

RESOLUTION M-01

POLICY AND COMPLIANCE PROCEDURES FOR DECLARATION OF RESTRICTIONS AND ARC GUIDELINES VIOLATIONS

1. **Purpose.** This Resolution establishes practice and policy, assigns responsibilities, and provides procedures to be followed by the Architectural Review Committee (hereinafter referred to as "ARC"), General Manger (hereinafter referred to as "GM"), the Ocean Pines Association (hereinafter referred to as "OPA") and the Board of Directors (hereinafter referred to as "the Board" or "BOD") for enforcing the Association's Declarations of Restrictions (sometimes hereinafter referred to as "DRs") and the ARC Guidelines, and compelling compliance therewith.

2. **Authority.** The OPA Board derives its authority to adopt this Resolution through and from the OPA Charter and and DRs.

3. **Policy.** The appeal of Ocean Pines depends on the cooperation of residents, property owners, and any other legally responsible parties in creating and maintaining clean and aesthetically pleasing homes and surrounding property. Therefore, membership and residing in OPA comes with certain responsibilities.

A. It is the policy of OPA to rigorously and proactively enforce its DRs, ARC Guidelines and any other applicable rules and restrictions. The enforcement authority shall be exercised, to the extent practicable, in a generally uniform and fair manner based on the approved process and procedures outlined in this Resolution. Further, enforcement shall be conducted with due regard to:

1. Courteous and respectful interchanges that encourage voluntary compliance, and
2. Timely and effective notification of all pending actions related to the issue under consideration.

4. **Definitions.**

A. **Complaint:** The notification to or identification by the Compliance, Permitting and Inspections Department (hereinafter referred to as CPI) that a violation of the DRs or ARC Guidelines may exist.

B. **Complainant:** An individual or entity that brings a potential violation of the DRs or ARC Guidelines to the attention of the CPI.

C. **Responsible Party:** A Responsible Party is an owner (including without limitation individual, corporation, limited liability company, limited partnership, Trust, and Estate) of a lot or unit within the OPA, which owner is a member of OPA as defined in the OPA governing documents.

D. **Substantial Progress:** Substantial Progress is progress toward compliance pursuant to a signed contract between the Responsible Party and licensed contractor and/or between the Responsible Party and OPA, to complete work that corrects the Violation, which contract shall have start and completion dates and a dollar amount or estimate for completing the work or, in the case of the Responsible Party self-performing the work, a project plan approved by CPI with a start date, completion date and project milestones that can be inspected and verified by CPI. Substantial Progress is determined to exist or not exist in the absolute discretion of CPI, subject to GM approval.

E. **Violation:** A Violation is a condition on an OPA member-owned property/lot that has been determined or confirmed by the CPI, after a Complaint or based on CPI's independent identification, to be in non-compliance with the DRs or ARC Guidelines.

F. **First Notice:** A written notification to a Responsible Party of a Violation conveyed by an appropriate method to the owner/member address on record with OPA, which, in conformance with

Section 11b-111.10(b)(2) of the *Real Property* Article of the Maryland Code: 1) describes the nature of the Violation; 2) demands that the Violation(s) be corrected or abated and describes the action needed to correct or abate the Violation; and 3) states the beginning and ending of the fifteen (15) day period during which the condition must be abated or corrected.

G. Second Notice: A written notification to a Responsible Party of the continuation of the Violation referenced in the First Notice. The Second Notice will be delivered by an appropriate method to the owner/member address on record with OPA and will otherwise conform to the requirements of Maryland Code, *Real Property* Article, Section 11b-111.10(b)(3).

H. Repeat Violation: A Repeat Violation is a Violation of the same or substantially similar type as previously documented and cited at the same property address. Where appropriate, the process to enforce a Repeat Violation will begin with Paragraph 6, Step 4 below.

5. Responsibilities.

A. BOD: The BOD has oversight and other responsibility, as dictated by the OPA governing documents and applicable Maryland law, in regard to Violations.

B. GM: The GM is designated as the individual having general oversight responsibility as to the compliance program to be administered hereunder.

C. CPI: CPI shall be the point of contact for Violations and shall be the investigating department in regard to Violations, subject to GM oversight. CPI activities shall include, but not be limited to, receipt and investigation of Complaints, determining if a Violation exists, which may include entering lots to conduct visual inspections and documentation of subject properties, preparation and issuance of notices of Violations to lot owner and any other Responsible Party, maintenance of records of Complaints and Violations, making recommendations for the disposition of Violations, and preparation of reports and records of Violations.

D. ARC: As further set forth in this Resolution, the ARC shall:

1. Upon reasonable request for a variance/exception by a Responsible Party, ARC shall review the request to determine if sufficient justification exists to grant a variance to the DRs or exception to ARC Guidelines.

2. Be able to enter onto a lot to conduct an inspection, with the purpose of entry limited to observation and/or documentation, when necessary, and after attempting to obtain the owner's permission.

3. Otherwise perform duties as specified herein and in the OPA governing documents.

6. General Procedures.

A. Records: OPA records pertaining to each Complaint and all actions related thereto are to be maintained by CPI.

B. Inspections: The General Manager shall establish procedures for inspections to be followed by CPI.

C. Responsible Party Notification/Subsequent Enforcement: The following steps will be followed by the OPA when a Complaint is received by CPI or a Violation is otherwise identified by CPI:

Step 1. Complaint is received by CPI or a Violation is otherwise identified by CPI.

Step 2. Review of Complaint and Violation Determination: CPI determines if the condition complained of or otherwise identified by CPI constitutes a Violation of the DRs or ARC Guidelines. In determining whether a Violation exists, CPI may consult with the ARC, the GM, or (with the consent of the GM) OPA legal counsel. This may include, if necessary and permitted under the circumstances, entering onto a lot to conduct an inspection, with the purpose of entry limited to observation and/or documentation of the subject condition(s). Upon determining that the condition complained of or otherwise identified by CPI constitutes a Violation, CPI will notify the GM and then proceed to Step 3. If CPI determines that a Violation does not exist, such determination will be reflected in the record of the Complaint and the case will be closed. CPI will arrive at its determination as soon as practicable.

Step 3. First Notice of Violation: If CPI determines that the condition complained of or otherwise identified by CPI constitutes a Violation, the CPI will send the First Notice of Violation, as defined above, to the Responsible Party. If the Violation is not corrected, or Substantial Progress has not been made toward correcting the Violation, within 15 days from the date of the First Notice, OPA will proceed to Step 4. If the Violation is corrected within the 15-day period, this will be reflected in the record of the Complaint and the case will be closed. If Substantial Progress is achieved by the owner/Responsible Party, the case may be suspended for a period as determined by CPI in its freely exercised discretion (subject to the approval of the GM), not to exceed Sixty (60) Days (subject to paragraph 9 below). If the subject condition is not corrected within such suspension period, the case will proceed to Step 4.

NOTE: Any suspension of the 15-day period, as referenced above, must be documented in writing, in the OPA file, and in a letter to the owner/Responsible Party. The letter to the owner should: 1) state the period of the suspension of the case that has been granted (not to exceed 60 days, subject to paragraph 9 below); 2) advise the owner that the suspension of the case may be revoked at any time in the discretion of the OPA; and 3) make clear what must be accomplished during the suspension of the case, in order to avoid further enforcement action.

Step 4. If the owner/Responsible Party fails to comply with the First Notice of Violation by the end of the Fifteen Day (15) period or any suspension period as referenced in Step 3, a Second Notice of Violation, as defined above, will be sent notifying the Responsible Party that continued failure to correct the Violation may result in the filing of a judicial action against the owner/member (to obtain damages, attorney's fees, and/or an injunction), the imposition of sanctions against the owner/member, or both. This Second Notice will comply and be consistent with Section 11b-111.10(b)(3) of the *Real Property* Article of the Maryland Code, including without limitation, providing the owner/member with notice of the owner/member's right (exercisable within ten days) to request a hearing on the matter to be held before the OPA Board in executive session. The request for hearing must be submitted to OPA in writing within ten days from the date of the Second Notice of Violation. The Second Notice of Violation to be provided pursuant to this Step 4 must be sent within twelve (12) months after the date of the First Notice of Violation.

If hearing is requested by owner within ten (10) days (from date of Second Notice):

If a proper and timely hearing request is submitted to the OPA by the owner of the subject property, then a hearing shall be scheduled and held before the Board in a manner consistent with Section 11b-111.10(b)(4) of the *Real Property* Article of the Maryland Code. If a hearing is requested, the Board shall provide the owner/member with written notice of the time and place of the hearing, which must be held at least 10 days after the date the owner/member submitted their written request for a hearing. Depending on the timing, the hearing could be held at either a special meeting of the Board or the next regular meeting

of the Board. The outcome of such hearing and steps to be taken following such hearing shall be consistent with Section 11b-111.10(b)(4) of the *Real Property* Article of the Maryland Code.

If a hearing is not requested by owner:

If the owner does not request a hearing in conformance with the Second Notice of Violation, consistent with Section 11b-111.10(b)(4) of the *Real Property* Article of the Maryland Code, and the Violation continues (is not corrected or abated), the Board, at its next meeting, shall deliberate as to whether the Violation occurred and decide whether judicial action will be taken and/or sanctions will be imposed.

If owner requests a hearing, but does so late:

If the owner requests a hearing but does not do so on a timely basis, OPA shall notify the owner that the request was untimely and therefore ineffective and, consequently, the owner has waived their right to a hearing; and if the Violation continues (is not corrected or abated), the Board, at its next meeting, shall deliberate as to whether the Violation occurred and decide whether judicial action will be taken and/or sanctions will be imposed.

Step 5:

Consistent with Section 11b-111.10(b)(4)-(5) of the *Real Property* Article of the Maryland Code, following decision of the Board (and announcement thereof) at or after a hearing requested by the owner, or after deliberations by the Board in the absence of a hearing requested by the owner, if the Board finds that the Violation has occurred and has not been corrected or abated, i.e., is continuing, the Board shall determine and announce the action to be taken and sanction(s) to be imposed, including the following:

- 1) Filing of a judicial action to seek damages, injunctive relief, and/or associated attorney's fees and other costs (as allowed by law);
- 2) Suspension of the member's voting rights so long as the Violation continues; and/or
- 3) Suspension of the member's right to use OPA amenities so long as the Violation continues.

Consistent with the DRs, in the context of a continuing Violation found by at least a two-third majority of the Board to exist, which Violation constitutes a failure to maintain the property and/or improvements thereon in a manner satisfactory to (a super-majority of) the Board, OPA personnel or contractors, upon authorization by (a super-majority of) the Board, may enter upon the property and repair, maintain, and restore the property including exterior of improvements. In that event, the cost of such repair, maintenance, and restoration work shall be added to and become part of the member's annual assessment (and may otherwise be sought as damages, along with attorney's fees, in a judicial action, if any, pursued by the OPA against the owner/member).

If directed to do so by the Board and/or GM, upon receiving a case for judicial action, OPA legal counsel may issue a final warning letter to the member/owner before filing suit, indicating the judicial action to be taken and remedies to be sought in the event that the Violation is not corrected/abated within a specified time period.

7. GM Reporting. The GM will regularly report to the BOD as to the number and status of pending and unresolved Complaints and Violations.

8. Other Enforcement Action. Nothing in this Resolution shall limit OPA's other enforcement powers contained in the DRs or at law.

9. **Required ARC/County Approval.** If, at any point in the enforcement process, ARC approval or Worcester County approval is required for any necessary corrective action, by virtue of the nature of the corrective action, the Responsible Party shall seek and obtain such approval, at the Responsible Party's expense. In that event, CPI (subject to GM approval) and/or the Board may suspend the case beyond the 60-day period referenced in paragraph 6, Step 3, above.

10. **Non-Waiver of OPA Rights.** The failure of the BOD, GM, CPI, or other personnel of the OPA to enforce OPA governing documents or exercise rights under the HOA Act in regard to a Violation, or delay in doing so, shall not constitute or be deemed a waiver of the OPA's right to enforce the governing documents and/or exercise rights under the HOA Act in regard to any other Violation.

Effective Date: November 18, 2023 Approved by the BOD November 18, 2023
President [Signature] Secretary [Signature]
Review History:
General Manager [Signature] Date: 12/12/23
Legal _____ Date: _____
By-laws and Resolutions Advisory Committee [Signature] Date: 1/12/24