

CHAPTER 2

ENFORCEMENT REGULATION FOR NON-MONETARY VIOLATIONS UPDATED 11/2/17

2.01 Purpose and Intent. The purpose of this regulation is to establish reasonable and clear enforcement procedures to address non-monetary violations of the Protective Covenant and the Code within the authority granted to the Association by law and in the Governing Documents.

2.02 Scope of Enforcement Procedures. This chapter applies to all acts of members which the Association, acting through its Board of Directors ("the Board"), Art Jury, or its staff, may find to be non-monetary violations of the Protective Covenant and the Code in exercise of its discretion pursuant to Article I, Section 4 and Article V, Section 10 of the Protective Covenant, Declaration No. 1 [Paragraphs 4 and 180], Article I, Section 17 of the Protective Covenant, Declaration No. 2 [Paragraph 236], and Article I, Section 17 of the Protective Covenant, Declaration No. 3 [Paragraph 264]. For example, such violation may include, but not be limited to, construction without a permit or in conflict with a permit, or the creation of, or failure to prevent, conditions prohibited by the Protective Covenant or the Code.

2.03 Discovery and Informal Notice. After an alleged violation of the Protective Covenant or the Code is observed or reported, Association staff may investigate the violation. In the case of relatively minor violations, staff shall have the discretion to make a courtesy call or send a letter informing the member of the violation and the need for compliance. If compliance does not occur within 7 days of the call or letter, or if the nature of the violation requires more immediate action, the Manager or his or her designee may elect to serve a Notice of Violation pursuant to §2.04.

2.04 Notice of Violation. The Manager or his or her designee may deliver to the member by First Class U.S. Mail or personal delivery a written notice of the alleged violation, the desired remedy to comply with the Protective Covenant or the Code, and a specific date (the "Compliance Date") to effect compliance which is at least 21 days after the letter's date except as otherwise permitted pursuant to §§2.05 and 2.06 (a "Notice of Violation"). The Notice of Violation shall further inform the member that failure to comply by the Compliance Date may result in the Board imposing a special assessment in the amount as fixed in the most recent Association Building Department Schedule of Fees & Assessments and other charges, and may lead to the loss of membership privileges.

2.05 Stop Work Order. In addition to a Notice of Violation, if construction without a permit or in conflict with a permit has occurred, is ongoing or is threatened or prospective, a "stop work order" may be given at any time to the member and/or the contractor by First Class U.S. Mail, personal delivery or posting on the building site.

2.06 Temporary Restraining Order. In cases where work does not stop in response to a "stop work order" or another exigency so justifies such action, the Manager or his or her designee shall have the discretion, but shall not be required, on behalf of the Association to immediately seek a temporary restraining order, subject to providing the member with an alternate dispute resolution

procedure if required by law. The Association may seek a temporary restraining order prior to the Compliance Date in the Notice of Violation.

2.07 Board Action. If compliance is not effected on or before the Compliance Date, the Board will consider at a meeting duly noticed as provided in this §2.07 the following actions: (1) the imposition of a special assessment in the amount as fixed in the most recent Association Building Department Schedule of Fees & Assessments and an additional amount equal to the costs and expenses in excess of the special assessment incurred by the Association in obtaining compliance (the amount may be specifically fixed by the Board at a subsequent duly noticed and held meeting) and (2) the suspension of membership privileges. As soon as practicable following the Compliance Date, the member shall be given at least fifteen days prior written notice by certified mail of the date, place and time of the Board meeting, and will be given an opportunity to be heard at such meeting. The notice shall state (i) the amounts of the special assessment all other required fees and the enforcement procedures of the Association, (ii) an itemized statement of the current and potential charges owed by the member, including principal owed, any late charges and their method of calculation, and any attorneys' fees and (iii) the collection practices used by the Association, including a statement that the Association is entitled to its reasonable costs of collection. If the Board acts to suspend membership privileges, the affected member is thereafter not in good standing with the Association, subject to the restoration of membership privileges pursuant to §2.10.

2.0701 Special Assessment. The Association finds and declares that a special assessment in the amount as fixed in the most recent Association Building Department Schedule of Fees & Assessments is a reasonable sum to reimburse the Association for enforcing the Protective Covenant and the Code pursuant to this chapter through the time of the meeting of the Board following the Compliance Date, and that the special assessment does not exceed the amount necessary for the purpose for which it is levied.

2.0702 Permit Fees. The special assessment in the amount as fixed in the most recent Association Building Department Schedule of Fees & Assessments and any additional amount, if imposed by the Board, and all relevant building permit fees are due prior to and as a condition for issuance of a building permit (in those cases where construction is occurring without a building permit) or before work can continue (in cases where work is in conflict with an approved building permit).

2.08 Renewal of Violation. In the event compliance by the Compliance Date is ostensibly accomplished by the member, and the member subsequently either renews the violation or proceeds with another violation, a notice of a Board meeting pursuant to §2.07 together with notice that the Board will consider whether to levy another special assessment in the amount as fixed in the most recent Association Building Department Schedule of Fees & Assessments and other potential remedies, may be given without the need for another Notice of Violation. Such a circumstance of renewal includes, but is not limited to, events where work stops, a building permit application is received, but work begins again before Art Jury approval and issuance of the permit.

2.09 Nonexclusive Remedy. At any time before or after a Notice of Violation or a notice of a Board meeting pursuant to §2.07, the Board may pursue any and all other remedies at law or in equity.

2.10 Restoration of Membership Privileges. The Manager may restore membership privileges by the following procedures:

2.1001 Request for Restoration. The member shall submit a written request to reinstate his, her or its membership privileges to the Manager. The written request shall include a description of the violation and describe the steps the member has taken to achieve compliance. The member shall also remit the amounts of the special assessment and all other required fees and charges with the written request.

2.1002 Membership Restoration. An inspection shall be made by the Manager or his or her designee to verify compliance. When compliance is satisfied and all fees and charges are paid, the Manager shall note the same in the file of the member's respective building site(s) and deliver to the member a written notice of restoration of membership privileges.

2.11 Effective Date. The effective date of this chapter is March 3, 1994.

2.12 Amended Date. This chapter was amended at §§2.02, 2.06, 2.0801, 2.09, 2.11 and 2.1201 on January 15, 1998, and was amended and restated on July 19, 2007.



ENFORCEMENT REGULATION FOR NON-MONETARY VIOLATIONS

1. Purpose and Intent. The purpose of this regulation is to establish reasonable and clear enforcement procedures to address non-monetary violations of the Rancho Santa Fe Protective Covenant (the "Protective Covenant") and the Rules and Regulations (the "Rules") adopted by the Board of Directors (the "Board") of the Rancho Santa Fe Association (the "Association") within the authority granted to the Association by law and in the Protective Covenant, the Amended and Restated Articles of Incorporation of the Association (the "Articles"), the Amended & Restated Bylaws of the Association (the "Bylaws") and the Rules.
2. Scope of Enforcement Procedures. This regulation applies to all acts of Members (as defined in Article VI of the Articles) which the Association, acting through the Board or the Association staff, may find to be non-monetary violations of the Protective Covenant and the Rules in exercise of its discretion. In the interests of clarity, the failure to pay assessments, dues and other charges would be regarded as monetary violations, but the failure to meet obligations under agreements with the Association may be found to be non-monetary. In the interests of further clarity, this regulation does not apply to acts otherwise covered by the governing documents of the Rancho Santa Fe Golf Club or the Rancho Santa Fe Tennis Club.
3. Discovery and Informal Notice. After an alleged violation of the Protective Covenant or the Rules is observed or reported, Association staff may investigate the violation. Staff shall have the discretion to make a courtesy call or send a letter informing the Member of the violation and the need for compliance. If compliance does not occur within seven days of the call or letter, or if the nature of the violation requires more immediate action, the Manager or his or her designee may elect to serve a Notice of Violation pursuant to paragraph 4. below.
4. Notice of Violation. At any time, the Manager or his or her designee may provide the Member notice of the alleged violation, where curable, the desired remedy to comply with the Protective Covenant or the Rules and a specific date (the "Compliance Date") to effect compliance which is at least 14 days after the letter's date (a "Notice of Violation"). The Notice of Violation shall further inform the Member that failure to comply by the Compliance Date may result in the Board imposing discipline, including suspension of all membership rights, voting rights, the right to make use of recreational facilities, charging privileges and the like and fines according to a schedule published by the Board. Further, the Board may charge the Member for the costs of bringing the Member in to compliance, including attorney's fees and costs incurred, whether or not litigation is commenced. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records. Note: The 14-day cure period and Compliance Date discussed in this regulation will only apply to violations susceptible of being cured.
5. Stop Work Order. In addition to a Notice of Violation, if construction without a permit or in conflict with a permit has occurred, is ongoing or is threatened or prospective, or a Member shall fail to fulfill the Member's obligation under any agreement with the Association relating to such construction, a "stop work order" may be given by the Manager or his or her designee at any time to the Member and/or any Member's contractor by first-class mail, postage prepaid, to the last known address of the Member shown on the Association's records, personal delivery or posting on the Building Site (as defined in Article VI of the Articles).

6. Temporary Restraining Order. In cases where work does not stop immediately in response to a "stop work order" or another exigency so justifies such action, the Manager or his or her designee shall have the discretion, but shall not be required, on behalf of the Association to immediately seek a temporary restraining order or preliminary injunction. The Association may seek a temporary restraining order or preliminary injunction prior to the Compliance Date in any Notice of Violation.

7. Board Action. If compliance is not effected on or before the Compliance Date specified in a Notice of Violation or if a violation is not susceptible of being cured, the Board may consider at a hearing duly noticed as provided in this paragraph 7, any disciplinary actions specified in paragraph 4. above. The Association shall provide the Member not less than 15-days prior notice of a hearing to consider discipline and the reasons therefor. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records. The notice shall contain: the date, time, and place of the hearing; the nature of the alleged violation; the amount of the costs and expenses of the Association to the date of notice in attempting to obtain compliance, a statement to the effect that an additional amount may be levied for costs and expenses incurred by the Association after the date of notice and a copy of this regulation. The Member shall be provided an opportunity to be heard, orally or in writing, at such hearing. The notice of the ruling of the Board on the matter shall be provided to the Member not more than 15 days after the hearing and not less than five days after the hearing. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records, and the effective date of any suspension shall be the date the notice was provided to the Member.

8. Collection of Sums. All amounts due the Association pursuant to this regulation shall be paid within five days of notice of the ruling of the Board pursuant to paragraph 7. above. In the event that the Member does not timely submit payment, the Association may collect such amounts by all lawful means, including, but not limited to, suit in Superior Court. In the event of suit in Superior Court, the Association as prevailing party shall be entitled to its reasonable attorney fees and costs.

9. Nonexclusive Remedy. At any time before or after a Notice of Violation or a notice of a Board hearing pursuant to paragraph 7. above, the Board may pursue any and all other remedies at law or in equity.

10. Restoration of Membership Privileges. The Board may restore membership privileges suspended pursuant to this regulation by the following procedures:

10.1 Request for Restoration. The Member shall submit a written request to reinstate membership privileges to the Manager. The written request shall include a description of the violation and describe the steps the Member has taken to achieve compliance. The Member shall also remit all amounts owed by the Member to the Association with the written request.

10.2 Membership Restoration. An inspection shall be made by the Manager or his or her designee to verify compliance. When compliance is satisfied and all amounts owned by the Member to the Association are paid, the Manager shall submit a request for restoration to the Board, and if the Board decides that there is no reason to continue suspension of membership privileges, the Board shall direct the Manager to note the same in the file of the Member's respective Building Site(s) and deliver to the Member a written notice of restoration of membership privileges.