



STAFF REPORT

DATE: November 8, 2021

TITLE:

Proposed revisions to the Covenants Enforcement Procedures

RECOMMENDATION:

Staff and the Covenants Committee are requesting the Board of Directors to review proposed revisions to the Covenants Enforcement Procedures and provide feedback and direction. Staff and the committee will then consider additional modifications, seek legal review and opinion, and return at a subsequent Board meeting for consideration to adopt the updated procedures.

BACKGROUND:

The process of evaluating and updating the Association Covenants Enforcement Procedures began in 2018 when it was recognized by the Covenants Committee that the current procedures had not been updated in more than a decade. The committee agreed that they were inadequate for the demands of current complaints.

Two previously revised drafts, one provided by the committee in 2019 and one revised by former legal counsel in 2020, were proposed but neither was adopted by the committee nor received Board of Directors approval.

The committee membership has since changed, with the current committee chair resurrecting the Covenants Enforcement Procedures update project. In collaboration, staff and the committee began further review in January 2020, with detailed analysis of the prior draft revision documents, resulting in the most current proposed revisions to the Draft Covenants Enforcement Procedures.

Staff and the Covenants Committee believe that the proposed revisions achieve the goals and objectives of the project.

Project goals include the following:

- To update the procedures to be consistent with current technology (email, website, etc.).
- To provide Covenants Enforcement Procedures that are easily understandable.
- To provide for the equal treatment of all member property owners.
- To encourage compliance and discourage repeat violations.
- To Clarify the receipt of complaint process and communication to both respondents and complainants.
- To identify and distinguish between the two types of violations: “objectionable activities” and “non-compliant conditions.”
- To Clarify the reinspection process, if required, between the two violation types.
- To Provide due process to respondents by requiring sufficiency review prior to a hearing and possible fine imposed.





Pursuant to Tahoe Donner Covenants and Restrictions the board may consider adoption of new and amended procedures without a requirement to publish for a member notification and comment period.

Article III, Section 7

(b) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board in accordance with this subparagraph (b). **Except in the case of:** (i) rules or regulations adopted to respond to an emergency which threatens the health or safety of the residents or immediate damage to or destruction of any Common Area; and (ii) rules or regulations concerning Board or committee administrative or procedural matters, no Association Rule shall be adopted until the proposed rule or amendment thereof has been published to the Members at least 45 days prior to the date when the Board is scheduled to act on the proposal. During the 45-day comment period at least one Board or community meeting shall be held at which the proposed rule is an agenda item.

ANALYSIS:

At the July 8, 2021, regularly scheduled Covenants Committee meeting, the committee approved, by motion, proposed revisions to the Covenants Enforcement Procedures (2 votes for, 1 vote against). Additionally, an informal poll of the committee members results was consistent highlighting a single dissenting vote.

The dissenting voter expressed two concerns with the proposed revisions:

- Transparency and due process with non-disclosure of evidence.
- The respondents right to request a hearing if the claim is believed to be unnecessary or unwarranted.

The committee disagreed and felt accommodation was made with added language in the Notice of Non-Compliance section and detailed in the corresponding letter to the respondent.

FISCAL IMPACT:

N/A

ALTERNATIVE:

The Board may direct staff to solicit legal review of the proposed procedure changes with modifications. The Board may direct staff to solicit legal review of the proposed procedure changes without modifications.

SUPPORTING DOCUMENTS:

Exhibit 1: Presentation – Proposed Covenants enforcement Procedures

Exhibit 2: Covenants Enforcement Procedures Existing and Proposed – Draft revision document

Prepared by: Brian Yohn, Interim Director of Risk Management and Real Property

Board Meeting Date: November 19, 2021

General Manager Approval to put on Agenda: _____ Date: _____

