

GENERAL FINE POLICY
POLICIES AND PROCEDURES FOR IMPOSITION OF
MONETARY PENALTIES AT OCOTILLO
• NON-RESIDENTIAL PROPERTY OWNER •

Effective: January 1, 2010

These policies and procedures have been reviewed and verified to be
with applicable Arizona law as of January 23, 2018.

PREFACE

Pursuant to A.R.S. § 33-1803, the Board of Directors of The Ocotillo Community Association (“Association”) has adopted these Policies and Procedures providing for notice and an opportunity to be heard to an owner (“Owner” defined as Apartment Development, Condominium Development, Shopping Center, Commercial Office, General Commercial, Telecommunication Site, Industrial Park, Resort Hotel, School, Church, Library, Substation, Well-Site, or other use determined by Declarant) prior to the imposition of a monetary penalty for certain violations of the Declaration of Covenants, Conditions and Restrictions for Ocotillo recorded at Instrument No. 86-167478 in the records of Maricopa County, Arizona, as amended from time to time, and any tract declaration or plat governing any portion of Ocotillo (collectively, “Declaration”), or the Ocotillo Rules and Regulations (“Rules”) adopted by the Board of Directors of the Association.

I. NOTICE OF VIOLATION.

A. Progressive Fines: Prior to the issuance of the initial Notice of Violation (“NOV”), the Board of Directors, the Association property manager or any person acting at the direction of the Board of Directors shall provide a courtesy letter to an Owner regarding a violation of the Declaration or Rules. Such courtesy letter shall demand permanent correction of the violation by the Owner. Subsequently, if the Board of Directors, the Association property manager or any person acting at the direction of the Board of Directors or the Association property manager determines that the Declaration or the Rules have been violated again by an Owner and that the imposition of a monetary penalty is an appropriate enforcement action for the Association to take to obtain compliance with the Declaration or the Rules, the Board of Directors, the Association property manager or any other person acting at the direction of the Board of Directors or the Association property manager may serve a NOV upon the Owner. The first NOV will set a monetary penalty of \$500 for a violation, contingent upon an opportunity to be heard as set forth below. Subsequent NOV will set forth progressive monetary penalties in increments of \$150. The following table exemplifies progressive fines for continuing or subsequent violations. The interval between each progressive NOV shall not be less than ten (10) calendar days. If an Owner remains in continual compliance for a six-month period for the subject matter of a NOV, a subsequent violation for the same matter will result in resetting the fine process, beginning with the courtesy letter followed by progressive NOVs as set forth below.

Non-Residential Fine Schedule		
Notice #	Description	Maximum Fine
1	Courtesy Letter	No Fine
2	First NOV	\$500.00
3	Second NOV	\$650.00
4	Third NOV	\$800.00
5	Fourth NOV	\$950.00
NOV’s Subsequent to the fourth notice shall be subject to legal enforcement		



B. Form of NOV: A NOV shall contain:

1. A description of the violation.
2. The provision(s) of the documents that has allegedly been violated.
3. The date of the violation or the date the violation was observed including the first and last name of the person or persons who observed the violation.
4. The maximum amount of the monetary penalty that may be imposed by the Board of Directors with respect to each NOV as set forth in Section I.A.
5. A statement that the Owner may request in writing a hearing on the subject of the violation before the Board. In order to be heard, the Association must receive a written request for such a hearing within fifteen (15) calendar days after the date of the NOV by marking the appropriate portion of the NOV requesting a hearing, signing the NOV, and returning the NOV to the Association. The Owner should retain a copy of the NOV. An Owner's failure to request a hearing within the prescribed time period and by the prescribed manner shall be deemed a waiver and forfeiture of the Owner's right to a hearing with respect to the NOV.
6. A statement that (1) if the Owner fails to timely request to be heard as prescribed, the amount of the monetary penalty as set forth in the NOV shall be due within fifteen (15) calendar days after the date of such NOV, and (2) if the Owner requests to be heard as prescribed, any amount of monetary penalty imposed by the Board of Directors shall be due within fifteen (15) calendar days after the date of the Board's Notice of Decision.
7. Information concerning the manner in which a monetary penalty imposed by the Board of Directors may be enforced.

C. Service:

A NOV shall be served either by personal delivery to the Owner named in the NOV or by sending the NOV to the Owner by United States mail, postage prepaid. A NOV served by mail shall be deemed to have been received by the Owner to whom the NOV was addressed on the earlier of the date the NOV is actually received or three days after the NOV is deposited in the United States mail, postage prepaid. A NOV shall be delivered or mailed to the Owner at the address of the Owner as shown on the records of the Association. If more than one person or entity owns a lot or parcel, a NOV to one of the joint Owners shall constitute notice to all of the joint Owners. A Notice of Decision (if necessary) will be served in the same manner as a NOV.

D. Supplemental Fine Schedules:

The Board of Directors may adopt supplemental fine schedules to address specific violations in the community (i.e. parking, rentals, architectural violations, etc.). If a supplemental fine schedule is not adopted for a particular violation, this general fine schedule shall control.

E. Injunctive Relief:

If a violation is not cured after the Fourth NOV, the Board of Directors may request that Association's attorney file an action seeking Injunctive Relief against the Owner to cure the violation. However, nothing in this Fine Schedule limits the Board of Directors right to seek immediate Injunctive Relief at any time regardless of the presence or absence of notices or fines hereunder, for any violation that the Board of Directors determines in its sole and absolute discretion.

II. HEARING.

A. Request for Hearing:

The NOV shall indicate that the Owner may request in writing a hearing on the subject of the violation before the Board. In order to be heard, the Association must receive a written request for such a hearing within fifteen (15) calendar days after the date of the NOV by marking the appropriate portion of the NOV requesting a hearing, signing the NOV, and returning the NOV to the Association. An Owner's failure to request a hearing in this manner.

- B. Conduct of Hearing:** The Board shall conduct a properly and timely requested hearing. Upon conclusion of the hearing, the Board shall determine, in its sole and absolute discretion, whether a violation of the Declaration or the Rules occurred and, if so, the amount of the monetary penalty, if any, to be imposed for such violation. Such monetary penalties may not exceed the prescribed amounts set forth in Section I.A herein. The Board shall serve a Notice of Decision upon the Owner with the Board's decision. If the Owner fails to appear at the hearing, then the Owner shall be deemed to have waived his right to a hearing with respect to the violation.



III. ENFORCEMENT.

A. Enforcement of Monetary Penalty:

Unless a later due date is set by the Board of Directors, (1) if the Owner fails to timely and properly request to be heard as prescribed, the amount of the monetary penalty as set forth in the NOV shall be due within fifteen (15) calendar days after the date of such NOV, and (2) if the Owner requests to be heard as prescribed, any amount of monetary penalty imposed by the Board of Directors shall be due within fifteen (15) calendar days after the date of the Board's Notice of Decision. Any monetary penalties imposed and any charges for late payment of same shall be enforceable and collectible by civil suit in a court of competent jurisdiction and the recording of a judgment for same.

B. Other Enforcement Action:

In addition to or in lieu of the imposition of any monetary penalty for a violation of the Declaration or the Rules, the Board of Directors may proceed at any time with any other enforcement action available to the Association under the Declaration or at law or in equity. Enforcement actions available to the Association may be exercised separately or concurrently, and the exercise of one enforcement action shall not constitute an election of remedies or be a waiver of the right of the Association to take any other enforcement action.

C. Prior Policies and Procedures:

These Policies and Procedures shall not supersede or displace the Policies and Procedures for the Imposition of Monetary Penalties adopted by the Board of Directors as set forth in the Revised Community Rules and Regulations (revised January 1, 2008), relating to over seeding, water backflow, cross-connecting portable and reclaimed water systems, back washing pools, littering common areas, and pet issues (including, but not limited to, unleashed pets observed on common areas or failure to pick up their waste) which shall remain in full force and effect. In its discretion, the Board of Directors may amend or repeal these and prior Policies and Procedures.

D. Damages:

The fines set forth in this Fine Schedule shall be considered to constitute damages sustained by the association and are intended to compensate the association for the administrative burden of addressing the violation and the adverse impact of the violation on the community. The Board of Directors also reserve the right to deviate from the fine amounts set forth herein if, after a hearing on the matter, the Board finds good cause to decrease the amount of the fine levied in a particular case. The Board also reserves the right to pursue any and all other remedies set forth in the Declaration at the same time or in lieu of levying the fines set forth in this Fine Schedule.

