

**TOWNHOMES AT MARBELLA ON
CYPRESS, INC.**

**PRE-SUIT COVENANT ENFORCEMENT
MANUAL**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Townhomes at Marbella on Cypress (herein “Declaration”), the Association’s Bylaws and Chapter 720, Florida Statutes, provide Townhomes at Marbella on Cypress, Inc. (herein “Association”) the authority to enforce the Declaration, Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association (herein collectively “Governing Documents”) and Chapter 720, Florida Statutes;

WHEREAS, enforcement may be through fines, suspensions and/or the institution of legal action to compel compliance and/or to recover damages and that said enforcement may be against a lot owner, occupant, licensee, tenant, invitee and/or guest.

WHEREAS, the Chapters 617 and 720, Florida Statutes, the Declaration, and Bylaws of the Association permit the Board the authority to adopt a uniform enforcement procedure and a procedure for reviewing violations at meetings of the Fining Committee.

WHEREAS, Chapters 617 and 720, Florida Statutes, the Declaration, and the Bylaws of the Association allow for the Board of Directors to appoint a Fining Committee.

NOW, THEREFORE, LET IT BE RESOLVED THAT: 1) a Uniform Enforcement Policy shall be adopted, 2) a Fining Committee shall be formed; and 3) a Fining Committee meeting procedure shall be adopted:

UNIFORM ENFORCEMENT POLICY

The following procedures shall be followed when a lot owner, tenant, licensee, occupant, invitee, and/or guest fail to abide by the Association's Governing Documents and/or Chapter 720, Florida Statutes.

- 1) **COURTESY NOTICE** - In the event that a violation of the Governing Documents or Chapter 720, Florida Statutes, is discovered, an Owner and alleged violator (if not the same person) may be issued a Courtesy Notice advising that a violation of the Governing Documents or Chapter 720, Florida Statutes has been observed.
 - a. This Courtesy Notice is not required or otherwise a condition precedent to any other step in this enforcement procedure and may be implemented in the sole discretion of the Community Manager or the President.
 - b. If issued, a Courtesy Notice shall reasonably identify the alleged violation and the necessary corrective action and shall provide for a reasonable compliance deadline.
 - c. A Courtesy Notice can be in the form of a letter, email, or oral communication, either in person or by phone.

- 2) **FIRST NOTICE OF VIOLATION** – In the event that a violation of the Governing Documents or Chapter 720, Florida Statutes, is discovered, an Owner and alleged violator (if not the same person) shall be sent a **first** Notice of Violation advising that a violation of the Governing Documents or Chapter 720, Florida Statutes has been observed. The notice to the Owner and alleged violator (if not the same person) shall:
 - a. Include a short plain statement of the matters asserted by the Association to constitute the violation, including but not limited to the specific violation alleged, the date, time and location of the alleged violation;
 - b. State what action is required to remedy the alleged violation; and
 - c. Provide at least ##### (##) days to bring the violation into complete compliance.
Note- The stated compliance period shall be reasonable and shall be determined based upon the nature of the alleged violation (some violations may require additional time)

- 3) **SECOND NOTICE OF VIOLATION** – If a violation cited in a notice pursuant to Paragraph 2) is not completely remedied within the time provided or if the violation reoccurs within six (6) months, the Owner and alleged violator (if not the same person) shall be sent a **second** Notice of Violation by both **certified and regular mail** advising that a violation of the Governing Documents or Chapter 720, Florida Statutes has been observed. The notice shall contain information similar to as follows:

- a. A statement that a First Notice of Violation had been sent regarding the alleged violation and that the alleged violation has not yet been remedied or has reoccurred;
 - b. Include a short plain statement of the matters asserted by the Association to constitute the violation, including but not limited to the specific violation alleged, the date, time and location of the alleged violation;
 - c. State what action is required to remedy the alleged violation; and
 - d. A final demand that the alleged violation be rectified with fourteen (14) days of receipt of the letter by certified mail or within nineteen (19) days from the date of mailing (whichever is first);
- 4) **NOTICE OF REFERRAL TO THE FINING COMMITTEE** – If a violation: a) cited in a notice pursuant to Paragraphs 1), 2) and/or 3) is not completely remedied within the time provided or if it reoccurs within six (6) months, or b) is approved for Expedited Enforcement pursuant to Paragraph 5), the Board may (at a duly called meeting) impose a proposed suspension or fine to be heard by the Fining Committee. The Board shall determine the length of any suspension and/or the amount of any fines sought to be imposed, including the commencement date for any continuing violation. Upon the Board’s decision to levy/impose a suspension and/or fine, the Owner and alleged violator (if not the same person) shall be sent a Notice of Referral to the Fining Committee by both **certified and regular mail** advising that a violation of the Governing Documents or Chapter 720, Florida Statutes has been observed. The notice shall contain information similar to as follows:
- a. A statement that a meeting of the Fining Committee has been called to consider approval of the Board’s levy of a fine in the amount of up to \$100 per violation (accruing at a rate of up to \$100 per day, if a continuing violation up to \$5,000.00) and/or a suspension;
 - b. A short plain statement of the matters asserted by the Association to constitute the violation, including but not limited to the specific violation alleged, the date, time and location of each alleged violation for which a levied fine and/or suspension may be approved by the Fining Committee;
 - c. The date, time and place of the meeting of the Fining Committee, which shall be held no sooner than fourteen (14) days from the date the notice was mailed to the Owner and the alleged violator (if not the same person); and
 - d. A statement that the Owner and the alleged violator (if not the same person) will have an opportunity at such meeting to respond to the alleged violation, present evidence and provide written and verbal argument on all pertinent issues, as well as to review, challenge and respond to any material considered by the Fining Committee;

- 5) **EXPEDITED ENFORCEMENT** - The notices required in Paragraphs 1), 2) and/or 3) may be avoided, if in the opinion of the President, two (2) Directors, or the Community Manager and one (1) Director, the Owner or alleged violator (if not the same person):
- a. States a refusal to comply;
 - b. Installed an improvement or made a change to a Lot or Home subsequent to the denial of an architectural application;
 - c. Violates any Leasing Restriction contained in Article 11.3 of the Declaration;
 - d. Altered, changed or damaged the common areas; or
 - e. If the alleged violation is of a nature that:
 - i. Creates a dangerous condition;
 - ii. Detrimentially impacts the subdivision;
 - iii. Is recurring;

In those such instances, the Association may immediately proceed with the calling of a meeting of the Fining Committee as provided in Paragraph 3) and/or may turn the matter over to legal counsel to pursue legal action to compel compliance and/or to seek damages.

- 6) **RIGHT OF ABATEMENT** – The notices required in Paragraphs 1), 2), 3) and/or 4) may be avoided, if in the opinion of the President, two (2) Directors, or the Community Manager and one (1) Director, the alleged violation can be safely and cost-effectively remedied through the Association’s right of abatement. The Association’s right of abatement may also be in addition to any other remedy provided in the Declaration or by law. The Association may undertake a right of abatement as provided in Article 12.2 of the Declaration, provided that the Owner or alleged violator (if not the same person) is provided the following notice by **certified and regular** mail:

- a. Include a short plain statement of the matters asserted by the Association to constitute the violation, including but not limited to the specific violation alleged and as reasonably practicable the date, time and location of the alleged violation;
 - b. State what action is required to remedy the alleged violation and to avoid the Association’s right of abatement; and
 - c. Provide as stated # of days from the date of the notice to bring the violation into complete compliance prior the Association entering onto the Lot to undertake abatement.
 - d. Include a statement that the costs of the abatement, including any collection costs and reasonable attorneys’ fees shall be the obligation of the Owner.
- 7) **ALTERNATIVE DISPUTE RESOLUTION/LITIGATION** – When a violation: a) cannot be remedied under Paragraphs 1) – 4), b) the right of abatement pursuant to Paragraph 5) is not selected, or c) is referred to legal counsel as otherwise provided herein,

the Association may proceed with the filing of an action in a court of competent jurisdiction.

A deviation from this policy or any notice requirement stated herein shall not invalidate any notice provided pursuant to this policy, provided that the Owner and alleged violator (if not the same person) was reasonably apprised of the alleged violation(s) and proposed action of the Association.

ESTABLISHMENT OF A FINING COMMITTEE

Fining Committee – The Fining Committee shall be deemed established by the adoption of this policy. The Fining Committee shall be composed of three (3) members of the Association who are not officers, directors, contractors or employees of the Association or the spouse, parent, child, brother, sister, or household member of an officer, director, contractor or employee of the Association. The members of the Fining Committee shall serve at the pleasure of the Board of Directors. The duty of the Fining Committee is to hold hearings/meetings as necessary to consider the approval of the Board levied fines and/or suspensions against alleged violators.

FINING COMMITTEE DUTIES

The duties of the Fining Committee shall be as follows:

- a. The Fining Committee shall consider all evidence and testimony presented at any meeting called pursuant to Paragraphs 3) and 4) above;
- b. The role of the Fining Committee is limited to determining whether to confirm or reject the fine and/or suspension imposed by the Board pursuant to this adopted policy;
- c. If the Fining Committee does not agree, the fine and/or suspension levied by the Board may not be imposed;
- d. If a fine and/or suspension is imposed, the Association shall provide a notice of the suspension and/or a demand for fine payment to the Owner and/or violator; and
- e. Fines shall be paid in full within thirty (30) days of the Association's demand for payment.

FINING COMMITTEE MEETING PROCEDURE

1. The Association shall be provided an opportunity to present oral, written, photographic, or eyewitness testimony to the Fining Committee for each alleged violation contained in the notice. The Association shall have a maximum of four (4) minutes to address each alleged violation contained in the notice, unless an extension of time is granted by the Fining Committee upon the request of the Association. A request for an extension shall not be unreasonably denied.

2. The alleged violator shall be provided an opportunity to present oral, written, photographic or eyewitness testimony to the Fining Committee for each alleged violation contained in the notice and to rebut or challenge any evidence offered by the Association. The alleged violator shall have a maximum of four (4) minutes to address each alleged violation contained in the notice, unless an extension of time is granted by the Fining Committee upon the request of the alleged violator. A request for an extension shall not be unreasonably denied.

3. After the times provided in paragraphs 1 and 2 of this procedure, the Association and the alleged violator shall each have two (2) minutes to make a single closing argument for each alleged violation. The Association shall provide its closing argument(s) first.

4. Upon the conclusion of the closing argument for each alleged violation, the Fining Committee shall consider each alleged violation, and the evidence presented. The Fining Committee shall make a determination by a majority vote as to whether a violation did in fact occur for each alleged violation. In instances where the Fining Committee determines that a violation did in fact occur and a fine and/or suspension, the Board shall then provide written notice of the previously levied fine and/or suspension by providing written notice of same. In instances

where the Fining Committee finds that a violation did not occur, no fine and/or suspension shall be levied or imposed.

5. The Fining Committee shall provide meeting minutes to the Board of Directors. The meeting minutes shall at a minimum indicate the parties present at the hearing and that each party in attendance was provided an opportunity to present evidence and/or to rebut evidence presented. Additionally, the meeting minutes shall indicate the disposition of each violation, including whether a Board levied fine and/or suspension was approved or denied.

6. The procedural guidelines provided above are not mandatory and may be modified at a hearing by the Fining Committee so long as it determines that each party is provided an adequate opportunity to present evidence and/or make arguments in favor of or opposed to the levy or imposition of a fine and/or suspension of common element/area use rights. Any deviation from these procedural guidelines shall not invalidate a decision made after hearing evidence/testimony from both parties.