

## **CC&R Violation Process**

Since the inception of our HOA, one of the main requests submitted to the Board of Directors and our Association management company is to expedite the resolution of repeat and unresolved CC&R violations. The Board has worked closely with our Association manager over the years to ensure corrective-action timelines are followed and follow up site inspections are occurring.

Improvements have been noted and illustrated through the report log. However, the general issue remains with a percentage of homeowners not addressing violations in a timely manner. As such the Board deliberated earlier this year and unanimously voted to implement a new process effective February 1, 2006. Please review the attached information for details. The Board believes the new process, already utilized by several HOAs in Sacramento County, will help ensure the community is maintained proactively according to our rules/regulations and encourage prompt resolution when a violation occurs.

Please contact the Board or our property management company if you have questions or comments. Contact information is listed in the HOA newsletter and community web site ([www.stonelakeclub.com](http://www.stonelakeclub.com)).

Sincerely,

Vincent Lena – President  
Gary Sibner – VP  
Joseph DosReis – CFO  
Gina Tosi-Smith – Secretary  
Trevor Hacker – Director at Large

## **STONELAKE RULES FOR GOVERNING DOCUMENT ENFORCEMENT**

### **A. Purpose of These Enforcement Rules.**

These Rules establish procedures that the Stonelake Master Association will follow when the Association is enforcing the Stonelake Master Declaration of Covenants, Conditions and Restrictions (the "Declaration") and other governing documents of the Stonelake development. The Rules are intended to ensure compliance by the Members of the Association with the Governing Documents and to give Members the assurance that violations of the Governing Documents will be dealt with in a uniform and consistent manner. Because tenants and renters of Stonelake property owners cannot have rights that are greater than the person(s) from whom they are renting or leasing a residence, the Association also has authority under the Governing Documents to pursue Governing Document enforcement when the violator is a tenant rather than a property owner.

The Declaration will control in the event that there is any discrepancy and/or conflict between the requirements or restrictions set forth in the Declaration and these Rules. All capitalized terms used in these Rules are terms defined either in the Rules, the Declaration, the Association's Bylaws, or the Design Guidelines for Stonelake. The Association's authority to adopt these Rules is set forth in the Bylaws of the Stonelake Master, Article 9, Section 9.8.

### **B. Powers Available to the Association to Remedy and Correct Violations.**

The Association may apply any or all of the following measures it deems necessary to remedy and correct any violation of the Governing Documents which occur as the result of any action or failure to act by an Owner or tenant. Those remedies that are available in response to Governing Document violations are summarized in numbered paragraphs 1 through 5, below. Whenever possible, the Association and its management company desire to promote and encourage voluntary compliance with the Stonelake Master Association Governing Documents. To that end, under circumstances when the violation does not involve nuisance activity, a breach of the peace, or an immediate threat to person or property, the initial step in the enforcement process will be the issuance of a courtesy notice informing an owner or other resident that they are, or appear to be, in violation of the Governing Documents and requesting the recipient's voluntary compliance. Under those circumstances, it is only when the recipient of the courtesy notice fails to voluntarily initiate action to correct, cease or eliminate the condition, giving rise to the notice that further enforcement action will be taken.

When a person who receives a courtesy notice from the Association or a person whose conduct is so egregious that immediate enforcement action is warranted fails to correct the condition or cease engaging in the conduct that gives rise to the Association's action, the following rights and remedies are available to the Association:

1. ***Imposition of Reimbursement Assessments:*** If an Owner or resident engages in activity or conduct that violates the Governing Documents and the Association is compelled to spend its money to either repair damage to the common area or to enforce the Governing Documents, the Association is empowered by the Declaration to recoup its expenditure from the violating owner as a Reimbursement Assessment (see Declaration at Article 10, Section 10.4 and 10.7). The Reimbursement Assessment may be collected or imposed to recover costs incurred by the Association to repair damage to the common areas and facilities for which the assessed owner, or the owner's guests or tenants were responsible, the Assessment can be collected by using lien and foreclosure remedies against the violator's lot.
2. ***Imposition of Fines or Monetary Penalties.*** In the case of any violation, except the failure to pay an Assessment, the Association may impose monetary penalties. The levy of Monetary Penalties is subject to the notice and hearing requirements of these Rules, and is a penalty for purposes of these Rules. See the Bylaws of the Stonelake Master Association, Article 5, Section 5.2. The levy of any penalty for a violation of the Governing Documents does not excuse or permit the continuation of the violation that caused the fine to be imposed. Instead, the Association reserves the right to enforce the applicable remedy at any time without regard to the imposition of any previous penalty. Exhibit "A" to these Rules presents the Association's current schedule of fines.
3. ***Suspension of Membership Rights:*** In the case of any violation, the Association may suspend the Owner's right to use recreational common facilities of the Association or suspend the Owner's

voting rights as a Member of the Association. Suspension of the Owner's rights is subject to the notice and hearing requirements of these Rules.

4. ***Initiation of Legal Action to Enforce the Governing Documents:*** In the case of any violation, the Association may also commence legal action including injunctive relief to compel adherence with the Governing Documents. Under certain circumstances, State law conditions the right of community associations to initiate law suits for CC&R enforcement by requiring the association to try – as a first step in the enforcement process—to send violators a notice called a “Request for Resolution” which invites the alleged violator to participate with the association in some form of alternative dispute resolution (ADR) before a legal action can be initiated. See Civil Code section 1354. Only after those ADR efforts have failed to resolve the dispute can the association file a lawsuit seeking enforcement.
5. ***Special Remedies for Enforcement of Design Standards:*** In the case of any violation involving the correction of an improvement, physical condition or nuisance involving the Owner's Lot or Residence, the Association shall follow the enforcement procedure as listed and detailed in the Stonelake Master Association Architectural Control Committee Architectural Guidelines, Section 6.0, 6.1, and 6.2.

**C. Members' Right to Notice of Disciplinary Action and Right to be Heard.**

All officers and directors, management agents, and employees of such management agent are hereby designated to issue citations to Members and other residents who are believed to be in violation of any of the Governing Documents. Citations, notices and hearings on alleged violations shall comply with the following procedures:

1. ***Notice of the Violation:*** Before any community association can discipline an association Member, the Member must be given at least 15 days prior written notice specifying the nature of the damage or alleged violation and stating the time, date and place of the next Board meeting where the Member who is the subject of the disciplinary action will have an opportunity to be heard. Notice shall be delivered to that Member either personally or by first-class mail. If the notice is given by mail, it must be sent by first class mail to the last address of the Member as shown on the Association's records. The notice must also advise the Member of his or her right to attend the meeting and address the Board.

If the Member wants to address the Board regarding the alleged Governing Document violation or to make a presentation to the Board as to why the Member believes he or she is not in violation of the Governing Documents, that portion of the meeting devoted to the hearing can be conducted in executive session at the request of the Member. See Civil Code sections 1363(h) and 1363.05(b). When fines are levied by the Association in accordance with the accompanying Fine Schedule, the notice of the fine will advise the Member that he or she has two alternatives, which must be exercised within five (5) days following receipt of the notice of the fine, namely: (i) to pay the fine; or (ii) request a hearing before the Board of Directors to present contentions as to why the fine was inappropriate or improperly imposed. If a timely request for a hearing is received from a fined Member, the Committee shall provide the Member with notice of a hearing on the matter, which shall comply, with this paragraph of the Rules. If a timely request for a hearing is not made, the fine may be approved by the Board at its next regularly scheduled meeting on the consent calendar.

3. ***Conduct of the Hearing:*** At any disciplinary hearing the Member will be given an opportunity to be heard, and may submit a written brief, provide oral testimony at the hearing or provide both a written brief and oral testimony. The Member who is the subject of the disciplinary action shall have the opportunity to present witnesses on the Member's behalf and to cross-examine any witnesses that may testify on behalf of the Association against the Member.

After the hearing, the Board of Directors shall determine whether a violation has occurred, and if so, may impose a penalty in the form of discipline and/or a Reimbursement Assessment. If the Board of Directors imposes a penalty upon the Member, the Committee must provide the Member with notification of such action within fifteen (15) days of making that determination. The penalty imposed upon the Member shall become effective not less than five (5) days after the date of the hearing. The Board may also take such other action as may be appropriate. If the notice requirements are not followed as indicated above, the discipline imposed upon the Member will not be effective.

4. **Representation by Legal Counsel:** All Members who are involved in a disciplinary proceeding have the right to be represented by legal counsel, although it is not the custom and practice of the Association to be represented by its attorney at covenants enforcement or member disciplinary hearings. Accordingly, the notice of hearing sent or delivered to a Member in accordance with paragraph C 1, above, will include a request that the noticed Member advise the Association, through the Association's management company, at least three days prior to the scheduled hearing date of whether the Member intends to be represented by counsel. The purpose of that notice requirement is to enable the Association to schedule its own representation, if desired, and therefore, if a Member appears at a hearing with legal counsel and without giving the Association proper notice of the Member's intention to have counsel present, the Board of Directors shall have the discretion to adjourn the hearing to a later date in order to arrange for the Association's counsel to be present.
5. **No Authority to Expel a Member or Terminate Membership:** Nothing in the Governing Documents or these Rules shall permit the Association to expel a Member or to terminate a Membership in the Association.
7. **Waiver of Penalties:** The Board may waive a proposed Reimbursement Assessment or other Penalty, or rescind a currently imposed Reimbursement Assessment or previously imposed Penalty at any time, upon finding that a Member has complied with the Governing Documents or for other good cause.
8. **Example of Typical Enforcement Procedure Progression:** To illustrate how the Association will routinely apply these enforcement procedures, assume that the Member who is considered to be in violation of the Governing Documents (either by a confirmed complaint from another property owner, by observance by the Association's management personnel, or by other credible means) is brought to the attention of the Association's management on December 1, 2002 and that a Courtesy Notice is sent to the alleged violator on December 2, 2002. For purposes of this hypothetical example of an enforcement process, it is assumed that the next regularly scheduled meeting of the Stonelake Board of Directors has previously been set for December 10, 2002, and that the next regularly scheduled meeting of the Board will be on January 14, 2003 (following the Holidays).

Under this set of facts, the Association's initial Courtesy notice will contain a reasonably detailed description of the alleged violation (with a citation to the Governing Document provision that is claimed to have been violated), and notify the recipient Member of the date, time and location of the next meeting of the Board of Directors when the violation is on the agenda to be heard.

By law, that notice of the Committee meeting must be given to the Member by either first-class mail or personal delivery at least 15 days prior to the date of the meeting and the notice must inform the Member who is the subject of the disciplinary action of his or her right to attend the meeting, address the Board of Directors and to have the meeting conducted in executive session if the Member so desires. Accordingly, because the next scheduled meeting of the Board of Directors is less than 15 fifteen days following the date of delivery of the Courtesy Notice, the hearing must be scheduled at the next regularly scheduled meeting that is more than 15 fifteen days from the date of the Notice (the January 14<sup>th</sup> meeting of the Board). The Courtesy Notice can impose a date for the Member to correct the alleged violation or to cease the conduct or activity that gave rise to the Courtesy Notice that is prior to the date of the Board of Directors meeting where the matter is scheduled for disciplinary action. However if the violation is not corrected prior to the Board of Directors hearing date on January 14, 2003, the matter shall be heard, with or without the presence of the noticed Member, and any fine previously imposed shall be confirmed, eliminated or modified at that hearing.

#### **D. Authority to Adopt Fine Schedule.**

The Board may adopt a schedules of fines and Penalties for specific violations and may adopt a range of possible fines for a typical type of violation or the Board may establish that each violation is subject to the same fine or Penalty no matter its classification or type of violation. Any schedule of fines and Penalties, adopted by the Board shall be incorporated into these Rules as an amendment or addendum, and shall be effective upon notice to the Members of the same. See Civil Code section 1363(g). The Association's present Fine Schedule is attached to these Rules as Exhibit "A".

#### **E. Alternative Dispute Resolution.**

California law, specifically California Civil Code §1534 ("ADR Statute") strongly encourages alternatives to litigation to resolve disputes concerning Governing Documents and enforcement issues. Such an alternative is entitled "alternative dispute resolution" or "ADR." ADR typically includes mediation and binding and non-binding arbitration. These procedures are intended either to clarify disputes prior to filing a lawsuit or actually resolve disputes in their entirety. The obligation to comply with the Civil Code ADR Statute rests not only with the Association, but also with any owner who desires to initiate his or her own CC&R enforcement action when the objective of the enforcement action is to seek declaratory relief (i.e., a court determination of the meaning of a particular Governing Document provision) or injunctive relief (i.e., a court order compelling compliance with the Governing Documents) or either of those two remedies, together with money damages not to exceed \$5,000.00.

California law also recognizes the complexity of living in a common interest development managed by an association of property owners whose members do not always agree on how to enforce the Governing Documents against noncompliant owners. The law therefore requires community associations to take the lead in ensuring that all members understand and comply with the Governing Documents. One of these requirements is for the association to distribute annually to its members a summary of ADR procedures. The ADR procedures as described in Civil Code §1354 are as follows:

**Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief or for declaratory relief or injunctive relief in connection with a claim for monetary damages, other than association assessments not in excess of \$5,000, related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a forum of alternative dispute resolutions such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a request for resolution.**

**The request for resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the request for resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the request for resolution shall be in the same manner as prescribed for service in a small claims action as provided in §116.340 of the Code of Civil Procedure. Parties receiving a request for resolution shall have 30 days following service of the request for resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party.**

**If alternative dispute resolution is accepted by the party upon whom the request for resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the request for resolution, unless extended by written stipulation signed by both parties. The cost of the alternative dispute resolution shall be borne by the parties.**

**FAILURE OF ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE REQUIREMENTS OF §1354 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.**

The Stonelake Master Association has adopted its own internal Governing Document enforcement procedures in order to provide an expeditious and inexpensive forum for a fair hearing and resolution of disputes, concerning the Governing Documents, without having to take these matters to a professional alternative dispute resolution service provider or to court. Please consult those procedures, as set forth in these Rules of Enforcement Action, and the complete text of the Civil Code ADR statute, if you wish to initiate a Governing Document enforcement action, separate and apart from any action by the Association.

**EXHIBIT "A"**

**FINE SCHEDULE OF THE STONELAKE MASTER ASSOCIATION**

The Board of Directors is authorized and empowered to delegate its authority to impose fines in accordance with this schedule to Association personnel, such as security patrol personnel or property managers, so long as any fine imposed by such committees or persons are accompanied by a written notice, delivered personally or by first-class mail, containing the following information: (i) the amount of the fine being imposed; (ii) a general description of the alleged violation giving rise to the fine; (iii) the date, time and location of the next meeting of the Board of Directors or its Covenants Committee where it is scheduled to consider and perhaps affirm the imposition of the fine (which date shall not be less than 15 days after the fine is issued); and (iv) notification to the fined owner of his or her right to attend that meeting and to address the Board with respect to the disciplinary action.

<b>Article, Section Number</b>	<b>Provision Violated</b>	<b>Time Period to Correct Violation (Days)</b>	<b>Assessment (Dollars)</b>
7, 7.5	Landscape Control / Maintenance		\$50
5, 5.2	Adopted Policy		\$50
8, 8.24	Creating a Nuisance		\$50
7, 7.5	Attracting Insects or Rodents		\$50
8, 8.2.9	Improper Accumulation on Lots		\$50
8, 8.2.5	Nonstandard Vehicles/Recreational Vehicles		\$50
8, 8.2.1	Improper Residential Use		\$50
8, 8.2.4	Excessive Noise		\$50
8, 8.2.7	Continuous Barking Dog		\$50
8, 8.2.7	Pet Waste Removal		\$50
8, 8.2.7	Restricted animal, livestock or poultry		\$50
8, 8.2.5	Garage Conversion & Storage		\$50
8, 8.2.9	Improper Placement of Sports Equipment		\$50
8, 8.2.2	Business Activity		\$50
10, 10.3	Home and Lot Maintenance		\$50
8, 8.2.3	Restricted Signs		\$50
8, 8.24	Hazardous Activity		\$50
8, 8.2.9	Improper Placement of Trash Containers		\$50
8, 8.2.1	Temporary Structures		\$50
7, 7.6	Street Tree Removal / Replacement		\$50
8, 8.1 – 8.1.4	Leasing Restrictions		\$50
8, 8.2.5	Inoperable Vehicles / Vehicle Storage		\$50
8, 8.2.10	Unauthorized Antenna / Satellite Dish		\$50