

The Capes Homeowners' Association

Fine Schedule and Enforcement Policy

BACKGROUND

Homeowners purchased their homes in The Capes development in order to enjoy the attractive residential environment that the development provides. However, the purchase of a home in this community also imposes a legal obligation on all homeowners to adhere to the Covenants, Conditions & Restrictions (CC&Rs), By-Laws and related policies. And a home's purchase here comes with a clear expectation that the CC&Rs, By-Laws and policies will be enforced on all homeowners in order to maintain an attractive and well-kept neighborhood with common amenities and, as far as possible, to maintain and /or increase property values.

The Board of Directors of the Homeowners' Association (HOA) has a legal obligation to exercise reasonable business judgment and to act in the best interests of the entire community. Thus, HOA Board members have an affirmative duty to enforce the CC&Rs, By-Laws and policies, but occasionally the only practical tool for enforcement of the CC&Rs, By-Laws and policies is a fine or the threat of fines. However, without a published Schedule of Fines, the Board of Directors cannot legally impose fines. The Oregon State Law which governs Homeowners' Associations (ORS 94.630 (1)(n)(A & B) states that Associations may "levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based on (A) a schedule contained in the declaration or bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing address designated in writing by the owner or, (B) a resolution of the association or its board of directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners. A Schedule of Fines will also help ensure that the board is not capricious, selective or arbitrary in enforcing the CC&Rs, By-Laws and related policies.

By Resolution dated June 4, 1998, the Board has the authority to levy fines in an amount not to exceed \$500 per violation/per day. A copy of said Resolution is attached for reference.

By Policy dated May 16, 2009 and amended July 21, 2018, Failure of an owner or renter to register a guest may result in a fine of up to \$500 per guest per night. A copy of said Policy is attached for reference.

By Resolution dated July 16, 2011, the Board has authority to impose fines for failure to make trim repairs and other exterior repair of homes. A copy of said Resolution is attached for reference.

POLICY STATEMENT

The attached Schedule of Fines has been prepared by The Capes HOA Board of Directors. It outlines specific violations of the CC&Rs, By-Laws and policies and lists the penalty for those violations. This policy also specifies that a fine may only be imposed after the owner has been sent written notice that a fine is being considered, and is provided a reasonable opportunity to be heard regarding the alleged violation by the Board of Directors or a designated representative. No fine or enforcement fee will be imposed until after the requested hearing has taken place.

The purpose of fines is to encourage compliance with our CC&Rs, By-Laws and policies. This schedule of

finer serves to provide each homeowner a clear understanding of the penalties involved for violations of our CC&Rs, By-Laws and policies, and for failure to respond to notice of alleged violations.

A. VIOLATIONS, COMPLAINTS, and NOTIFICATION:

- 1 Filing a Complaint A complaint that an owner, guest, or renter is violating the Association's Declaration, Bylaws, Rules, Regulations, or Policies may be filed by the M a n a g e r , the Board, or another owner. An owner typically should file a complaint with the manager, but may file a complaint directly to the Board. Complaints filed by owners should be in writing (letter or email), identifying the name and address (if known) of the offending owner and a description of the alleged violation (including date(s) and approximate time(s)).
- 2 Courtesy Reminder Since the purpose of this resolution is to maintain quality in our neighborhood and not to collect fines, the Association will first try to correct problems without imposing fines. Homeowners may be informally contacted (typically by the M a n a g e r) to explain the complaint and the violation and to discuss the need and plans for remedy. If the informal communication does not resolve the issue or if informal communication is not utilized, an Owner will be provided with a written "Courtesy reminder" explaining the violation and the expected remedy and providing a reasonable time for the homeowner to correct the violation. With communication and cooperation from the homeowner, this is typically adequate to eliminate or sufficiently reduce the concern and resolve the complaint. If not, the complaint may be escalated and a fine imposed or other action taken.
- 3 Notification Letter. Before a fine may be imposed, owners will receive a Notification Letter delivered and/or mailed to their address of record with the following information:
 - A. A description of the alleged violation;
 - B. The timeline required to avoid being assessed a fine. This may vary depending on the violation, but generally twenty (20) calendar days from the date of the postmark of the notification shall be set for compliance or correction of the violation.
 - C. The consequences for not correcting the problem as required, including the amount of fines, the date those fines will be imposed, and any ongoing accrual of fines. Any fine shall not be assessed until after the date has expired for the owner to request a hearing, but the fine may be imposed before that date and continue to accrue;
 - D. The owner's right to have a hearing, how this may be accomplished, and a deadline for requesting this hearing.

Exception of Notice Procedure:

Violations posing a threat to the health, safety, and/or welfare of the community as a whole or any one or more other Owners may require immediate action and thus create exceptions to the foregoing notice provisions. Examples of health, safety, and welfare violations include, but are not limited to: erosion control; threat of fire; damage to neighboring properties; collapsed structure, to name a few.

Violations causing fees or fines to be assessed upon the Association by outside entities (Department of Environmental Quality or any other state or local agencies or vendors) are not subject to the foregoing notice provisions and will immediately become the responsibility of the Violator.

B. HOMEOWNERS RIGHT TO A HEARING:

The Association recognizes each Owner's right to explain the reasons why there is a violation of the CC&R, By-Laws, or policies, particularly if the violation results in a monetary penalty. Before any penalty is assessed, an Owner has the opportunity to request a hearing before the Board of Directors as detailed below.

1. (a) The request for a hearing must be submitted via written letter or electronic mail within twenty (20) days of the date of postmark of the notification to the Capes Manager or the right to a hearing will be waived and the fine will be automatically assessed. **Failure to request a hearing in a timely manner is a waiver of the owner's right to challenge the violation and imposition of all fines.**
- (b) When the Board has been notified that a timely request for a hearing has been received, it will provide the affected owner with written notice of a hearing before the Board or a Board appointed committee (Hearing Committee). Unless the Board and the affected owner mutually agree upon a date and time for the hearing, the hearing shall be set for between 10 and 60 days after the receipt of the timely request for a hearing. The Notice of Hearing shall include:
 1. A statement of the violation;
 2. The proposed action and/or fine, including fines that continue to accrue;
 3. The date, time, and place of the hearing; and
 4. Any time limits placed upon the presentation of evidence.

Failure of the owner to respond to correspondence regarding the setting of the hearing or failure to attend the hearing shall constitute a waiver of the owner's right to a hearing and to challenge the action or imposition of fines as set forth in this policy.

- (c) Attorneys. If the owner intends to have an attorney present at the hearing, the owner must notify the Board at least ten (10) days before the hearing.
- (d) At the hearing, the affected owner shall have a reasonable amount of time to present evidence and argument. Specific time limits may be set out in the Notice of Hearing. Additional time may be granted by mutual agreement. Other owners may present evidence or argument relating to the alleged violation at the discretion of the Board or Hearing Committee and in accordance with procedures established by the Board.

- (e) One or more violations may be combined and heard in one hearing, at the discretion of the Board or Hearing Committee. If additional alleged violations and fines occur by the same owner subsequent to the Notice of Hearing and before the date of the hearing, at the discretion of the Board or Hearing Committee those additional alleged violations may also be heard at the scheduled hearing, provided the owner is given notice of the subsequent alleged violations and fines before the date of the hearing.
- (f) A Hearing Committee may meet in closed session and the Board must meet in open session to make the determination of whether the violation has been committed and whether changes in the fines imposed should be made. The Board may issue its decision at the hearing or at a later-scheduled Board meeting if further information or consideration is required. The Board or the Hearing Committee shall endeavor to send the owner a Notice of Decision in writing within fourteen (14) days after the hearing. This Notice of Decision shall confirm any fines due, the date upon which such fines become payable, and whether fines are continuing to accrue. Any fines imposed after a hearing shall become due and payable immediately.
- (g) An owner is entitled to one hearing per continuing violation. A request for an additional hearing may be denied if the Board or Hearing Committee determines that the same violations are continuing in nature and that no evidence that could be presented by the owner would change the previous decision on the same or similar type of violation.
- (h) An owner may appeal a fine imposed after a hearing by submitting to the Board a written notice of appeal setting forth specific objections or mitigating circumstances within ten (10) days after the fine is imposed. **Failure to request an appeal in a timely manner is a waiver of the owner's right to appeal.** The Board shall address the appeal in a Board meeting. The appealing owner may, but is not required to, attend the meeting and present testimony or other evidence. The Board shall issue a final, conclusive decision within sixty (60) days after receipt of the notice of appeal. The Board's decision on appeal shall be final and binding upon the appealing owner. If the Board made the original fine determination, the appeal shall be deemed a request for reconsideration.

C. FINE SCHEDULE CYCLE:

Should a period of at least one year lapse between violations letters of the same offense, the next letter will be a First Notice again.

D. PENALTIES:

If a violation still exists after the initial twenty (20) day period or per a schedule agreed upon by the Manager and/or the Board and the property owner has not requested a hearing, the following penalties will be automatically assessed **in addition** to the original fine:

- 1. First Notice of Violation \$50 Applied on day twenty-one
- 2. Second Notice of Violation \$100 Applied the following month
- 3. Third Notice of Violation \$150 Applied per month until violation is corrected

E. SCHEDULE OF FINES:

Property Maintenance, Landscape Maintenance, or Architectural Violations	Up to \$500 if correction is not completed per agreed upon schedule, plus an additional \$500 per day until violation is corrected or time to complete is mutually extended.
Parking Violation	\$75 per violation, plus an additional fine of \$25 per day until the offending vehicle is removed.
Rental Violation	
(Paying Guest) - failure to register	\$100 per incident
(Non-Paying Guest) - failure to register	\$100 per incident
Exceeding the 30 calendar days per year rental allowance	\$250 per night for the first violation; \$500 per night for each subsequent violation
Garbage Violations	
Hazardous waste (paint, electronics, etc.)	\$500 per incident plus any fines imposed by the dumpster service and/or the DEQ
Large items left outside dumpsters	\$100 per item plus any removal/dump fees incurred
Quiet Enjoyment (Nuisance)	\$25 per violation
Maintenance of Animals	
Failure to clean up pet waste	\$50 per violation
Pets off leash	\$25 per animal per occurrence
Unauthorized Signs	\$25 per violation
All Other Minor Violations	
Those involving only the homeowner	\$25 per violation
All Other Significant Violations	
Those affecting safety or aesthetics	\$100 per violation

The above list is not complete or comprehensive. All other violations not listed or specified above will result in reasonable fines up to \$500 per violation.

The payment of any and all legal fees and costs incurred by the Association to enforce violations or collect fines shall be the responsibility of the homeowner.

Homeowners are responsible for damage caused to the common areas by themselves, their guest or renters. **It is the homeowner's responsibility to inform their guests and or renters of the rules and regulations and are responsible for any fines assessed.**