

Rules and Regulations, Part 2

Judicial Process

OVERVIEW OF THE JUDICIAL PROCESS

The Judicial Process describes how the Deerlake Village Community Association (DVCA) should respond to violations of the DVCA Covenants, Bylaws, and Rules and Regulations.

Has a Violation Occurred? If a possible violation is reported or detected, the DVCA Board or a DVCA Committee (if the violation involves a DVCA rule associated with a Committee) considers the evidence and judges whether a violation occurred.

The Response to Minor Violations. If the violation is judged to be minor (e.g., displaying a small yard sign), the initial response is informal: a friendly reminder of the rule, description of the violation, and request to remedy the violation by a given date. If the violation is not remedied by that date, a more formal Warning Letter requesting remedy is sent by the DVCA Board.

The Response if a Violation is Not Remedied or is Judged to be Serious (e.g., cutting down a tree without required LRC approval). The DVCA Board sends a Notice of Violation to the alleged violator, with the Notice indicating the fine or other sanctions/remedies that are recommended because of the violation.

The Notice also states that the violator has a right to a hearing before any fines or sanctions are imposed.

The Alleged Violator Can Request a Hearing When Fines or Other Sanctions Are Imposed. The hearing is held before the Hearings Committee, and both the alleged violator and the DVCA Board representative handling the case present evidence regarding the violation(s). The Hearings Committee judges whether the violation(s) occurred and can also comment on whether the recommended sanction is appropriate (but the DVCA Board has final say over sanctions).

The Alleged Violator Can Appeal the Decision of the Hearings Committee. The hearing is held before the full DVCA Board; the alleged violator describes why they believe there has been no violation or why the sanction(s) should be lowered.

The Judicial Process is described in detail below.

THE DVCA JUDICIAL PROCESS

A Lot or Home Owner's violation of any of the provisions of the Declaration, Bylaws or Rules and Regulations of the Association shall be grounds for relief that may include, among the possibilities, an action to recover fines and penalties as determined by the Board, sums due for damages, injunction(s), denial of rights to use DVCA amenities, suspension of privileges or services, or any combination thereof. Such relief may be sought by the Association, an aggrieved Lot Owner, or by any person(s) adversely affected. Any monetary damages that are recovered will go to the Association. (NOTE: Article VI, Section 27 of the Covenants states that: Every lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the Rules and Regulations ... In the event of noncompliance by the tenant or his/her guests, all costs associated therewith, including fines and legal fees, will be assessed against the owner and the owner's property.)

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1. Determining if a Violation of the Covenants, Bylaws, and/or Rules and Regulations Has Occurred

A. A DVCA Committee Takes Responsibility

Many violations involve DVCA Rules and Regulations associated with Deerlake Committees, including the Landscape Review, Architectural Review, Pool, Lake, Clubhouse, and Conservation Easement Committees. Suspected violations may be detected by Committee members or reported to the Committee by others, including residents and DVCA Board members. In such cases, the Committee is charged with determining whether a violation of DVCA rules/regulations has occurred.

The Committee considers the available evidence and, if necessary, attempts to verify that a violation occurred (e.g., visits the Lot in question to examine the alleged violation, questions the complainant and alleged violator). A record of the suspected violation is made, including a written description of the violation, with the date and time of occurrence noted; the observations of committee members; and photographs and other evidence of the violation, if available. If a majority of the Committee members agree that a violation has occurred, the Committee Chair proceeds to Step 2 (Initial Response to the Violation).

B. The Board Takes Responsibility

Other violations are not associated with Deerlake Committees (e.g., failure to pick up pet waste where required, the display of advertising or other prohibited signs). In such cases, the DVCA Board is charged with determining whether a violation occurred. The Board considers the available evidence and, if necessary, attempts to verify that a violation occurred. A record of the violation is made. The Board may ask the Community Relations Chair to perform these activities, acting as the Board's representative. If a majority of the Board members agree that a violation occurred, the Board proceeds to Step 2.

Note: If the Committee handling the alleged violation, the DVCA Board, or the DVCA Board representative is unable to personally witness the violation, the person reporting the violation should complete the "Deerlake Village Issue of Concern" form, available on the Deerlake Village website (click "Governance," then "DVCA Policies"). Otherwise, the reported violation will not be pursued. The person completing the form should be informed that they may be called as a witness if the matter results

in a hearing and that, if a Notice of Violation is sent to the alleged violator, their identity will be revealed if requested by the alleged violator.

2. Initial Response to the Violation

The Committee handling the violation or the DVCA Board determines the desired remedy for the violation.

A. If the Desired Remedy Only Involves Correcting the Violation and/or Refraining from Further Violation

In many cases, the remedy will involve correcting the violation or refraining from further violation (e.g., removing the advertising sign, picking up dog waste in the future). In such cases, the Committee Chair or the Board shall notify the violator of the existence of the violation, describe the nature of the violation, with reference to the governing document/provision that has been violated, and describe the desired remedy. The notice shall be verbal, if possible, otherwise in writing (including electronic communications). The tone of the communication should be constructive: a friendly reminder of the rule, description of the violation(s), and request for compliance. The Committee Chair or Board representative shall attempt to obtain an agreement from the Lot Owner to remedy the violation(s) within an acceptable time frame not to exceed thirty (30) days, except for remedies the success of which is impacted by being performed in a particular season. The Committee Chair or Board representative shall note the time of the discussion, the outcome of the discussion, and the time frame within which the owner has agreed to remedy the violation. If the violation is not remedied within the agreed time frame or the Committee Chair or Board representative is unable to reach agreement with the Owner about remedying the violation, the Board will issue a written Warning Letter – described in Step 3.A. (If a Committee Chair has been handling the case, the Chair shall pass information on the violation to the Board, including their efforts to remedy the violation and their desired remedy. The Board will then issue a Written Warning.)

B. If the Desired Remedy Includes a Fine and/or Other Sanctions

If the violation is deemed consequential, the Committee or Board may decide that the initial response should include, among other possibilities, an action to recover fines and penalties as determined by the Board, sums due for damages, injunction(s), denial of rights to use DVCA amenities, suspension of privileges, or any combination thereof. Violations here may include, but are not limited to, cutting down trees without required permission from the LRC, and the damage or destruction of DVCA property. When a fine or other sanction is the recommended remedy, the Lot Owner has a right to a hearing before the fine or sanction is imposed. The Board sends the violator a written Notice of Violation by first class return receipt mail at the address listed in the Association records. (When a committee believes that a fine or other sanction is warranted, they refer the case to the Board, along with all information on the violation and the remedy they recommend. The Board then decides whether to follow the Committee recommendation.) The Notice of Violation shall a) describe the violation(s), including time and date, and the governing document/provision that has been violated; b) list the recommended sanction(s) for the violation, including the amount of the fine(s) and the date any fine(s) are to begin accruing; c) state that the Lot Owner has a right to a hearing before the fine/sanctions are imposed, with a description of the nature of this hearing (see below); d) state that the Lot Owner must provide a written request for a hearing

to the Secretary of the Deerlake Village Board within fifteen (15) days of receiving the Notice of Violation, with this request indicating whether the Lot Owner plans to bring an attorney to the hearing; e) state that if a hearing is not requested by the stated date, the Lot Owner is considered at fault for the violation(s) and the recommended sanction(s) will be imposed; and f) state that if the Lot Owner requests a hearing, the recommended sanction(s) will be delayed until after the Hearings Committee delivers the decision to the Lot Owner, assuming the decision finds the Lot Owner at fault.

3. If the Initial Response to the Violation in 2.A. Does Not Result in an Agreement from the Lot Owner to Remedy the Violation or the Owner Does Not Remedy the Violation within the Stated Time Frame

A. A Warning Letter is Sent by the Board

The Board shall send the Lot Owner a Warning Letter by first class return receipt mail at the address listed in the Association records. The contents of the Warning Letter shall include: a) a description of the violation(s), with reference to the governing document/provision that has been violated; b) the acceptable remedy of said violation(s) and the date by which the violation should be remedied in order to prevent the Board from taking further action.

B. A Notice of Violation Is Sent If the Warning Letter Does Not Result in the Acceptable Remedy of the Violation

If the Lot Owner does not remedy the violation(s) in the manner required by the Board by the stated date, the Board shall issue a written Notice of Violation, sent by first class return receipt mail. The Notice of Violation issued by the Board shall include a copy of the Warning Letter and shall a) describe the violation(s), including time and date, and the governing document/provision that has been violated; b) list the recommended sanctions for the violation, including the amount of the fine(s) and the date any fine(s) are to begin accruing; c) state that the Lot Owner has a right to a hearing before the fines/sanctions are imposed, with a description of the nature of this hearing (see below); d) state that the Lot Owner must provide a written request for a hearing to the Secretary of the Deerlake Village Board within fifteen (15) days of receiving the Notice of Violation, with this request indicating whether the Lot Owner plans to bring an attorney to the hearing; e) state that if a hearing is not requested by the stated date, the Lot Owner is considered at fault for the violation(s) and the recommended sanctions will be imposed; and f) state that if the Lot Owner requests a hearing, the recommended sanctions will be delayed until after the Hearings Committee delivers its decision to the Lot Owner, assuming the decision finds the Lot Owner at fault.

4. The Hearing

The Hearings Committee will respond to hearing requests within seven (7) days of their receipt, via first class return receipt mail to the alleged violator and written communication to the DVCA President. The Hearings Committee response should a) describe the nature of the hearing; b) list the time, date, and location for the hearing; c) ask whether the alleged Violator and Board would like to call witnesses/experts at the hearing; and d) request that the names, credentials (if relevant), and planned testimony of these witnesses/experts be provided within seven (7) days. (Note: The time/date for the hearing is subject to reasonable negotiation if necessary.) The hearing itself should ideally be held within thirty (30) days of being requested. The Hearings Committee will notify the Board and alleged violator

which witnesses/experts will be allowed to testify at the hearing at least seven days before the hearing, based on the relevance of their testimony to the case.

The hearing is confidential, limited to members of the Hearings Committee, the Board member handling the alleged violation, the alleged violator, the attorneys for the alleged violator and Board (if desired), and any witnesses/experts approved by the Hearings Committee. A written record and an audio recording of the proceeding will be made, but they will only be made available to the Hearings Committee and the DVCA Board.

The Chair of the Hearings Committee will bring the hearing to order, describing the hearing format. The Board member handling the case will speak first, describing the nature of violation(s) and presenting evidence of the violation(s) (up to 15 minutes). The alleged violator will then respond to the complaint, presenting any evidence (up to 15 minutes). The Board member and alleged violator may have witnesses or experts testify on their behalf, if such witnesses/experts have been approved by the Hearings Committee (10 minutes per witness/expert). The attorneys for the DVCA and alleged violator can also speak at this time (15 minutes each). Members of the Hearings Committee can ask questions of the suspected violator, Board member, and witnesses/experts, including the attorneys, if any (responses to questions do not count toward the above time limits). The Board member and suspected violator may not question one another, nor may the attorneys question the witnesses/experts. The Board member and suspected violator will then each be given up to 5 minutes to make closing remarks. Everyone but the Hearings Committee will then leave the hearing. The Hearings Committee will first discuss whether the DVCA Board acted in accordance with all DVCA Governance Documents in leveling the penalty(s) or other remedies listed in the Notice of Violation. If so, the Hearings Committee will judge whether the suspected violator has violated any of the Deerlake Covenants, Bylaws, or Rules and Regulations, with a majority vote required on each violation. If the Hearings Committee finds that the Lot Owner has committed the violation(s), it may by majority vote *recommend* that the fines/sanctions imposed by the Board be revised – but the Board has the final say over the fines/sanctions imposed. If the Hearings Committee determines that the Lot Owner has not committed the violation(s) or the DVCA Board has not acted in accord with DVCA Governing Documents, all fines/sanctions will be suspended.

The Hearings Committee then provides the Board and the alleged violator with written notice of their decision and the rationale for it, using first class return receipt mail for the alleged violator.

5. Appeals Process

Should the Lot Owner(s) wish to appeal the finding of the Hearings Committee to the DVCA Board, the Lot Owner must provide a written request to the Secretary of the Deerlake Village Board within fifteen (15) days of receiving the Hearings Committee’s notice of their decision. The request should indicate whether the Lot Owner plans to bring an attorney to the Board hearing.

Within ten (10) days from the receipt of the Lot Owner's Notice of Appeal, the Board, by and through the President or Vice President, shall set a date and time for the appeal to be heard by the Board (hereafter referred to as the “Board Hearing”), not to exceed thirty (30) days from the date of receipt of the Lot Owner’s request for appeal. A written notice of the time and date of the Board Hearing shall be sent to the

Lot Owner(s) by first class return receipt mail. Failure to appeal within the above fifteen (15) day time frame shall conclusively determine the Lot Owner(s) fault pertaining to the violation(s) and acceptance of the remedy and the fines and/or penalties set forth in the Notice of Violation. If a Lot Owner(s) requests a Board Hearing by the stated deadline, any fines or other sanctions shall be suspended until after the Board's Decision is delivered to the Lot Owner.

Board Hearing. The Board will be provided with the written record and audio transcript of the earlier hearing before the Hearings Committee at least seven days before the Board Hearing. The Board Hearing is confidential and limited to the Lot Owner, the DVCA Board, and attorneys for the Lot Owner(s) and DVCA, if desired. During the Board Hearing, the Lot Owner will be given an opportunity to state their position as to why the violation(s) should be deemed invalid, unenforceable, or the fine for said violation(s) should be reduced, or any other special circumstances or hardship that the Lot Owner would like for the Board to consider (up to 30 minutes). Attorneys for the Lot Owner and DVCA, if present, will each be given up to 15 minutes to present. And members of the Board will have the opportunity to question the Lot Owner and the attorneys.

Board Hearing Decision. After considering the arguments of the Lot Owner, the Board will have seven (7) days from the date of the Board Hearing in which to issue its ruling. Said ruling shall be in writing, shall include the decision of the Board with respect to the violation(s) of the Lot Owner, and should be sent to the Lot Owner by first class return receipt mail.

Should the Board decide the violation(s) is valid and enforceable, the ruling shall include the amount and start date of the fine(s) and/or other sanctions, and a time frame to cure the violation(s) without further penalty. All Board decisions will be final (NC Gen. Stat. 47F-3-107.1)

Enforcement

The Board may use any legal or equitable remedy allowed by North Carolina law as a means of enforcing penalties, including but not limited to filing suit against the Lot Owner, filing a Claim of Lien and if necessary, foreclosing the Claim of Lien, filing a proof of claim in bankruptcy.

Note on Delinquent Assessments. The procedures set forth in this instrument shall not apply to the collection of delinquent assessments, which shall be controlled by the governing documents and the Planned Community Act (Chapter 47F of the North Carolina General Statutes).

Conflict of Interest

If a member of the Board, Hearings Committee, or any other Committee dealing with a violation has a conflict of interest, that member should recuse themselves from all discussions and votes involving the violation. This is the case where the Board member, Committee member, or members of their family is (are) accused of the violation(s), are the direct victims of a violation (beyond the victimization they experience as a member of the DVCA), or otherwise has a personal or financial interest in the outcome of the case (over and above that of other DVCA members).

Voluntary Mediation

Notwithstanding the above, at any point the Board or a Lot Owner may make a request to mediate the dispute via the process laid out in N.C. Gen. Stat. 7A-38.3F. In mediation proceedings, the parties to the

dispute meet with a neutral third-party mediator. The mediator is there to facilitate discussion and cooperation between the parties to help them reach a just settlement. If both parties agree, they split the cost of the mediator. In addition, the Board may encourage Lot Owners involved in private (neighbor to neighbor) disputes to engage in mediation. Note: Disputes related solely to a Lot Owner's failure to pay a Deerlake Village Community Association assessment or any fines or fees associated with the levying or collection of an Association assessment in a timely manner are not subject to mediation.