

# **Harbor Watch Homeowners Association Inc. of Lake Norman**

## **Enforcement Procedures For Harbor Watch Covenants/Restrictions Violations**

(Authorization: N. C. Gen. Stat. 47F-3-107.1)

### **Enforcement Procedure**

In response to a complaint by a member relating to a covenant and/or restriction violation by another member of the Subdivision, the Board of Directors will initiate the following enforcement procedures:

1. The allegedly offending member will be personally contacted informing the member of the violation; the remedial action required; and the time within which the violation should be corrected.
2. Should the violation not be timely corrected, a warning letter will be sent from the Board again identifying the nature of the violation; referencing the specific provision of the Declaration, Bylaws, Rules, and/or Regulations that has been violated; and giving a specific date for compliance.
3. Should the violation not be corrected by the first Warning Letter compliance date, a Final Letter will be sent from the Board, which will include the following notifications:
  - a. that the first Warning Letter has been ignored;
  - b. that a Show Cause Hearing will be held and a fine may be imposed;
  - c. the time and place of the Show Cause Hearing, which shall not be less than 10 days from the mailing of the Final Letter; and
  - d. that the lot owner has the right to bring an attorney to the Hearing.

The Show Cause Hearing may be held before an Adjudicatory Panel appointed by the Board or before the Board.

4. At the Hearing, the lot owner is given an opportunity to present his or her case, i.e., to explain why they are not in violation or why they should not be fined.
5. After the Hearing, the Adjudicatory Panel or the Board, as the case may be, will determine if a fine should be levied. If the Hearing was before an Adjudicatory Panel, the Panel will provide written notice of its decision to the Board within 5 business days of the Hearing.
6. If the decision is that a fine should be levied, the Board will determine the appropriate amount of the fine, which can be up to \$100 per day per violation; depending, of course, on the severity of the violation.
7. A letter will be sent to the lot owner of the Board's decision and the date, which must be at least 5 business days after the Hearing, upon which a daily fine will commence.

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8. If the Hearing was held before an Adjudicatory Panel, the letter will include the right to appeal the decision within 15 business days to the Board of Directors. Upon the receipt of such an appeal, the Board will notify the lot owner in writing of the date for the Appeal Hearing and above steps 4 through 7 will be essentially repeated.

Note: Under North Carolina law, a fine is an assessment. A lien can be filed against a lot owner's property to secure payment of the fine if the fine becomes past due. The lien can be ultimately foreclosed.

9. In the alternative, should the alleged violation be of such a nature that the Board reasonably believes that fines would not provide sufficient incentive or be inappropriate to achieve desired remedial action or if the violation could possibly result in essentially irreversible damage; then the Board reserves the right at any time to have the Association's Outside Legal Counsel take immediate action which includes issuing a Warning Letter and/or the filing of a formal Complaint with the North Carolina Court System.

10. Fines must be paid within 30 calendar days of the date on the letter, which levies the fine. If the fine is not paid within 30 days, the fine will increase to \$10 per day until the total levied fine balance is paid. Once the level of the delinquent fine balance exceeds \$500, the Association may undertake legal action to collect the unpaid balance. The property owner will be responsible for all costs associated with the collection of the unpaid balance including attorney fees.

11. Actions taken by the Board of Directors to levy set fines for certain specific covenant violations are set forth in the Appendices to this procedure.

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### **Appendix**

#### **A. Dogs roaming the neighborhood without leashes**

The Declarations of Restrictive Covenants of The Harbor Watch Subdivision General Use Restrictions Section 14 states in part “ Each owner must see to it that all owner’s dogs are kept on the owner’s property unless leashed. No dogs shall be permitted to roam the property and the Association may have strays and dogs not leashed and are found off their owner’s lot picked up by governmental authorities.”

The procedure that will be specifically used to address violations of Declarations of Restrictive Covenants as it relates to dogs is listed below:

- 1) The offending member will be personally contacted informing the member of the violation; the remedial action required; and the time within which the violation should be corrected.
- 2) Should complaints of unleashed dog(s) continue, a warning letter will be sent from the Board again identifying the nature of the violation; referencing the specific provision of the Declaration, Bylaws, Rules, and/or Regulations that has been violated; and giving a specific date for compliance.
- 3) Should complaints continue, a second letter will be sent from the Board advising that if complaints continue a fine of \$25.00 will be levied. If complaints continue after the \$25.00 fine is levied, a second fine will be levied in the amount of \$50.00. Furthermore, additional fines will be levied for each such subsequent complaint received and at the discretion of the Board of Directors, the fine amount levied per the additional violations may be increased should the condition(s) not be properly addressed and the complaints continue.

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### Appendix

#### B. Cutting Trees

The Declaration of Restrictive Covenants of The Harbor Watch Subdivision General Use Restrictions Section 21 states (Committee means the Architectural Review Committee):

21. Except within the building site or within 20 feet of the main dwelling, no trees of any kind in excess of 6 inches in diameter at ground level may be removed from any lot without prior approval of the Committee.

The procedure that will be specifically used to address violations of Declarations of Restrictive Covenants as it relates to cutting trees is listed below:

- 1) All trees greater than six inches in diameter at ground level and outside 20 feet of the main dwelling that are cut without prior approval of the Architectural Review Committee (ARC) will result in a fine of \$250 for each tree removed.
- 2) All trees greater than six inches in diameter at ground level and outside 20 feet of the main dwelling that are cut without prior approval of the Architectural Review Committee (ARC) shall be replaced by a quantity of trees totaling the diameter of tree(s) removed. Replacement trees must be no less than 2 inches in diameter ( e.g., three trees two inches in diameter may replace one six inch tree). Replacement trees must be native “ecological equivalent” of what was removed ( i.e., a tree removed from the canopy must be replaced with a similar species that also has the potential to reach the canopy and sub-canopy trees must be replaced with similar sub-canopy species).
- 3) Type and location of replacement trees must be submitted to ARC for approval no later than 30 days after date fine is levied. Trees must be replaced within 30 days of the date of ARC approval of the replacement tree proposal.

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### Appendix

#### C. Collecting Delinquent Assessments

The DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF HARBOR WATCH SUBDIVISION Book:1041 Page: 1446 3 through 6, which is Article II titled RIGHTS AND DUTIES OF THE ASSOCIATION AND PROPERTY OWNERS ASSESSMENTS, covers Annual Assessments *or dues* (Section 2), Late Charges and Interest on Unpaid Assessments (Section 6) and Lien for Unpaid Assessments (Section 7).

The purpose of this appendix is to document the process by which the HOA collects delinquent assessments or dues.

- 1) Each year a dues statement letter is sent to each lot owner typically in December. This letter includes the statements below:

Attached is the Annual Dues statement for 20XX for your property at Harbor Watch.  
**The dues are payable by January 31, 20XX.**

Late fees and interest charges accrue on the 20XX dues beginning March 1, 20XX for any unpaid dues. As set forth in the covenants, the late fee is \$25.00 and the interest rate on any unpaid balance is 1.5% per month (18% annual rate). **Payments will be applied first to outstanding late fees, interest charges, legal fees and dues, then to current late fees, interest charges, and legal fees in that order, before being applied to current annual dues.**

- 2) If the Annual dues are not received via postmarked envelope by the last day of February, a delinquent dues letter is sent to those delinquent lot owners. This letter includes the statements below:

The Home Owners Association **will not** go to the expense of providing monthly billing for unpaid balances.

A table is provided which depicts the unpaid dues for each lot owned and late fee and interest amounts are shown depending on when payment is received within the month in the table through June 30.

If the 20XX Dues, late fees and interest charges are not paid in full by June 30, 20XX, the Homeowners Association's attorney will be notified and legal action will be immediately taken to collect any unpaid balances. **All fees necessary to collect delinquent account balances are borne by the property owner and these fees are significant.**

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- 3) If the account balance of annual dues, late fee and interest are not received by early June, a second letter is sent to those lot Owners that are delinquent. This letter includes the statements below:

When your dues were not received before March 1, 20XX, a follow-up letter dated March X, 20XX was mailed to you stating that if the 20XX Dues, late fees and interest charges are not paid in full by June 30, 20XX, the Homeowners Association's attorney will be notified with and legal action will be immediately taken to collect any unpaid balances.

The Harbor Watch Board plans to vigorously pursue collections of the accounts in arrears. **If your dues, late fees and interest in the amount of \$XXX.XX are not paid in full by June 30, 20XX we will notify the Homeowner Association's attorney to pursue collection of the unpaid balance.** The property owner will be responsible for all costs associated with the collection of the unpaid balance including attorney fees. **These additional costs will be substantial.**

Thank you in advance for understanding it is the fiduciary responsibility of the Homeowners Association to collect annual dues, late fees and interest as defined in the Harbor Watch Covenants and Restrictions and in the NCGA General Statutes, Chapter 47F, aka the North Carolina Planned Community Act; specifically Article 1: Section 102(c) and Article 3: Sections 102(11), 115, and 116.

- 4) IF the HOA does not receive the annual dues, late fee and interest early July, The HOA will turn over the delinquent dues collections to the HOA attorney. The HOA attorney will originate a **Demand for Payment** letter providing a deadline to submit the account balance plus legal fees associated with generating the letter and administrating the collection of the account balance. **The legal cost for the Demand for Payment letter is typically \$175 plus administrative costs.**
- 5) If the Lot Owner fails to respond by the deadline prescribed in the **Demand for Payment** letter from the attorney, a lien will be filed against the lot by the HOA attorney. **The typical legal expense for filing a lien is \$350 plus costs for filing and administrative costs.**
- 6) The HOA will notify each Lot Owner with a lien filed on their lot during December of their account balance less legal fees and how the account balance may be settled.
- 7) Liens are re-filed on an annual basis and **the typical legal expense for re-filing a lien is \$350 plus filing and administrative costs.**
- 8) When liens are originally filed and when they are re-filed, the HOA attorney will perform a quick title search. One outcome of the search is that it can be ascertained if there is a Deed of Trust or other lien and if any such instrument(s) have precedence over the HOA lien. If the HOA attorney determines that the HOA Lien has precedence, the HOA might seek to foreclose if circumstances, such as significant account balance, warrant.

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- 9) Any lot owners/residents who are delinquent in their Annual Dues will be prohibited from using community amenities.
  
- 10) Any lot owners/residents who are delinquent in their Annual Dues will have their voting rights suspended.