

# **The Reserve at Estes Park Homeowners Association**

## **Policies**

### **1. Policy for Investment of Funds (adopted 8-2-06)**

Reserve funds for The Reserve at Estes Park Homeowners Association may be invested only in checking, money market or certificate of deposit accounts at any federally insured bank. Sufficient funds shall be kept in checking or money market accounts to meet the regular operating needs of the association. Terms for certificates of deposit shall be based upon the likely potential need for funds in order to avoid penalties for early withdrawal while obtaining reasonable rates of return on the funds. Funds will be invested in certificates of deposit only with Executive Board approval.

### **2. Policy for Conflict Resolution (adopted 9-20-06)**

It shall be the Policy for the Board of Directors and Members of The Reserve at Estes Park Homeowners Association to resolve conflicts regarding Association matters in the following manner and order:

1. Each side shall state its position clearly and concisely in writing and present same to the other side of the issue.
2. Both sides shall attempt to engage in a civil dialogue with the goal to amicably agree to a resolution of the conflict.
3. If the Board is unable to resolve the conflict, the parties shall seek professional arbitration and the costs of same shall be paid by the non-prevailing party.
4. Legal action shall be a last resort.

### **3. Policy for Collection of Assessments (adopted 6-8-11)**

Assessment notices for the year will be mailed to Reserve homeowners on or near January 1 of each year. Assessments shall be due February 1 of each year. If not received by February 10<sup>th</sup>, a \$25 late fee will be assessed. An additional late fee of \$5 per month will be assessed on the 5<sup>th</sup> of each month until the assessment and associated late fees are paid.

If a homeowner does not pay the assessment when due, a notice will be sent in late February, reminding the owner of the amount due, including applicable penalties and future additional late fees. A similar notice will be sent monthly until the delinquent amounts are paid. If a valid email address is available, the first notice may be sent via email. Subsequent notices will be sent via both email and postal service.

If an assessment remains unpaid for four months, the board shall consider filing a lien against the property for the past due amount plus expenses. Facts to be reviewed in the consideration will include, but not be limited to: other liens against the property, pending foreclosure action on those liens, bankruptcy filing by the property owner, correspondence or other communication from the property owner regarding plans to pay the past due amount.

#### **4. Policy Regarding Conflicts of Interest (adopted 6-8-11)**

The purpose of the conflict of interest policy is to protect the Reserve at Estes Park Homeowners Association (“The Reserve”) and its interests when it is contemplating entering into a transaction, arrangement or plan approval that might benefit the private interest of an officer, board member or committee member of The Reserve. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to community interest associations.

##### Definitions:

**Interested Person:** Any director, officer, or member of a committee with executive board delegated powers, who has a financial interest, as defined below, or direct interest in approval of plans submitted for architectural control committee review (collectively, an “interest”) is an interested person.

**Financial Interest:** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family: a) an ownership or investment interest in any entity with which The Reserve has a transaction, arrangement or plan approval, b) a compensation arrangement with The Reserve or with any entity or individual with which The Reserve has a transaction, arrangement or plan approval, or c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which The Reserve is negotiating a transaction or arrangement.

A financial interest is not necessarily a conflict of interest. As stated below person who has a financial interest may have a conflict of interest only if the appropriate executive board or committee decides that a conflict of interest exists.

##### Procedures:

**Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the interest and be given the opportunity to disclose all material facts to the directors and members of committees with executive board delegated powers considering the proposed transaction, arrangement or plan approval.

**Determining Whether a Conflict of Interest Exists.** After disclosure of the interest and all material facts, and after any discussion with the interested person, he/she shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The

remaining board or committee members shall decide if a conflict of interest exists.

#### Procedures for Addressing the Conflict of Interest:

An interested person, whom the Board or delegated Committee has determined to have no conflict of interest, may participate in the discussion at the executive board or committee meeting and shall be allowed to vote on the matter. An interested person, whom the Board or delegated Committee has determined to have a conflict of interest, shall abstain from discussion and voting on the transaction, arrangement or plan approval involving the possible conflict of interest.

The president of the executive board or committee chairperson shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction, arrangement or plan approval.

In the event of a financial matter, after exercising due diligence, the executive board or committee shall determine whether The Reserve can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the executive board or committee shall determine by a majority vote of the disinterested directors or committee members, whether the transaction or arrangement is in The Reserve's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

#### Loans:

The Reserve shall not make loans or guaranties.

#### Violations of the Conflicts of Interest Policy

If the executive board or committee has reasonable cause to believe a director, officer, or committee member has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

If, after hearing the person's response and after making further investigation as warranted by the circumstances, the executive board or committee determines the person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### Record of Proceedings:

The minutes of the executive board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have an interest in connection with an actual or possible conflict of interest, the nature of the interest, any action taken to determine whether a conflict of interest was present, and the executive board' or committee's decision as to whether a conflict of interest in fact

existed.

b. The names of the persons who were present for discussions and votes relating to the transaction, arrangement or plan approval, the content of the discussion, including any alternatives to the proposed transaction, arrangement or plan approval, and a record of any votes taken in connection with the proceedings.

Statements:

Each director, officer and member of a committee with executive board delegated powers shall upon election and annually, sign a statement which affirms such person:

- a Has received a copy of the conflicts of interest policy,
- b Has read and understands the policy,
- c. Has agreed to comply with the policy.

## **5. Policy for Covenant and Rule Enforcement (adopted 6-8-11)**

For the benefit and protection of The Reserve and of the individual owners, the Association, acting through its Executive Board in its fiduciary duty, deems it desirable to establish and operate by procedures to insure proper process in cases where there is a question of compliance by an owner, a tenant, family members, and guests with the provisions of the covenants, the bylaws, or the rules and regulations.

The Executive Board encourages the neighborly approach that residents first communicate with each other regarding a perceived violation of covenants, laws, rules and/or regulations in an attempt to resolve any problems. The intent of the Board is to establish a procedure, in the rare instance that neighbors cannot reach accord directly, for resolving violations of The Reserve's covenants, rules and regulations.

The Reserve Covenants Declaration specifies the procedures that will be followed in the event it is necessary to commence action at law or in equity against persons or entities in violation of the covenants, rules or regulations (Article XIII). This section of the covenants is repeated as Attachment A to this policy.

Therefore, it is resolved by the Executive Board that the following procedures shall apply to violations of the covenants, bylaws, or the rules or regulations in effect at the date of the alleged violation other than those concerning payment of assessments by members.

### **INFORMAL RESOLUTION OF VIOLATION BY NEIGHBORS**

Any owner, or owner's agent, of a lot in The Reserve may directly request that another owner cease or correct any act or omission which appears to be in violation of the covenants, guidelines or rules. It is the preference of the Board that residents of the community attempt informal resolution in this manner prior to seeking formal resolution.

In the event the perceived violation would also be a violation of Federal, state, or local laws or regulations, the complaining resident should contact the appropriate government agency to report the perceived violation.

## **FORMAL RESOLUTION OF THE VIOLATION BY THE RESERVE**

1. The Reserve's Executive Board or its agent may initiate Formal Resolution of violations upon observation of a violation. The Common Interest Ownership Act, sec.-123, provides a one-year statute of limitations within which an Association must commence an action to require the removal of an unauthorized improvement, starting from when the Board first knew or should have known of the violation.
2. Lot Owners or their agents or the Architectural Control Committee members of The Reserve may initiate a request for review of a perceived violation of a covenant, rule or regulation by providing a written statement of the perceived violation and the resulting concerns to any member of the Executive Board or its agent.
3. Any action taken by The Reserve shall be strictly within the discretion of the Board. The Board shall use its judgment in deciding how to proceed regarding any complaint, including referral back to neighbors, referral to the Architectural Control Committee, or review and disposition by the Board.
4. When the Board or its agent believes that action is required regarding violation(s) of covenants, rules or regulations, a letter will be sent to the accused lot owner identifying the violation(s) and setting forth a timeframe for correction that is appropriate and reasonable to the violation ("First Notice").
5. A subsequent violation (or non-correction of the violation, based on the "First Notice") will result in another letter ("Second Notice") being sent to the owner, again specifying the violation, and advising the owner that they have the right to meet with Executive Board or its agent, or the Architectural Control Committee to discuss the matter and proposed correction of the violation. Should the lot owner fail to contact any member of the Board or the Committee, that lack of response will be deemed as agreement with the violation.
6. The notice of the right to a hearing shall inform the owner they must correct the violation or meet with the Executive Board or Architectural Control Committee to discuss the violation within 30 days of the date of the letter ("Second Notice"). The Executive Board member or member of the Architectural Control Committee will coordinate with the lot owner to establish the hearing date, time, and location.
7. If the lot owner charged with a violation responds, requesting a hearing with the Architectural Control Committee or Executive Board, a hearing shall be set and the date, time, and location communicated to the lot owner. The Board or Committee may restrict attendance to the meeting to only those parties to the dispute and their witnesses upon the request of any party to the dispute or on the Board's or Committee's own initiative. Any decision to restrict attendance to the hearing shall be made by the Board or Committee in its sole discretion when the Board or Committee believes that confidentiality shall be in the best interest of The Reserve. Any such hearing conducted with restricted access shall be in accordance with rules regarding meetings in executive session.
8. The hearing procedures shall be as follows:
  - a. The Committee or Executive Board, through the chair of the meeting, shall

direct all proceedings at the meeting. The chair shall also have complete authority to decide what evidence shall be accepted. No person shall speak without being recognized by the chair and the chair may limit the amount of time any person may speak. The failure of persons to comply with the directions of the chair or otherwise conduct an orderly hearing may cause the meeting to be adjourned by the chair.

- b. The Committee or Executive Board, through the chair of the meeting, will describe the specific provision of the covenants or rule or regulation which is said to have been violated, including the date and place and/or read any written complaint to the accused. A record of the proceeding shall be kept in the written minutes of the meeting.
  - c. The person charged shall be asked to admit or deny the charge. The person charged may speak for himself or herself or may be represented by counsel throughout the hearing. Failure to respond or attend the hearing will be construed as an admission of the alleged violation.
  - d. If the charge is denied, the complaining witness or witnesses shall describe the details of the circumstances at the hearing.
  - e. The accused shall have the opportunity to confront each witness against him or her.
  - f. When all complaining witnesses have been heard, the accused may make statements in rebuttal, and may provide witnesses in support of his or her position. The complaining witnesses may ask questions of each such rebuttal witness in turn.
  - g. If the alleged violation is determined by the Executive Board or the Committee to be valid, the owner shall be informed of a deadline to correct the violation. The owner will also be informed of their right to appeal a decision by the Committee to the Executive Board. Should the owner desire to appeal the decision, they must contact any member of Executive Board to be placed on the agenda of the next regularly scheduled meeting of the Board, or at the discretion of the Board, a special meeting of the Board. If an alleged violation is appealed from the Architectural Control Committee to the Executive Board, the Executive Board, at its sole discretion, may consider the matter solely on the Committee's record, or it may conduct a new hearing of arguments.
  - h. Should the owner of the property desire to appeal a decision by the Architectural Control Committee to the Executive Board, the decision of the Executive Board shall be final. The decision of the Board shall be recorded in the regular minutes of the meeting, and that decision communicated to the property owner.
9. In the event the violation is of a continuing nature, or is a repeat of the same violation that was previously corrected by the lot owner, or if the violation constitutes a threat to the health, safety, or welfare of the residents or the property within the community, or the circumstances otherwise justify such action, the Executive Board may institute an action in a court of competent jurisdiction to pursue legal remedies including seeking injunctive relief to abate the violation immediately without proceeding through steps outlined above. Nothing in this policy shall constitute an election of remedies nor preclude the

Executive Board from seeking assistance from other enforcement authorities such as police, fire, code enforcement or animal control.

10. The Reserve shall be entitled to reimbursement of its costs including reasonable attorney fees, court costs, and other legal costs incurred in all enforcement activities from any lot owner who has committed a violation. Nothing in this paragraph shall be construed to prevent lot owners from recovering their costs as otherwise provided by law.

## **Attachment "A" to The Reserve Covenant and Rule Enforcement Policy**

From the First Amendment to Declaration of Covenants, Conditions, and Restrictions for The Reserve, dated June 21, 2000:

### Article XIII                      General Provisions

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner, by the Architectural Control committee, or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.