

**CANOA SECA ESTATES II, INC. POLICY DOCUMENT 2020-01**  
**DRAFT RESOLUTION OF THE BOARD OF DIRECTORS**  
**RE: ENFORCEMENT POLICY**

WHEREAS, Chapter 16 of the Arizona Revised Statutes, Section 33-1803(C), Arizona Planned Communities Act, sets forth the procedure the Association must follow before proceeding with any action to enforce the *Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Canoa Seca Estates II* (the "Declaration"), the Bylaws, any Rules and Regulations or Design Guidelines adopted by the Board of Directors (cumulatively, the "Governing Documents"); and

WHEREAS, Chapter 16 of the Arizona Revised Statutes, Section 33-1803(B), Arizona Planned Communities Act, provides that after notice and an opportunity to be heard, the Association's Board of Directors may impose reasonable monetary penalties on Lot Owners for violations of the Governing Documents; and

WHEREAS, Section 14.2 of the Declaration provides authorization for monetary fines and other means of enforcement; and

WHEREAS, in accordance with the Arizona Planned Communities Act and the Governing Documents, the Association's Board of Directors wishes to adopt a policy setting forth the Association's enforcement procedures.

NOW THEREFORE, LET IT BE HEREBY RESOLVED that the following policy pertaining to the enforcement of the Governing Documents was duly adopted by the Association's Board of Directors, supersedes and replaces all previous enforcement policies adopted by the Board, and becomes effective as of the date shown below.

1. Reporting a Violation. Verbal complaints about violations on Lots will not be accepted. The complainant must submit his/her complaint in writing to the Board of Directors. The pertinent provision in the Arizona Planned Communities Act [A.R.S. §33-1803] requires that the name of person(s) observing the violation may have to be revealed to the alleged violator. In addition, the complainant may be called upon to testify in court as to the details of the violation.

2. Courtesy Reminder. If a condition on a Lot, or the activities of an Owner, his/her tenants, guests or invitees, appear to be in violation of the Governing Documents, as noted by or reported to the Board, an authorized Association representative will contact the Owner in writing (via email, hand delivery or U.S. Mail) to inform him/her of the concerning condition or activity with a request to rectify the concerns within the following two weeks. There should be no indication in the Courtesy Notice that there is a violation of the Governing Documents.

3. Violations of the Governing Documents NOT Concerning a Condition on a Lot. If the activities of an Owner, his/her tenants, guests, or invitees, constitute a violation of the Governing Documents, but do not

concern a condition on the Owner's Lot, the Board has the following options to continue enforcement of the Governing Documents:

- A. Follow the procedures for Violations concerning a condition on a Lot as set forth in this Policy, Paragraphs 4 - 7; or
- B. Proceed directly to the delivery of a Notice of Hearing to the Owner, or referral of the matter to the Association's Attorney as set forth in this Policy, Paragraph 9.

4. First Notice of Violation. If the condition on a Lot has not been addressed following the delivery of the Courtesy Notice, a First Notice of Violation stating that the condition of the Owner's Lot is in violation of the Governing Documents will be sent to the Lot Owner of record with a timetable for corrective action, which will be at least 21 calendar days from the date of the First Notice, unless the violation poses a danger to property or person, in which case the Board may impose a shorter deadline.

5. Contents of First Notice of Violation. The First Notice of Violation from the Board of Directors or its authorized agent shall provide at least the following information:

- A. The provision(s) of the Governing Documents that allegedly has been violated.
- B. Action(s) required to cure violation(s).
- C. The date of the violation(s) or the date the violation(s) was/were observed.
- D. The first and last name of the person(s) who observed the violation(s).
- E. A copy of this Policy or where this Policy can be obtained (i.e. Association Website) to assure the Lot Owner is aware of the process he or she must follow to contest the First Notice of Violation.
- F. Notice of the Owner's option to petition for an administrative hearing on the matter in the Arizona Department of Real Estate pursuant to A.R.S. §32-2199.01.

6. Contesting the First Notice of Violation. If the Lot Owner wishes to contest the First Notice of Violation, he/she shall provide the Board a written response by certified mail within 21 calendar days after the date of the First Notice, requesting any additional information he/she requires. This response shall be sent to the Association's address contained in the First Notice of Violation.

7. Response by Association to Owner. Within 10 business days after receipt of the Lot Owner's response, the Board or its authorized agent will respond to the Lot Owner if necessary to provide any information from items 5(A)-(F) above that were omitted from the First Notice, if any, and may otherwise address any other matters raised in the Lot Owner's Response.

8. Second Notice of Violation. After the procedure in Paragraphs 4-7 is completed, or after the initial timetable for corrective action set forth in the First Notice of Violation has expired (if the Lot Owner has not contested or otherwise responded to the First Notice of Violation), a follow-up inspection will be conducted by the Board or its authorized agent. If the Lot Owner has not cured the violation(s) within the time specified, a Second Notice of Violation will be sent, wherein the Lot Owner will be instructed to cure the violation(s) within 7 calendar days after the date of the Second Notice.

9. Notice of Hearing or Referral to Attorney. A follow-up inspection will be conducted on or after the deadline date of the Second Notice of Violation. If the non-compliance has not been cured, the Board may refer the matter directly to the Association's attorney for further action, or send the Owner a "Notice of Hearing" via certified mail, return receipt requested and first class mail, wherein the Owner will be invited to attend the next Board Meeting/Hearing Panel Session and have an opportunity to be heard before further enforcement action is taken. The date, time and location of the hearing shall be stated in the Notice of Hearing. The Hearing will be conducted in a closed session of the Board unless the Owner requests that it takes place in an open Board meeting.

10. Hearing Panel. A quorum of the Board of Directors shall act as the Hearing Panel at the Board's next regularly-scheduled meeting or at a special meeting.

11. Designated Representative. A Lot Owner may present to the Board (prior to or at the Hearing) written notification that another person is the Owner's designated representative. A designated representative may speak on behalf of the Owner.

12. Procedure for Hearing. Procedure for the Hearing will be set by the Board of Directors. The Lot Owner and his/her designated representative will be informed of the procedure before the Hearing begins. The Lot Owner and/or his/her designated representative will be given an opportunity to present supporting documentation and testimony to show cause why a penalty should not be levied by the Board or other enforcement action taken.

13. Proof of Delivery of Notice. Proof of delivery to the Lot Owner of the Notice of Hearing shall be deemed adequate if a copy of the Notice, together with a statement of the date and manner of delivery is entered into the minutes of the meeting, by the officer, director, or agent who mailed or delivered the Notice.

14. Procedure if Owner or Representative Does Not Appear. If the Lot Owner or his/her designated representative does not appear at the hearing, the Lot Owner shall be deemed to have waived his/her right to a hearing, and the Board may levy a monetary penalty, take other enforcement action, and/or refer the matter to the Association's attorney for further action.

15. Amount of Monetary Penalty: The monetary penalty for each violation of the Governing Documents shall be in accordance with the Monetary Penalty Guidelines attached hereto as Exhibit "A." The Board shall have the sole discretion to adopt, repeal, or modify the Monetary Penalty Guidelines at any time. Such Monetary Penalty Guidelines shall not be effective until they have been distributed to the membership.

16. Hearing Panel's Decision. Notice shall be sent to the Lot Owner by the Board or its designated agent within 10 business days after the date of the hearing, stating the Hearing Panel's decision, including the amount of any penalty or any other enforcement action that may have been imposed by the Board, and its due date or date of implementation.

17. Delinquency of Penalty. A monetary penalty not paid within 30 days after its stated due date shall be delinquent, and a late charge of \$15.00 or 10% of the unpaid penalty, whichever is greater, may be added to the penalty.

18. Repeat Violations. A monetary penalty for violation(s) of the Governing Documents may be imposed by the Board without further notice for each additional instance of noncompliance of the same rule or restriction by the Owner his/her tenants, guests or invitees, that occurs within six months of the date of the First Notice of Violation, or within 60 days of the last occurrence of the same violation, whichever is later. Daily penalties for certain violations of the Governing Documents may accrue for ongoing issues of noncompliance until each such violation is corrected.

19. Collection of Penalties. The Association has a lien for monetary penalties and associated late charges, attorney fees and costs, imposed for non-compliance with the Governing Documents, after the entry of a judgment in a civil suit for such monetary penalties, late charges and associated attorney fees and costs, by a court of competent jurisdiction, and the recording of that judgment in the office of the Pima County Recorder. This lien shall be effective upon conveyance of the Owner's interest in the subject Lot. The Association may collect the amounts due under the judgment prior to conveyance of the Lot, by any lawful means.

20. Cumulative Rights and Remedies. All rights and remedies of the Association at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. This means that the Association's Board can decide to bring a lawsuit against a Lot Owner to enforce an applicable rule, restriction or statute in addition to or instead of imposing a monetary penalty. This also means that all pertinent provisions of the Declaration also apply.

DATED this 26th day of August, 2020.

**CANOA SECA ESTATES II HOMEOWNERS, INC., an  
Arizona non-profit corporation**

By: \_\_\_\_\_  
Its President

ATTEST:

\_\_\_\_\_  
Secretary

## EXHIBIT "A"

### MONETARY PENALTY GUIDELINES

- A. Base Penalty. The base monetary penalty for any violation of the Association's Governing Documents is \$100.00
- B. Penalty for Recurring Violations. There are three instances when an additional monetary penalty may be imposed for recurring violations by an Owner, his/her tenants, guests or invitees, of the same rule or restriction in the Governing Documents:
  - 1. Escalated Penalty. If a violation of the same rule or restriction in the Governing Documents reoccurs within 30 days of: (a) the initial imposition of a monetary penalty for that violation, OR (b) the date of the last occurrence of the same violation; the Board may impose an additional monetary penalty in the amount of last monetary penalty imposed PLUS an additional amount not to exceed \$50.00.
  - 2. Duplicate Penalty. If an Escalated Penalty does not apply and a violation of the same rule or restriction in the Governing Documents reoccurs: (a) within six months of the date of the First Notice of Violation, OR (b) within 60 days of the last occurrence of the same violation, whichever is later; the Board may impose another monetary penalty of no more than \$100.00.
  - 3. Daily Penalty. If a violation of a rule or restriction in the Governing Documents is of a kind or type that can or is likely to reoccur continuously without interruption for more than a single day, the Board may impose the Base Penalty plus an additional Daily Penalty of no more than \$10.00 per day for the first 30 days of continuous violation, and no more than \$50.00 per day for continuing violations exceeding 30 days.
- C. Other Penalties. The Board may impose other monetary penalties that the Board believes are reasonable and commensurate with the nature of a serious violation of the Governing Documents, subject to the following procedures:
  - 1. A "serious violation" is defined as an action or condition that poses a significant and severe risk of harm to persons or property, or a substantial modification to the Lot in violation of the rules and restrictions in the Governing Documents concerning architectural control.
  - 2. Before imposing such a penalty, the Board must provide the Owner in writing in the Notice of Hearing: a) the amount of the monetary penalty sought to be imposed, and b) the parameters used by the Board to determine the amount of the monetary penalty.
- D. Reduction or Waiver of Penalties. The Board may, in its sole discretion, choose to reduce or waive penalties if the situation warrants.