

Covenant Enforcement

The N.C. Planned Community Act in Chapter 47F of the General Statutes “applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.” The Village was created before that date; however, the “except as otherwise provided” comes into play for the Village because the imposition of fines is one of the things expressly stated in the law that applies to communities irrespective of whether they were created before July 1999. *See* § 47F-1-102 (c). The process for the provision of fines is controlled by § 47F-3-107.1, which states in pertinent part:

Procedures for fines and suspension of planned community privileges or services. Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12).¹ Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116.

The following suggested formalized process mirrors the requirements of the N.C. Statute and seeks to implement a process flow of how the Village will move forward on assessing fines, where appropriate, in matters where the declaration, covenants, or bylaws are believed to have been breached. Once implemented, we should be able to move seamlessly through this process by referring to a quick 2-page document.

¹ Section 12 provides: “*After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association.*”

PROCESS GUIDE FOR CONSIDERING THE ASSESSMENT OF FINES FOR ALLEGED BREACHES OF VILLAGE DECLARATION, COVENANTS, OR BYLAWS.

1. Scope: In any matter where the Board of Directors (Board) or the Architectural Control Committee (ACC) of the Village at Nags Head Property Owners Association (VNH-POA), in the exercise of authorities granted in the Village at Nags Head controlling documents² has cause to believe that a property owner has breached the terms of any controlling document, the following process shall be followed to address the alleged breach.

2. Notice: The Board or the ACC shall provide written notice to the property owner regarding the alleged breach.

a) The written notice shall consist of a clear explanation of the condition alleged to constitute the breach and the identification of the controlling document and section alleged to have been breached;

b) The written notice shall set forth the remedial action required to correct the breach and restore the property to compliance;

c) The written notice shall include a requirement that the property owner respond to the alleged breach within thirty (30) days of the date of the notice;

d) Written notice shall be served via registered mail to the address of record the property owner has provided to the VNH-POA Property Management Company and the address of record for the property located on the Dare County Parcel Data Sheet;

3. Pre-Hearing Resolution of Alleged Breach: The Board and ACC encourage resolution of alleged breaches of the controlling documents without the necessity of a formal hearing or the imposition of fines. To that end, property owners and the Board or ACC may enter into agreements resolving alleged breaches contained in the written notice at any time. The terms of such agreements, as long as otherwise in compliance with the controlling documents, are within the discretion of the Board or ACC, provided they are reduced to writing, executed by

² “Controlling documents” include but are not limited to: the Articles of Incorporation, Declaration, Covenants, Bylaws, Transfer of Architectural Control from the Developer, and any/all amendments to such documents.

both parties, and expressly identify the remedial action required to correct the breach and restore the property to compliance and the time frame for the completion of such work.

4. Failure to Respond or Complete Remediation: Should a property owner fail to respond to the written notice of alleged breach within thirty (30) days as outlined in Section 2c, above, the matter shall be scheduled for a hearing before the Board or an adjudicatory panel appointed by the Board to determine if the property owner should be fined or if Village privileges or services should be suspended.

5. Hearing: If a property owner fails to respond to the notice of alleged breach of controlling documents or fails to complete the agreed-upon remediation of a breach reached pursuant to a pre-hearing resolution outlined in Section 3, above, the Board shall provide written notice of a hearing to the property owner to resolve the dispute.

a) The written notice shall consist of a clear explanation of the condition alleged to constitute the breach, identification of the controlling document and section alleged to have been breached, and that the hearing is an opportunity for the property owner to be heard and to present evidence;

b) The written notice shall be served via registered mail to the address of record the property owner has provided to the VNH-POA Property Management Company and the address of record for the property located in the Dare County Parcel Data Sheet;

c) The written notice shall also advise a potential outcome of the hearing should the property owner be found in breach of the controlling documents may include the imposition of a fine not to exceed one hundred dollars (\$100.00) for the breach, and without further hearing, a fine not to exceed one hundred dollars (\$100.00) for each day more than five days after the decision that the breach occurs, consistent with the provisions of North Carolina General Statute § 47F-3-107.1;

d) If the Board decides to have the hearing before an adjudicatory panel, the panel appointed by the Board shall be composed of members of the association who are not officers of the association or members of Board; and

e) The Board or the adjudicatory hearing panel shall provide written notice of its decision to the property owner within fifteen (15) days of the hearing in the manner outlined in Section 5b, above.