

**EAGLE CREEK
FINING & SUSPENSION HEARING COMMITTEE CHARTER**

WHEREAS, substantive and procedural due process requires that a committee other than the Board of Directors render findings of fact and decisions related to the alleged covenant violations related to the Association's efforts to monitor and enforce compliance with the Association's Declaration, Articles of Incorporation, Bylaws and duly adopted Rules & Regulations; and,

WHEREAS, such process requires that an Owner have an opportunity for a hearing before such independent committee herein after established, in compliance with Section 720.305, Fl.Stat., [2017] as amended or renumbered from time to time, and referred to as the Fining & Suspension Hearing Committee; and,

WHEREAS, the Board of Directors deems it necessary and desirable and in the interest of the individual Lot Owners and the Association's Members to establish a Fining & Suspension Hearing Committee to assist the Association with enforcing compliance with the Association's Declaration, Articles of Incorporation, Bylaws and duly adopted Rules & Regulations when appropriate.

NOW, THEREFORE, THE BOARD OF DIRECTORS RESOLVES THAT the Fining & Suspension Hearing Committee be established, having the following terms of reference for the Charter, unless such terms should be in violation of Florida Statute, in which case, statute shall govern in case of conflict:

I. RESPONSIBILITY. The Fining & Suspension Hearing Committee shall serve at the pleasure of the Board of Directors. The primary responsibility of the Fining & Suspension Hearing Eagle Creek Fining and Suspension Committee Charter

Committee is to serve as an objective and neutral hearing tribunal to determine whether there have been violations of the Association's Declaration, Bylaws and duly adopted Rules & Regulations. The Fining & Suspension Hearing Committee will make decisions in the same manner as would a jury in a court of law and determine whether or not a violation has occurred or not; and if a violation has occurred, whether or not the violation occurred over multiple days. The Fining & Suspension Committee does not investigate violations and does not initiate the violation procedure. Should it occur that a member of the Fining & Suspension Committee is the person who made the complaint of violation to the Association, its board, manager, attorney or other agent, then that particular member must recuse him or herself from sitting in judgment at the Fining & Suspension Committee hearing on that matter. Fining & Suspension Committee members are expected to act as fiduciaries, in the best interest of the Association and are expected to use at all times reasonable judgment free of bias or discrimination.

II. MANNER OF ORGANIZATION.

A. Membership

1. The Fining & Suspension Hearing Committee shall consist of at least three (3) Members [Owners of Record only are eligible] appointed by the Board of Directors. While neither Florida Statute nor the Association's governing documents address the role of a Village Representative in regard to the imposition of a fine or suspension, it is likely that the Village Representatives will be involved with policy or procedures related to the Fining and Suspension Committee, and as such, Village Representatives, like Board Members, will not be eligible to serve on the Fining and Suspension Committee. For the purpose of conducting its business, a simple majority of the Fining & Suspension Hearing Committee

Members shall constitute a quorum. Members of the Fining & Suspension Hearing Committee may not be:

- a) Members of the Board of Directors or Village Representatives; or
- b) Spouses of or immediate family members of a current Member of the Board of Directors or a Village Representation; or,
- c) Delinquent in any monetary obligation to the Association.

If at any time during service on the Fining & Suspension Committee a member is elected to the Board of Directors, as a Village Representative or their spouse or immediate family member is so elected, then at such time as the election, the Fining & Suspension Committee member shall be automatically and by operation of law removed from the Fining & Suspension Committee without need for Board action or proclamation. Should the Fining & Suspension Committee member become delinquent during his or her term of service, that person can and will be removed by the Board of Directors as determined at a Board of Directors meeting.

B. Term.

The Fining & Suspension Hearing Committee members shall serve at the pleasure and direction of the Board of Directors. Generally, the Board of Directors will appoint members to this standing committee on an as needed basis. Removal from the Fining & Suspension Committee is as stated in Section A, above.

C. Appointment of Officers of the Committee.

1. Committee Chairperson - The Fining & Suspension Hearing Committee Chairperson shall be a member of the committee and shall be appointed by the Board of Directors. Functions of the Chairperson (or the Presiding Officer of the meeting in the absence of the Chairperson) shall include the following:

a) Coordinating with the Association's Manager when a matter needs to be scheduled for hearing and supervising committee activities and meetings to assure that responsibilities are met;

b) Forwarding the written and signed hearing reports from the Committee to the Board of Directors via management; and

c) Representing the Fining & Suspension Hearing Committee to the Board of Directors and the Management Company as a liaison when necessary;

2. Vice Chairperson - The Vice Chairperson, who shall be approved by the Board of Directors, shall preside over the committee hearings when the Chairperson is unable to attend.

2. Secretary - The Fining & Suspension Hearing Committee Members shall designate a Secretary from among the members of the Committee. The Secretary shall be responsible for assisting the Chairperson in preparing the written Fining & Suspension Committee report which is a promulgated form created by the Board of Directors for the use of the Fining & Suspension Committee members. The Secretary shall ensure that the report form is filled out, signed and dated by the committee members. That report form shall constitute both the written documentation on Committee's decisions and the committee's hearing minutes. In the event the Secretary is not in attendance at a meeting of the Fining & Suspension Hearing Committee in which a quorum is present, the presiding

officer shall assume the duties of the Secretary for the purposes of that meeting. Per statute, the Fining & Suspension Committee shall render its written decision at the close of the hearing and each member shall comply with completing the report form.

D. Termination of Committee Membership.

The Board of Directors may remove a member of the Fining & Suspension Hearing Committee, with or without cause, at any time and without advance notice. Vacancies may be filled by the Board of Directors. While no cause for removal is required, the Board will be inclined to remove a Fining & Suspension Hearing Committee Member for non-participation, nonattendance, disruptive behavior, actions contradictory to the best interests of the Association, divisive actions in nature against the Association, or any action the Board deems inappropriate or a conflict of interest.

III. MANNER OF OPERATION.

The Fining & Suspension Hearing Committee shall conduct its business in the best interest of the Association, and in accordance with Florida Statutes, this Charter, the Association's Declaration, Articles of Incorporation, Bylaws and Rules & Regulations. With regard to the rights of Owners, the Committee may take no actions other than those provided for and authorized by Florida Statute and this Charter, or those permitted by the Association's Declaration. The Fining & Suspension Committee is not responsible for enforcement of violations, as that is the province of the Board of Directors.

A. Meetings:

1. The Fining & Suspension Hearing Committee will meet as often as necessary. This is a statutory committee, meaning that all meetings must be noticed in the same manner as a Board of Directors meeting, and written notice of at least 14 days' notice by

U.S. Mail must be sent to the Owner subject to the potential fine or suspension. As such, the committee is a standing committee and would only meet at such times as the Board of Directors decides that an alleged violation should be set for hearing before the committee with all due and proper advance notice.

2. All Fining & Suspension Hearing Committee Meetings shall be open to all Members of the Association. These hearings cannot be closed.

3. The agenda for any Fining & Suspension Committee Meeting shall be the issue of the alleged violation. At the hearing, but not prior to, the Manager will provide copies of any supporting material or evidence as part of the Association's presentation in support of its claim of an Owner's violation. The accused Owner or Owner's attorney shall be entitled to review any material or evidence submitted by the Association at the hearing.

4. The affairs of the Association are private and thus, the general public has no right to attend meetings or hearings of the Fining & Suspension Hearing Committee, except that an Owner has the right to be represented by an attorney and may present witnesses.

5. Alleged violators, witnesses called during the hearing, the Managing Agent, counsel for the alleged violator, and members of the Fining & Suspension Hearing Committee shall have a right to be heard when recognized by the Chairperson or presiding officer of the meeting. The procedure for the Fining & Suspension Hearing shall be:

A. Presentation of allegations, witnesses and evidence by the Association,

B. Defense of the allegations by the Owner.

C. Close of the evidentiary and testimonial presentation, and at this time the committee members shall deliberate.

D. Announcement of the committee member's finding of either that a violation occurred or that the facts presented do not substantiate a finding that a violation occurred. If the committee

members find that a violation did occur, then there must also be a determination of on how many days the violation occurred.

6. Strict rules of evidence and civil procedure shall not apply, but the hearing will attempt to proceed with appropriate order and formality. In all cases, the Owner shall have the opportunity to question the testimony and evidence presented at the hearing and to raise factual or legal defenses. The Association shall have the burden of proving its case by at least a preponderance of the evidence. All other persons, including Association members in attendance during the hearing, shall have the right to be present, however, unlike with Board of Directors' meetings, there is no an open forum and no opportunity to speak.

7. The Committee reserves the right, in its discretion, to sequester [exclude from listening to other witnesses] witnesses from the hearing until such time as they are called to present testimony. However, the Owner and the Association's Managing Agent shall be allowed to be present at all times during the hearing and are not subject to exclusion.

B. Reporting:

1. The Fining & Suspension Hearing Committee's Chairperson shall, ensure that a written report and recommendation of its findings as to each and every individual case shall be submitted to the Board of Directors following the hearing. All decisions of the Fining & Suspension Committee shall be announced at the conclusion of the hearing and prior to the adjournment of the hearing. The Board of Directors shall provide a template form for the Fining & Suspension Committee's use so that the report will include at least the following:

- a) the date and time of the hearing with confirmation of advance notice;
- b) list the alleged violation or violations;

c) a summary of the material facts presented at the hearing regarding the pending allegations of violation; and,

d). the vote indicating conclusion of the majority of the Committee members as to whether or not a violation did or did not occur, and if the violation was found to occur, the Committee shall also note the number of days that the violation existed as multi-day violations carry the possibility of a per day fine.

2. The Secretary or Interim Secretary shall prepare and submit, through the Fining & Suspension Committee's Chairperson, minutes of all Fining & Suspension Committee Meetings. Copies of all meeting minutes and the report and recommendation regarding specific hearings shall be delivered to the Managing Agent and Board of Directors as soon as is practical. The Owner will be provided a copy of the meeting minutes or the report and recommendation upon written request by Management at no charge.

IV. HEARINGS.

A. Scope of Hearing Committee.

1. During a hearing, the Fining & Suspension Hearing Committee is not required to make inquiries of its own, but shall be permitted to ask questions of witnesses, including the Owner prior to reaching its decision on an alleged violation(s). The decision shall be based only upon on a review of the oral, visual, audible and written evidence presented during the course of the hearing, and not upon any 'independent' knowledge that a Committee member believes to have. Members of the Hearing Committee may NOT incorporate into the discussion or

its decision-making process any first-hand knowledge they have of the alleged violation, including any independent observation of the alleged violation. To do so would undermine the impartiality and the due process of the hearing process.

2. The decisions of the Fining & Suspension Hearing Committee are not to be policy decisions for the Association, and shall primarily relate to whether, in light of the facts submitted during the hearing process, there was or was not a violation of the Association's Declaration, Bylaws or Rules & Regulations. Even if the Committee believes the facts *should* constitute a violation but are do not actually violate any existing set of rules or restrictions, then the Committee shall exonerate the accused Owner – the Fining & Suspension Committee can't “legislate from the bench.”

B. Source of Hearings. The Board of Directors has the sole discretion of if and when a matter of alleged violation(s) should be referred to the Fining & Suspension Committee for hearing.

C. Findings by Hearing Committee.

The primary objective of the Fining & Suspension Hearing Committee at the conclusion of a hearing is to make a decision as to whether or not there has been a violation or violations of the Association's Declaration, Bylaws or Rules & Regulations, and if there was a violation, was it one that continued for more than multiple days. If the Fining & Suspension Committee has found that a violation has occurred, then the Board of Directors shall have the authority to levy and impose the appropriate fine or suspension. If the Fining & Suspension Committee finds that no violation occurred, then no fine or violation can be imposed by the Board of Directors.

V. **APPEALS.** Decisions of the Fining & Suspension Hearing Committee may be appealed, by the violator in writing to the Board of Directors.

A. Form of Appeal.

1. The appeal must be made in writing to the Board of Directors.
2. A decision of the Fining & Suspension Hearing Committee may only be appealed one time to the Board of Directors.
3. Decisions made by the Board of Directors, relative to appeals, are final.
4. Appeals must be submitted in writing to the Board of Directors within thirty (30) days from the date of the Fining & Suspension Committee hearing. For the purposes of this provision, the Owner shall be deemed to have received notice of the decision of the Fining & Suspension Hearing Committee five (5) days after the written report and recommendation was mailed.

B. Other.

1. The Board of Directors shall determine when and where it shall hear appeals from decisions of the Fining & Suspension Hearing Committee.
2. Any financial charge, or other remedy authorized by the Fining & Suspension Hearing Committee, shall continue to accrue or remain in force until such time as the Board of Directors has reversed or suspended the decision of the Fining & Suspension Hearing Committee.
3. The Board of Directors is not precluded from initiating any other available legal remedies as provided by statute or the Association's Declaration, Bylaws and Rules & Regulations to enforce the violation during the appeal period.

4. The appeal to the Board of Directors is not intended to be a second hearing on the violation, however, the Board of Directors may choose in its sole discretion to refer the matter back to the Fining & Suspension Committee for rehearing.

5. The Board of Directors may, at any time, in its discretion, during the hearing process, intervene on behalf of the Association. Such intervention by the Board of Directors will include, but not be limited to, initiating enforcement action as a result of the violation and/or terminating the hearing process.

VI. VIOLATION PROCEDURES The Board of Directors agrees to the following enforcement procedures of the Covenants, Codes, and Rules of the association, and hereby authorizes Associa Management to follow the policy as listed below.

A. Violation Notification

1. First notice of violation – “Friendly Reminder” Letter- 14 days to comply
2. Second notice of violation – “Second Notice” Letter sent 15 days after the First.

14 days to comply

3. Continued Non-Compliance will result in conducting a Hearing to Fine. 14 days

notice sent to homeowner by mail

A. Violation Recording Process

1. Pet off leash violation, pet excrement violation and pet maximum violations will require an accompanying picture/video or two eye witnesses (not from the same household) willing to submit statement in writing before a letter can be sent. Management will not contact animal control but will leave it up to residents to contact animal control if they wish, unless there is an attack that has been reported by two witnesses.

2. Pet Nuisance violations and excessive noise nuisance violations will require audio and visual recordings or two “eye” witnesses (not from the same household) willing to submit statement in writing before a letter can be sent. If there is a police report or event # in cases of nuisance, a violation letter can be sent.

3. Any violations that cannot be physically observed at any time (pet violations, noise violations) will remain open for a maximum of 6 months from the first observation if no further activity of the same kind is observed.

4. If the home changes ownership at any point in the violation process, a stay will be placed on the violation for a maximum of 90 days to allow the new homeowner time to remedy the violation.

5. Monitoring for violations shall be conducted weekly in accordance with office hours scheduled for property site surveys.

6. Notification will be sent within 3 business days of identifying the violation.

7. Any violations that pose a safety risk to the community or property must be remediated immediately.

Approved by Board Meeting this 30 day of May 2019



President of the Board of Directors
The Homeowner’s Association of Eagle Creek, Inc.

FINING PROCESS CHART

