

## **Berkeley Walk Community Association Violation Policy and Fine Schedule**

The Berkeley Walk Community Association Board of Directors has established, in conjunction with Heritage Property Management Services, Inc (HPMS), and adopted this policy statement regarding the process of communicating violations of the Declaration of Protective Covenants and Design Guidelines to our neighbors. Written policies allow transparency for the members, effectuate a reliable process for the Board, minimizes errors, and treats all members equally. Included in this policy statement is a schedule of fines should monetary penalties be necessary to motivate the resolution of uncorrected violations. The primary objective for this policy is rule compliance. Monetary penalties are intended to deter unwanted behavior. It is the Board's belief that effective covenant enforcement preserves property values. We are hopeful that every one of our neighbors shares the belief that maintaining the appearance of our homes and our neighborhood is beneficial to the community as a whole.

Note that this policy shall be effective as of April 1<sup>st</sup> 2018. This notification supersedes other policy statements and fine schedules. The effective date does not preclude or change previously imposed fines for past violations.

### First Notice - Courtesy Letter

A notice of violation letter will be sent by HPMS via USPS mail to the property address outlining the violation(s) and giving a time frame for rectification of the issue(s). This friendly reminder/courtesy letter asks for cooperation and reminds the homeowner that they can communicate their thoughts or concerns or ask for clarification by contacting HPMS via either email or USPS mail. After a follow-up review by HPMS and the Board, if the violation is found to be corrected in response to the first notice, then no further action shall be taken and, more specifically, no fine shall be levied against the owner.

### Second Notice – Intent to Fine

Inaction or inadequate action by the neighbor after a first violation letter will result in a warning letter sent by HPMS via regular or certified USPS mail. The homeowner is reminded that their property remains in violation of the Berkeley Walk Protective Covenants despite the first notice. The neighbor is informed that they have the right of appeal and are welcome to request a meeting (hearing) with the Board of Directors by communicating through HPMS. Because this is a second corrective notice, the Board expects the neighbor to send to HPMS a written explanation of their questions, concerns, intentions, and/or a request for a meeting with the Board. Failure to respond as directed in the letter will result in a third written notice setting a date for the levying of a fine (one time and/or daily) as authorized in the Protective Covenants.

### Verbiage from the letter, to be mailed to home owner:

Our records indicate that you have failed to make the necessary correction to become compliant with the Berkeley Walk Community Association, Inc. Declaration and/or rules and regulations. If you do not correct the violation within ten (10) days, you will be fined as allowed by the enforcement provisions of your governing documents. All fines associated with this violation will be assessed to your account. Failure to pay fines may result in the filing of a lien against your property.

### Third Notice – Fine

The third and final warning letter, if necessary, and sent by certified mail by HPMS, informs the homeowner of the date a fine will be assessed and/or begin to accrue. The homeowner is reminded that two previous letters have resulted in inaction or insufficient action and that they still have the right to a hearing on the matter. The homeowner is notified that failure to resolve the covenants violation and pay the fine assessed will result in an additional monetary penalty to be determined and assessed by the debt collection agency and eventually the Association's attorney.

#### Verbiage from the letter notifying that you are now being fined:

Our records indicate that you are still in violation of the Berkeley Walk Homeowners Association, Inc. Declaration and/or rules and regulations. In a recent notice you were advised that you would be fined if the violation was not corrected in ten (10) days. This is to notify you that you are now being fined \$25 per day as allowed by the enforcement provisions of your governing documents. You will continue to be fined on a monthly basis without further notice until this violation is resolved. You must notify our office in writing when you have resolved this violation. If the matter is not resolved, the Board may seek legal action. All fines and associated legal costs will be charged to your account. If you have corrected the violation, please notify this office so we can verify the correction and stop the fining process. Failure to do so will result in additional fines being assessed to your account. You may request a hearing before the Board of Directors to appeal the violation. All requests must be submitted to the Property Manager. If you fail to respond to this notice within ten (10) days you will automatically waive your right to appeal.

### Opportunity to be Heard

The Association recognizes each owner's right to explain the reasons why there appears to be a violation of the Covenants/Guidelines, particularly if the continued violation will result in a monetary fine. Before any fine is assessed, an owner has the opportunity to request, through HPMS, a hearing before the Board of Directors. The owner must provide a timely written request for such a hearing. If a hearing is held, the owner is bound by the decision of a majority of the Board. The Board reserves the right to waive or modify fines, for good cause, at its discretion.

### Repeat Violations

A repeat violation occurs when a homeowner violates a previously resolved provision of the Association's governing document(s) after having already been given the appropriate warnings, opportunity for a hearing, and the imposition of a fine, if necessary. A repeated violation will result in a shortened notification and opportunity for a hearing process, as well as a doubling of fines, if necessary.

### 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 neighbors may require immediate action and thus create exceptions to the foregoing notice provisions. This type of violation will be determined by the Board. It should be understood that the following fine schedule is to be considered flexible so that it allows for a significant fine concurrent with the first or second violation letter rather than just a warning letter should the situation require such action by the Board.

### Right of Self-Help/Abatement Entry

The Berkeley Walk Community Association has the right (but not the obligation) to enter an owner's property and to provide all noncompliance issue maintenance and repairs that are necessary to remove a Covenants/Guidelines violation. This right of abatement entry by the Association and any of its agents is not an actionable trespass. The Association shall assess an owner for the cost of all maintenance and repairs performed by the Association to correct such an issue. The Association shall also seek to recover reasonable attorney fees and court costs associated with any penalties or damages assessed.

### Suspension of Privileges

The Association, by action of the Board, may suspend the membership rights of a homeowner who is being fined for a Covenants violation. These privileges include the right to vote, the right of enjoyment in the Common Property (pool, tennis courts, clubhouse, playground), and the right to receive and enjoy such services and other benefits as are routinely provided by the Association to non-delinquent homeowners.

## **Fine Schedule**

Violation: first offense, per violation

Action: first (courtesy) notice, no fine

Time to Resolve: varies from immediately to as many as 180 days depending on the Board's determination of the complexity of the correction process.

Violation: inaction or inadequate action to correct a violation following the transmittal of the second and third written notices

Action: one-time fine ranging from \$50 to \$100 and/or a daily fine of \$25 at the discretion of the Board of Directors; the collection of fines will be handled by HPMS and a debt collection attorney who is capable of imposing a lien and initiating litigation (court action) should such be deemed by the Board to be necessary

Time to Resolve: the daily fine will accrue until a point in time when the violation is corrected and HPMS is notified of such by the homeowner

Escalation of Handling: Day Thirty-Five Reminder Notice

If a homeowner has not rectified a violation thirty-five days after the fine(s) is assessed and begins to accrue, HPMS will send the owner a reminder notice requesting immediate payment of the unpaid fine, interest, and other charges.

Escalation of Handling: Day Sixty-Five Second Reminder Notice

If a homeowner has not rectified a violation sixty-five days after the fine(s) is assessed and begins to accrue, HPMS will send the owner a final notification that the account will be transferred to a collection agency if payment is not received within fifteen days. The collection agency will initiate a call and letter campaign and subsequently report the homeowner to a credit bureau after 100 days.

Escalation of Handling: Balance Due Reaches \$1,200

When the balance due reaches \$1,200 the delinquent owner's account can be turned over by HPMS to the Association's attorney for collection actions. When the attorney receives a homeowner's account, the following actions will be taken:

- review online title records to verify ownership,
- send collection demand letter to delinquent owner giving the owner thirty days to pay or contest the debt, and
- review the file and recommend to the Board whether to pursue legal action and/or foreclosure.

Upon Board approval, the attorney will file the appropriate lawsuit.

Liens: Per the Property Owners Association Act (state of Georgia, adopted in 1994), the Association is granted an automatic lien on all properties with debts outstanding and the sale of such property will be prohibited unless any debts to the Association are satisfied before or at closing.

Hierarchy of Payments: Any payment received by the Association shall first be applied to any attorney's fees and other costs of collection, then to any interest accrued on the delinquent account, then to any administrative fees, and finally to the assessed fines.

Repeat Violation: repeat of a violation following a previous correction of the same violation

Action: First (courtesy) notice followed by a shortened notification and opportunity for a hearing process, as well as a doubling (or greater) of fines, if deemed reasonable and necessary by the Board to discourage such a violation from recurring

Time to Resolve: varies from immediately to as many as 60 days depending on the Board's determination of the complexity of the correction process

This policy and schedule is adopted per article 11 of the Berkeley Walk Community Association's Declaration of Protective Covenants and Design Guidelines and is subject to amendment or modification at any time by a majority vote of the Board of Directors. Such amendment or modification shall be effective upon notice to the homeowners.

Adopted by the Board of Directors, Berkeley Walk Community Association, March 2018