

ENFORCEMENT AND FINE POLICIES

WALNUT CREEK MUTUAL NO. FORTY

a California nonprofit mutual benefit corporation

Adopted on June 5th, 2023.

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These Policies are “operating rules” as defined in the Davis-Stirling Common Interest Development Act and, to the extent they conflict with any previous Policies, supersede and prevail over such previous Policies. All Policies, whether characterized as rules, policies, procedures or otherwise are subject to the provisions of the Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Forty currently in effect for this Mutual.

ARTICLE 1: ENFORCEMENT AND FINE POLICIES

1.1 Enforcement Procedure.

- a. *Report Violation:* Any Resident, Member, Director, manager or rules enforcement personnel claiming that a violation has occurred should report the violation to the Board of Directors or to the Mutual’s manager, preferably in writing.
- b. *Determination of Merit:* If an alleged violation is directly witnessed by a manager, the Mutual may immediately give notice to the Member responsible for the violation of a disciplinary hearing as appropriate under these rules. In all other cases, the Board must determine, in an executive session meeting, if the alleged violation has merit and, if so, give notice as provided in the next paragraph.
- c. *Give Notice of Alleged Violation:* Following a determination of merit as specified above, the Mutual will send a Notice of Violation and Hearing stating the nature of the alleged violation(s), the provision(s) of the governing documents violated, and the Member’s right to appear before the Board of Directors at a hearing in executive session on at least 10 days’ notice by any means authorized under Civil Code §4040 for individual delivery, before imposing a monetary penalty (fine) and/or any other discipline. No courtesy notice or warning is required.
- d. *Conduct Hearing in Executive Session:* All disciplinary hearings with the Board of Directors will be held in executive session. Executive session hearings may be held by video conference (e.g., Zoom) only, or in person, at the Board’s discretion. The Member responsible for the alleged violation may be heard, orally or in writing, and may present evidence, including witness testimony and documents.

1.2 Disciplinary Hearing Procedure.

- a. *Presentation and Consideration of Evidence:* The Board shall consider all evidence pertaining to the alleged violation which is presented before or at the hearing. Such evidence may include documentary evidence, witness testimony, and any other evidence the Board may consider relevant to its deliberations. There is no right to cross-examine witnesses or to be present for

witness testimony of other parties. Formal rules of evidence will not apply and the Board will give whatever weight it feels appropriate to each piece of evidence.

- b. *Take Action:* If the Member is found to have violated the governing documents, the Board may take any appropriate action allowed under the governing documents or the law, such as:
- i. Sending a “cease and desist” letter;
 - ii. Imposing one or more monetary penalties (fines);
 - iii. Allowing the Member a reasonable period of time to correct any ongoing violations, such as architectural or nuisance violations, and, in the Board’s discretion, imposing daily fines which may automatically begin, without further notice or hearing, if the Member does not: (1) comply within the time allowed or (2) request and be granted additional time to comply;
 - iv. Correcting (or causing to be corrected) the violation. Then, after a further notice and hearing, imposing a reimbursement assessment upon the Member for the costs and expenses of doing so, including attorneys’ fees, when allowed by law;
 - v. Suspending membership privileges, such as recreational common area use rights (but not Member voting rights), effective no sooner than five (5) days after the notice of disciplinary action required by Civil Code §5855 (c) or any successor statute;
 - vi. Initiating Internal Dispute Resolution and/or Alternative Dispute Resolution in the manner provided by the Mutual’s governing documents and the law;
 - vii. Seeking any legal remedy, including, without limitation, seeking a restraining order and/or injunctive relief, or imposing a lien and/or foreclosing on the Member’s property, where allowed by law;
 - viii. Taking no disciplinary action when circumstances warrant. The justification for taking no further action in response to a violation must be noted in the executive session minutes and the Member’s disciplinary file, if any.
- c. *Give Notice of Decision:* The Member, but not the complaining party, must be notified of any disciplinary action taken by the Board of Directors within 15 days following the action. If no disciplinary action is taken, no notice to any party is required, but such notice may be given to any party if circumstances warrant and doing so does not violate the privacy of the alleged violator.

1.3 Monetary Penalty (Fine) Schedule and Policies. If the Board finds a violation of the governing documents, the violation will be subject to the following monetary penalties (fines):

- a. For violations which are not continuous:

- i. For the first violation of a provision of the governing documents within any 12-month period, the responsible Member will be subject to a monetary penalty of up to \$100.00.
 - ii. For the second violation of the same provision of the governing documents within any 12-month period, the responsible Member will be subject to a monetary penalty of up to \$100.00.
 - iii. For the third or subsequent violation of the same provision of the governing documents within any 12-month period, the responsible Member will be subject to a monetary penalty of up to \$500.00.
- b. For continuous violations, such as architectural, ongoing nuisance, rental violations, or otherwise:
- i. Continuous violations will be considered a violation every day from the first day of the violation until remedied in full for at least 30 days.
 - ii. Continuous violations are subject to a monetary penalty (fine) of up to \$ 50 per day for every day of the violation, whether consecutive or not, until the violation is remedied, subject to a maximum monetary penalty (fine) of \$1,500 per calendar month.
- c. Multiple violations, whether non-continuous or continuous, may be addressed in one or more Notice(s) of Intent to Impose Discipline to the owner and may be the subject of and heard at one or more executive session hearing(s).
- d. All monetary penalties (fines) and reimbursement assessments are due upon notice given and are delinquent 15 days after they become due.

1.4 Remedies. Unless prohibited by other governing documents, and when permitted by law, the Mutual may take legal action or correct, remedy or cure a violation, and seek a reimbursement assessment against the Member, or file a memorandum of costs or motion for attorneys' fees, to recover costs, expenses and attorneys' fees incurred by the Mutual.

1.5 Reimbursement Assessment. If a violation is found which causes the Mutual to incur a financial obligation or expense, then the Member responsible for the violation will be subject to a reimbursement assessment in the amount of the obligation or expense incurred by the Mutual after proper notice and a hearing to the extent allowed by law.

1.6 Liens on Fines; Prohibition Against Non-Judicial Foreclosure. A monetary penalty (fine) imposed by the Mutual as a disciplinary measure for failure of a Member to comply with the governing documents may be treated as and is hereby an assessment that may become a lien against the Member's

separate interest, but such lien may not be enforced by the sale of the Member's interest under Sections 2924, 2924b, and 2924c (non-judicial foreclosure).