

# VISTANCIA VILLAGE A COMMUNITY ASSOCIATION

## Violation Enforcement Policy (Updated 08/28/2019)

WHEREAS, Vistancia Village A Community Association (“Association”) has authority pursuant to the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (“Declaration”) and the By-Laws of the Vistancia Village A Community Association (“By-Laws”) to determine, in its reasonable discretion, the manner in which to remedy and/or impose penalties for violations of the provisions set forth in the Declaration, Rules and/or By- Laws:

WHEREAS, The Board of Directors of the Association (“Board”) finds there is a need to establish procedures for the enforcement of the use restrictions and architectural and design standards in the Declaration, Rules and By-Laws, and for the elimination of violations which may be found to exist within the Association;

NOW THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the enforcement of violations of the use restrictions and architectural and design standards in the Declaration, Rules and By-Laws of the Association and for the elimination of violations thereof found to exist within the Vistancia Village A community. These procedures and practices shall be known as the “Violation Enforcement Policy”.

### **1. Establishment of a Violation.**

- a. **Architectural** – Any alteration, modification, addition or improvement of any Dwelling Unit, Parcel or Lot, which has not been first approved by the Design Review Committee (“DRC” or “Committee”) or which does not in all respects conform to that which has been so approved is deemed a “Violation” under this Enforcement Policy for all purposes.
- b. **Use Restrictions** – Any activity or condition continuing or existing on any Lot that is in direct violation of the Declaration or Rules, which is not expressly authorized by the Board, is deemed a “Violation” under this enforcement policy for all purposes.
- c. The Board may by resolution make a finding that a Violation exists by specifying the particular condition or conditions that constitute the Violation. If the Board makes such a finding, then the Board has the option of immediately proceeding with the procedures for Corrective Action, as set forth in Section 3 of this Violation Enforcement Policy.

### **2. Notice of a Violation.**

- a. **Initial Notice** (Violation Notice) – Upon verification of the existence of a Violation by the management staff (“Management”) or Board of the Vistancia Village A Community Association, Management will send a written notice of the Violation to the Lot Owner (“Initial Notice”). The Initial Notice will inform the recipient as follows:
  - (i.) The nature, description and location of the Violation; and
  - (ii.) A request to remedy the Violation within 14 days;
  - (iii.) Notice that if the Violation has already been corrected or plans and specifications for a subject improvement have been submitted to the DRC to disregard the notice.
  - (iv.) A request to contact the association within fourteen (14) days to inform them of the owner’s intent to correct the Violation or remedy the situation.
  - (v.) Notice of the fine if violation is not remedied within fourteen (14) days from the date of the Notice of Violation;
  - (vi.) An Owner’s right to request a hearing by the Board, with the right being waived if no request is made;

(vii.) And, in addition to fines, how the Violation can be enforced – by suit for money judgement for the fines, by corrective action by the Association if appropriate, and/or by lawsuit for injunctive relief.

- b. Continuing Violations: If the Violation continues without resolution fourteen (14) days after the date of the Violation Notice, a **FINE of \$100 shall be assessed every fourteen (14) days** until the Violation is resolved. In addition, the Board of Directors shall have the right to remedy the violation (see below – “Corrective Action”) and/or take legal action, the cost of which shall be billed to the Owner and collected in the same manner as assessments.
- c. Hearing. – Included in the Notice of Fine will be the opportunity for the Lot Owner to request and be granted a hearing by the appropriate Committee or the Board prior to any fine or Specific Assessment being levied upon the Lot Owner. The Notice of Fine will allow the Lot Owner fourteen (14) days to contact Management, in writing, to request a hearing upon the issue of the continuing Violation. Should the Lot Owner fail to contact Management within fourteen (14) days of the Notice of Fine Date, that party will have waived its opportunity for said hearing.

### 3. Corrective Action.

Where a Violation is determined to exist and is referred to the Board of Directors of the Association, and the Board by resolution makes a finding to such effect, specifying the particular condition or conditions which exist, Management, with the approval of a majority of the Board of the Association, may cause the Violation to be corrected, removed or otherwise abated by qualified contractors if Management, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where Management decides to initiate any action by qualified contractors, the following will apply:

- a. Management must give the Lot Owner and any third party affected by the proposed action prior written notice of undertaking of the action by way of a Notice of Corrective Action. The notice to the Lot Owner shall state that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at the Owner’s expense.
- b. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Management is authorized by the Board to cause such action to be taken.
- c. All costs incurred in correcting or eliminating the Violation will be added to, and become a part of, the Assessment to which the offending Owner and the Owner’s Lot or Parcel is subject, and shall be secured by the Assessment Lien.
- d. The Association, and its agents and contractors will not be liable to the Lot Owner or any third party for any damages or costs incurred by virtue of action taken under this Paragraph 3 where the Association and its agents have acted reasonably and in conformity with this Enforcement Policy.

### 4. Referral to Legal Counsel.

Where a Violation is determined to exist and is referred to the Board of Directors of the Association pursuant to any of the provisions of this Enforcement Policy and where Management deems it to be in the best interests of the Association, the Board may, at any time during the enforcement process, refer the Violation to legal counsel for action seeking injunctive relief against the Lot Owner to correct or otherwise abate the Violation, or to pursue any other legal or equitable remedy that may be available to the Association.

**5. Notices.**

- a. Any notice required by this Enforcement Policy to be given, sent, delivered or received in writing will be deemed to have been given, sent, delivered or received, as the case may be, upon the earlier to occur of the following.
  - (i.) When the notice is delivered by telecopy, the notice is deemed delivered when the sender receives a facsimile acknowledgement acknowledging delivery of telecopy.
  - (ii.) When the notice is placed into the care and custody of the United States Postal Service, the notice is deemed delivered as of the date the notice is deposited into a receptacle of the United States Postal Service with postage prepaid and addressed to the most recent address of the recipient according to the records of the Association.
- b. Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where Owner has otherwise acted so as to put the Association on notice that its interests in a Lot has been and is being handled by a representative or agent, any notice or communication from the Association or Management pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

**6. Cure of Violation During Enforcement.**

A Lot Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Enforcement Policy. Upon verification by Management that the Violation has been corrected or eliminated, the Notice of Violation will be voided. The Lot Owner will remain liable for all costs incurred and fines imposed under this Enforcement Policy, which costs and fines, if not paid upon demand thereof by Management, will be referred to the Association for collection in accordance with the Declaration and Arizona law.

**7. Repeat of Re-occurring Violations.**

Should an Owner correct a violation but the same violation re-occur within a three month period, the Association has the right to resume the fine process from the last notification.

**8. Waiver of Initial Notice.**

The Board of Directors shall retain the right and authority to not require the Initial Notice when, in its sole judgment, the Violation is considered of a type that requires immediate correction. Management shall be authorized to immediately proceed to the procedures for Corrective Action, as set forth in Section 3 of this Violation Enforcement Policy, and/or proceed to the Final Notice of Violation and Notice of Fine. The Board shall authorize this by way of resolution to be attached to this Policy as an addendum.

This resolution was adopted by The Board of Directors at the Board Meeting held on August 28, 2019. The Vistancia Village A Board of Directors reserves the right to modify this Enforcement Policy at its sole discretion.

  
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Rick Eckenrode, President  
Vistancia Village A Community Association

  
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