

RESOLUTION RE GRIEVANCE PROCEDURES ADOPTED BY THE GOLDMINE HILL CONDOMINIUM ASSOCIATION BOARD OF DIRECTORS

Whereas, Article III, Section 3.2B of the Declaration Covenants, Condition, and Restrictions empowers the Board Directors to enforce the provisions of the Declaration and the house Rules; and to initiate and conduct disciplinary proceedings and assign penalties for violation of the provisions of the Declaration and/or Rules; and

Whereas, in order to benefit and protect the interests of the Association and individual members of the Association, the Board deems it advisable to establish and administer uniform procedures assuring due process in all investigations and determinations with respect to alleged violations of the provisions of the Declaration and/or Rules by residents or guests of residents; and

Whereas, it is the intent of the Board that by establishing and administering the procedures described above, the necessity for seeking action in or through a court of law for resolution of alleged violation of provisions of the Declaration and/or Rules will be minimized;

Resolved, the Board does hereby adopt the following grievance procedures

GRIEVANCE PROCEDURES RE COMPLIANCE WITH PROVISIONS OF THE DECLARATION AND RULES

Section 1: ACTIONS PRIOR TO THE INITIATION OF FORMAL HEARING

It is the intent that an informal process be followed prior to the initiation of the formal process. To that end, any member, employee, tenant, of the Association, or other party with vested interest in the property, has the authority to request that a member or tenant cease or correct any act or omission which appears to be in violation of the Declaration of Covenants, Conditions and Restrictions of Association, the Bylaws of Association and the rules and regulations adopted by the Board of Directors and the membership. Such informal request may be made verbally or in writing, and may but need not be made before the formal process is initiated (see exhibits A & B).

Section 2: WRITTEN COMPLAINT

If the action of informal process is unsuccessful, the formal process shall be initiated by a written complaint by a member of the Board of Directors, or its agent. The complaint shall contain a written statement of charges setting forth in ordinary and concise language the acts or omissions with which the respondent is charged. So that the respondent will be able to prepare a defense, the complaint shall identify the specific provision(s) of the Declaration of covenants, Conditions and Restrictions, or the Bylaws, or the Rules and Regulations and Articles of Incorporation (hereinafter, the governing documents) which the respondent is alleged to have violated. The written complaint shall contain as many specifics as are available as to time, date, location, persons involved, etc., so that the complaint may be investigated by the Board of Directors or its agents.

Section 3: SERVICE OF COMPLAINT

The Board of Directors or its agent shall assign the complaint a number and serve a copy of the complaint upon the respondent together with a copy of this grievance procedure and a separate copy of the Notice of Respondent's Rights and Options to be completed, signed and returned by the respondent (see Section 5). The respondent shall be served at the address appearing on the books of the Association by either of the following means:

- (a) Personal delivery, or
- (b) By certified mail, return receipt requested

Service by mail shall be deemed delivered upon return of receipt. No order adversely affecting the rights of the respondent shall have been served as provided herein. However, after service is complete, the Board in its discretion may order a formal hearing.

Section 4: NOTICE OF RESPONDENT'S RIGHTS

Service of complaint and Notice of Hearing shall be accompanied by a Notice of Respondent's Rights and options, which state that the respondent may:

- (a) Request a formal hearing before the Board of Directors at which time respondent will present defense;
- (b) Object to the complaint upon the ground that it does not state the acts or omissions upon which the board of Directors may proceed;
- (c) Object to the form of the complaint on the ground that it is so indefinite or uncertain that the respondent cannot identify the violating behavior or prepare his defense; or
- (d) Admit to the complaint in whole or part. In such an event, the Board of Directors will make a determination as to whether it will waive hearing and simply impose penalty, if any, or if it will conduct a hearing to determine appropriate penalty.

Any objections to the form or substance of the complaint shall be considered by the Board of Directors within ten (10) days after receipt. If it is determined by the Board of Directors that the complaint is insufficient; the complaint will be rejected without formal hearing and both the complainant and the respondent shall be advised of the reasons for rejection. Otherwise, a formal hearing may be ordered by the Board in its discretion.

Section 5: NOTICE OF HEARING

If a formal hearing is ordered by the Board or requested by the respondent, a Notice of Hearing (Exhibit E) shall be served upon both the complainant and the respondent as provided in Section 3 above. The Notice shall be served not less than 15 days prior to the date of the hearing.

If the complainant or respondent can show acceptable cause as to why they cannot attend the hearing, they must notify the Board of Directors or agent at least 48 hours prior to the scheduled hearing. If cause is accepted by the Board of Directors, the hearing will be rescheduled and notice of the new date will be given at least ten (10) days prior to the date rescheduled hearing.

Section 6: DEFAULT

If the respondent fails to return the signed copy of the Notice of Respondent's Rights or fails to respond to a Notice of Hearing or appear at a scheduled formal hearing without requesting postponement, the Board of Directors shall proceed with the hearing as scheduled.

Section 7: DISCOVERY

Either party is entitled to:

- (a) Obtain the names and address of the witnesses to the extent known to the other party, and
- (b) Inspect and make a copy of any investigate reports relative to the subject matter of the hearing. No witness will be allowed to testify except those, which have been disclosed to both parties, or at the acceptance of the opposing party during the hearing.

Nothing in this section, however, shall authorize the inspection of or copying of any writings or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

Section 8: CONSTRAINTS OF BOARD OF DIRECTORS

It shall be incumbent upon each member of the Board of Directors to make a determination as to whether he or she able to function in a disinterested and objective manner in consideration of the case before the Board of Directors.

Any member incapable of objective consideration of the case shall disclose such to the Board of Directors and shall remove himself or herself from the proceedings, and have it so recorded in the minutes.

The respondent may challenge any member of the Board of Directors for cause, where a fair and impartial hearing cannot be afforded at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the Board of Directors shall appoint an alternate. If the Board is unable to appoint an alternate to fill the vacancy, the hearing shall continue with the remaining Board members. All decisions will be final.

Section 9: WITHDRAWAL OR RETIREMENT OF A MEMBER OF THE BOARD

If a member of the Board of Directors withdraws during the hearing, the remaining members shall continue as described in Section 8.

Section 10: HEARING

At the beginning of a hearing a member of the Board shall explain the rules and procedures governing the hearing.

- (a) Each party to the proceedings is entitled to make an opening statement, starting with complainant.

- (b) Each party is entitled to produce evidence witnesses and testimony and cross-examine the witnesses and opposing party.
- (c) Each party is entitled to make a closing statement.
- (d) Any relevant evidence shall be admitted. Hearsay evidence shall not be sufficient in itself to support a finding.
- (e) At the request of the respondent, the hearing shall be conducted in executive session.
- (f) Any party may waive the right to exercise any part of the process, and the Board of Directors is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted.

Section 11: DECISION

After all testimony and documentary evidence has been presented at formal hearing, the Board shall take the matter under submission and within five days decide the matter by majority vote. Both the complainant and the respondent shall be served forthwith, as provided Section 3, a copy of the Board's formal written decision. The decision shall address the issues and reasoning upon which the conclusion is based and set forth any disciplinary action taken by the Board.

A summary of the decision, excluding names of person involved addressing only the issue and the Board's decision as regards the issue, shall be included in the books of the Association. Disciplinary action, if any, shall become effective (10) days after the decision is served upon the respondent, unless otherwise ordered in writing by the Board of Directors.

The formal decision of the Board is final. Any further action regarding a particular matter shall be taken through the legal process in a court of law.

Section 12: PENALTIES

Penalties to which a respondent may be subject are attached as Exhibit D.

Exhibit A

NOTICE OF ALLEGED NON-COMPLIANCE

Date:

To:

From:

Please be advised that it is alleged that you have to comply with the provisions of _____

For your convenience, a copy of the provision is attached.

The provision clearly prohibits (describe alleged violation) _____

It is the duty and policy of the Board to assure that all provision of the Declaration of Covenants, Conditions and Restrictions and provisions of all Rules are strictly enforced. Accordingly, we are requesting that you take necessary steps to comply with the above provision, within (not more than 15 days).

If you have questions regarding the allegation or wish to discuss the matter with the Board or the Manager, please do not hesitate to call.

Thank you for your immediate attention to this matter.

Exhibit B

SECOND NOTICE RE ALLEGED NON-COMPLAINEE

Date:

To:

From: Board of Directors

On _____, you were given written notice of alleged violation of the provisions of _____
_____. A copy of the Notice is enclosed for your reference.

We are advised that the alleged violation has not been remedied to date.

Unless the alleged violation is remedied to the satisfaction of all concerned by _____
_____, the Board will schedule a formal hearing of the matter pursuant to the provision of its Resolution RE Grievance Procedures adopted _____.

If after hearing, the Board determines that you are in violation of _____ as alleged, you may be subject to one or more of the following remedial and disciplinary actions:

1. Direct action by Goldmine Hill Homeowners Association to remedy and cure your violation at your cost and expense;
2. Legal action against you to enjoin you from any further violation;
3. Legal action against you to enjoin you from any further violation and/or to require you to make the necessary cures;
4. Suspension of your voting rights;
5. Imposition of monetary penalties against you;
6. Attorney's fees and costs of suit being awarded to Goldmine Hill Homeowners Association and against you if legal action is taken; and,
7. Recordation of a Remedial Assessment lien against your condominium to secure your payment of damages, costs to cure, attorneys' fees, and/costs or suit, and foreclosure against your condominium if the lien is not promptly paid.

We hope that this matter can be resolved without formal hearing and urge your cooperation to the end. If you would like to discuss the matter informally with the Board, please contact the manager immediately. Thank you for your immediate attention to this matter.

Exhibit C

GOLDMINE HILL CONDOMINIUM ASSOCIATION NOTICE OF RESPONDENT'S RIGHTS

Respondent is notified by the delivery of this notice that he/she has the following rights and options to defense:

1. Contest the complaint at a formal hearing.
2. You may attend a hearing of the Board of Directors as provided on the "Notice of Hearing"; and/or
3. You may object to the form of the complaint upon the grounds that it does not state the acts or omissions upon which the Board of Directors may proceed; and or
4. You may object to the form of the complaint on the grounds that it is so indefinite or uncertain that respondent cannot identify the violating behavior or prepare his/her defense; and/or
5. You may admit to the complaint in whole or in part. In such event, the Board of Directors may make a determination as to whether it will waive the hearing and simply impose penalty, if any, or it will conduct a hearing to determine appropriate penalty.

Please return a signed copy of this form within ten (10) days of receipt. Circle the appropriate number above and return in the enclosed envelope. If you have any objection to the form or substance of the complaint, and the Board of determines that the complaint is indeed insufficient; the complaint will be rejected without formal hearing and both parties shall be notified of the reasons for rejection.

Either party (respondent or complainant) 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 investigate reports relative to the subject matter of the hearing at the sole cost and expense of the party requesting such information. Nothing shall authorize the inspection or copying of any writings or things which are privileged from disclosure by law or otherwise made confidential or protected such as on attorney's work product.

Your attention is directed to the Uniform Schedule of Penalties (attached to the grievance procedure as Exhibit D) which may be imposed upon a respondent if a decision unfavorable to a respondent is rendered

Signed: _____ Phone: _____

Address: _____

Exhibit D

GOLDMINE HILL CONDOMINIUM ASSOCIATION UNIFORM SCHEDULE OF PENALTIES (as adopted: October 20, 1993).

- 1) Suspension of voting rights for a maximum of one year.
- 2) Assessment of monetary fines:
 - Category A: Recurring Nuisance, Health/Life/Property Threatening
\$25.00 - \$50.00 + \$10.00 per day until nuisance abated
 - Category B: Non Recurring Nuisance, Non-Health/Life/Property Threatening
\$25.00 - \$50.00
 - Category C: Recurring Nuisance, Health/Life/Property Threatening
\$175.00 - \$250.00
- 3) Assessment of Fine/Conditional suspension of Fine/Conditional Indefinite Probation

CONDITIONS of suspension and probation: if violation reoccurs after hearing suspension and probation automatically revoked and respondent is subject of payment of fine.

- a) The amount of the fine should bear some relationship to the gravity of the offense. The precise amount of the fine should depend on whether the infraction was of a minor or a major nature. For example: Minor: use of a non-frost light bulb on a porch light; Major: repainting a home in zebra stripes.
- b) Owners should also be aware that they would be responsible for the payment of fines that are a result of their tenants' and guests behavior.

Exhibit E

“NOTICE OF HEARING BEFORE BOARD OF DIRECTORS”

RESPONDENT: _____

COMPLAINANT: _____

Parties to the complaint No. _____ are hereby notified that a hearing will be conducted before the Board of Directors at _____ on the _____ day of _____, 200__ at the hour of _____ upon the charges made in the following complaint. You may, but need not, be present at the hearing, may but need not, be represented by counsel, may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to have witnesses and to examine any relevant records by applying to the Board of Directors.

If any of the parties can show good cause as to why they cannot attend the hearing on the above date, they shall petition the Board of Directors of agent at least forty-eight hours prior to the scheduled hearing date. Failure to appear, file a written response, or to request a rescheduling of the hearing will constitute “default” (see Grievance Procedure, Section 6) and the Board shall proceed with the hearing.

Charges: A formal complaint has been filed, alleging the following violations:

Authority Cited: _____

Specific Complaint: _____

The proposed disciplinary action is from category _____ of the uniform schedule of penalties (see Grievance Procedure, Exhibit D), and/or suspension of voting rights for a period to be determined.

SIGNED: _____

DATED: _____

cc: Respondent/Complainant Files