board, the Review Board shall mail or deliver notice to the appellant owner of a hearing date, which notice will provide the date, time, and location of the hearing, which is to be determined by the Review Board.
4. The Review Board will permit the appealing owner up to thirty minutes to explain the circumstances of the matter and provide grounds as to why the fine should be waived, reduced or cancelled.
5. After the presentation, the hearing will adjourn, and the Review Board will review the circumstances of the Request for Hearing as presented.
6. Within seven (7) calendar days of the hearing, the Review Board will mail or deliver written notice to the owner of the Review Board's decision.
7. If the Review Board finds in favor of the owner, it will advise the owner as to whether the violation and/or the fines originally imposed are reduced, modified, or waived. Any adjustment(s) shall reflect on the owner's account the following month.
8. If the Review Board determines that the owner's explanation or defense presented at the hearing was inadequate or otherwise failed to justify a reduction, modification, or waiver of the violation and/or fines, the owner will be so notified, in which case the fines imposed will continue as owed to the Association until paid in full regardless of whether the violation has since been removed or corrected. In any event, if the Review Board finds against the owner, the fines will continue to accrue until full and adequate compliance occurs by owner.

## **V. Stop Work Order**

In addition to posing a fine, if appropriate based upon the nature of the violation, the Association may issue a Stop Work Order to any person or entity engaged in unauthorized activity or actions that violate the governing documents. An unauthorized activity is an activity which requires prior written approval of the Board or the Architectural Control Committee (ACC), and which has not received such prior written approval. A Stop Work Order shall:

- a. Identify the address of the property involved;
- b. Describe the unauthorized activity;
- c. Identify the specific prior approval requirement being violated;
- d. State that the unauthorized activity shall immediately cease, and describe any additional sanctions to be imposed;
- e. State that the delivery of the Stop Work Order serves as a determination that a violation has occurred;
- f. State that this determination is final unless it is appealed to the Board, in writing, within 10 days of the date that the Stop Work Order was issued;
- g. State that the failure to immediately comply with the terms of the Stop Work Order will cause a **\$350.00 fine** to be imposed, and that for each week thereafter in which non-compliance with the Stop Work Order takes place, a separate fine of **\$350.00 fine** will be imposed.

## **VI. Chronic Offenders**

### **A. Introduction**

When the activities or actions of an owner continue to violate the same or similar governing documents' requirements or restrictions repeatedly and continually occur over periods of time despite past notices or letters of the Association, such as owner is deemed a "Chronic Offender."

### **B. Board of Directors Opinion**

The Board considers it reasonably necessary to address the Chronic Offender situation as a result of the extra time, monies (including attorney fees), materials, monitoring and corrective effort being spent or done, than on owners who are single, isolated, or rare offenders. Further, the Chronic Offender has a much greater adverse impact on the attractiveness, value and marketability of homes in the neighborhood and on the quality of life of other owners. Accordingly, the Board of Directors has adopted this particular Rule as well as those in other Rules or Policies related to the topic of non-compliance or violations, in hopes that such a policy will deter owners from becoming or continuing to be Chronic Offenders and to help recover the additional costs incurred from the excessive time, effort, and monies expended by the Association in dealing with such owners.

### **C. Determination**

When making a determining whether an owner should be classified as a Chronic Offender, the Board may, among other things, take into consideration the number of notice violations, complaints, or magnitude of violations.

If the Board, or any Committee designated by it, determines that an owner is a Chronic Offender, the board will issue a notice to owner that they are now considered a Chronic Offender and to cease and desist the violation(s) then at issue. The Notice will include reference to the owner's right to request a hearing on the determination they are a Chronic Offender with the procedures established under Article IV, Request for Hearing. After such notice is sent to owner, if the violation(s) involved are not stopped or corrected, enhanced fines may be imposed pursuant to those listed in the schedule below.

### **D. Schedule of Fines**

At such time as an owner is determined to be a Chronic Offender, enhanced fines may be imposed and accrue as follows:

1st offense = Friendly warning to the owner and occupant;

2nd offense = **\$150.00**;

3rd and each subsequent offense = **\$300.00 per day or per incident**, with no limit to the number of fines assessed.

### **E. Removal from Chronic Offender List**

At such time an owner has not received any violations pursuant to Article I, Section B, Notice of Violation for two (2) consecutive years, the owner will no longer be subject to the enhanced fine schedule.

## **VII. Rule Enforceability**

If any portion of this rule is determined to be legally unenforceable, it shall not negate the enforceability of the remaining portions of the rule.

**Adopted by the Board this 5<sup>th</sup> day of August, 2019.**

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