

Members:

The Board has developed a proposed resolution outlining the procedure to be followed in enforcing compliance with the CCRs (resolving violations).

The resolution reflects recent compliance experience and lessons learned. It is intended to clearly set forth the purposes, principles and process to be followed. The aim is to assist members interested in understanding their compliance obligations and/or resolving violation notices efficiently in collaboration with the Board representatives. It is also intended to provide better clarity, transparency and continuity in the process, to guide the current and future Boards.

The process aims to fairly balance respect for the CCRs with the reasonable interests of all property owners. It envisions careful case by case consideration, with room for flexibility in solutions and time frames for compliance, including consideration for hardship conditions.

The procedure can be amended as experience gained warrants.

August 2022

Proposed TCHA resolution: Enforcing the CC&Rs**Preamble**

The stated purpose of the CC&Rs for Timber Cove Homes Unit Two is to preserve and protect the unspoiled natural environment in which we live. The rules they set forth regulate the use and appearance of the residential lots that comprise the subdivision, so that structures blend in unobtrusively and harmonize with the natural environment; manmade visual features or structures that clash or stand out offensively are considered nuisances which must be avoided or remedied. Timber Cove Homes Association was established to interpret and enforce the CC&Rs.

The TCHA Board is adopting the following principles and procedures in order to fulfill its mandate to enforce the CC&Rs in a manner that that is practical, fair and reasonable.

Principles

The CC&Rs emphasize the importance of strictly following the stated rules about home and structure design and land use, but that discipline is balanced with an express allowance for discretion and flexibility in enforcement to take into account special conditions and other approaches that can fulfill the stated purposes. (*Clause II, para. 4.*)

The CC&Rs provide that decisions regarding design elements or features regarding one property need not be similarly applied to other properties. (*Clause V, Para 4.*) The emphasis is on case-by-case

evaluation, that takes into account numerous considerations and circumstances which can differ greatly from one lot to the next, as discussed below.

The CC&Rs also make clear that failure to enforce specific provisions or address violations does not waive the power to enforce them at some later time. (*Clause XVII*)

Documented decisions of prior boards approving features on specific properties will be respected for those properties. However, the CC&Rs do **not** require the Board to apply those historical approvals to other lots, or “similar” features, in new design and compliance reviews. (*Clause V, Para. 4*).

The basic mechanism for enforcement of the CC&Rs is the requirement that owners obtain approval from the Board of the Association, **in writing**, BEFORE commencing construction, repair, or alteration of any house, outbuilding, deck, fence or any other man-made improvement, as well as installation of landscaping or removal of trees. Where the required written approval has not been obtained, or the requirements have been violated, the Board will work with the affected property owner to remedy the violation, through actions and agreements, also documented in writing, as set forth in this Resolution.

Procedures

The Compliance Process will be managed by the Board as follows:

1. A team of CCR Compliance Advisers, comprised of two or three persons who will represent the Board will be appointed by the Board each year after the Annual Meeting. At least one member of the team must be a current Board Director. The Compliance Advisers will take the lead in investigating apparent violations, notifying owners, and working with owners to develop and implement acceptable remedies. The Legal Committee of the Board, or the Secretary, or other members appointed by the Board, will serve informally as independent consultants to the Compliance Advisers, to provide advice or “second opinions” as requested. As noted below, the Legal Committee will have one formal responsibility, which is to act as final reviewers representing the Board, to confirm and sign off on agreed violation resolutions negotiated by the Compliance Advisers, on behalf of the Board.
2. The Compliance Advisers will identify apparent violations periodically, at least once annually, by visual surveys or in response to complaints from residents. With assistance from the Office Manager and the Secretary as needed, the Compliance Advisers will then review available Association files to determine whether the problem condition has previously been approved by the Board. If such evidence is found, or the record is ambiguous, no violation notice should be issued until the Board or Legal Committee have been consulted and agree a notice is warranted. For internal purposes, the Compliance Advisers can prioritize and pace actions to process violations by relative severity and urgency, to feasibly manage their workload.
3. An initial Notice of Violation will be issued to owners of non-compliant lots, with the violation indicated. Contact with the Compliance Advisers to discuss the violation and acceptable remedial action is requested within 30 days.
4. All exchanges of information, inquiries, or other communications between the Compliance Advisers and owners of non-compliant lots regarding the violation notice and proposed remedial measures will be routed through the TCHA Office Manager.

5. If resolution of the violation has not been achieved, or at least credibly commenced within 60 days of the original notice (unless otherwise extended by the Compliance Advisers), a second notice will be issued, warning of potential penalties if compliance is not credibly commenced within 120 days.

6. The Compliance Advisers are authorized by the Board to discuss the violation with the affected property owner, answer questions, review evidence or explanations offered regarding the violation circumstances, and to develop with the affected owner, mutually agreed remedial measures, the “Proposed Remedy”. For clarity and certainty, the Proposed Remedy should be documented in writing or email, as a simple agreed action plan with reasonable deadlines, to be dated and initialed by the owner and the Compliance Advisers or responded to via email.

7. **Guidelines and considerations for proposed remedies:** The starting point in evaluating the violation and discussing suitable resolution is the applicable wording from the CC&Rs. As a general matter, the key concerns of the CC&Rs include adverse visual impact of structures as seen from the roads and neighboring properties, confining structures within the designated building areas, and prohibiting erection of structures or parking of RV’s on undeveloped lots until plans for home construction have been reviewed and approved in writing by the Board.

In assessing and resolving violations, the Compliance Advisers may consider a wide array of relevant factors including evidence of prior approval of the noted condition, impact of physical conditions such as steep slopes and problematic soils, natural obstacles such as boulders, existing or potential manmade or natural screening, reports of positive or negative reactions from affected neighbors, cost of remedial measures, pending design approvals, changes in applicable laws, regulatory policy, new technologies and materials etc.

8. Once mutually agreed and initialed, the Proposed Remedy will be reviewed by the Legal Committee, or the Secretary, as an independent “second set of eyes”, to confirm the remedy is clear and fair, and that it constitutes reasonable compliance with the purposes of the CC&Rs. It is anticipated that reviewer suggestions, if any, would be limited and readily accommodated in the Proposed Remedy. The goal is to obtain authorization signed by the Secretary or the Legal Committee to proceed with the Proposed Remedy within 15 days of submittal.

8. **Final Approval**—The Compliance Advisers shall inspect affected property when advised the Remedy has been implemented to confirm satisfactory completion. At that time, a Final Notice of Approved Resolution will be Issued, in writing by the Association President or Secretary, and a copy maintained in a Designated Association File.

9. Role of the Full Board

a. The Compliance Advisers shall report to the Full Board in Executive Session in an agreed manner on the status of all pending violations at least once per quarter. The purpose of this report is for general oversight and guidance, and modification of procedures if necessary. It is not intended as a review or reconsideration of individual enforcement notifications and resolutions, which are intended to be handled by the Compliance Advisers with Legal Committee/Secretary review, unless the process yields a dispute.

b. **Disputes:** A property owner who is not satisfied with the remedial recommendations of the Compliance Advisers can request review of the issue by the full Board via IDR.

c. If the Compliance Advisers are unable to reach agreement and implementation of a Proposed Remedy with the affected owner even after IDR, the Board, in consultation with legal counsel, if necessary, shall determine appropriate legal enforcement mechanisms, including penalties, prohibition of sale of property until satisfactory resolution has been completed, injunctive relief, entry and abatement per the CC&Rs, etc. The Board may supplement this Resolution by publishing a general description of legal remedies approved by legal counsel. Per the CC&Rs, all attorney's fees and legal costs incurred resulting from a proved violation shall be reimbursed by the affected owner.

10. Conclusion: We wish to underline the key principles of this enforcement process: upholding the essential requirements of CC&Rs that benefit all members; case by case evaluation and balancing of all relevant considerations in a practical, reasonable way that respects the concerns of the Association and the reasonable interests of the property owner; and implementation of a fair resolution in a spirit of constructive collaboration. Initial positive responses to the recent mailing of Notifications provide encouraging indication that these goals are achievable .