

# **Plum Creek Village Homeowners Association Compliance Enforcement/Grievance Resolution Policy**

**The Declaration of Restrictions and the following policy are tools designed to protect the community's property values by making PCV a clean, safe, and appealing place to live.** Whenever there is a violation or grievance between the Board and homeowner, the objective is to resolve this through a friendly informal meeting, with the expectation that reasonable people will be able to resolve most, if not all, of the grievances at this stage.

## **Informal Meeting** (This is recommended but not required.)

If there appears to be a violation (claim) of the restrictions, the Board will request a meeting with the homeowner pertaining to the claim. This may be a simple brief oral or written request containing the facts related to the claim and what the homeowner is expected to do, or stop doing. The parties may meet at a mutually agreed place and time within ten (10) business days and attempt to come to a resolution.

## **Compliance/Grievance Resolution Process**

If the Board doesn't request an Informal Meeting, the homeowner doesn't agree to meet with the Board, there is a meeting but it doesn't result in a resolution, or if the homeowner fails to abide by the Informal Meeting agreement: Then Indiana State Law defines the following mandatory Compliance/Grievance Resolution Process where the goal is to create a means where disputes can be resolved amicably without resorting to litigation. If no agreement is reached, the law permits mediation or binding arbitration. A lawsuit may be filed only after the parties have exhausted this Compliance/Grievance Resolution Process and reached an impasse.

**STEP 1.** The Board must provide written notice of the claim to the homeowner, stating plainly and concisely the following information: (1) The nature of the claim, including the date, time, location, persons involved, and the homeowner's role in the claim. (2) The basis of the claim, including the provision of the governing documents or other authority out of which the claim arises. (3) What the Board wants the homeowner to do or not to do to resolve the claim. (4) That the homeowner has a right to meet with the Board, if the homeowner makes a written request for a meeting within 10 days of the claim notification. (5) The name and address of the person from whom the homeowner must request a meeting under subdivision (4).

**STEP 2.** (a) If the homeowner then requests a meeting under Step 1, the Board and the homeowner shall meet in person to resolve the claim by good faith negotiation, at the time and place agreed to by the Board and the homeowner. (b) During the meeting, the parties must have full access to the property that is the subject of the claim to inspect the property, if appropriate or necessary. If the homeowner agrees to take corrective action, the Board must provide the homeowner and his/her agents with full access to the property to take and complete corrective action.

**STEP 3.** (a) The parties are considered to be at an impasse if: (1) the homeowner does not request a meeting under Step 1; (2) either party fails to attend a meeting agreed upon under Step 2; or (3) the parties are unable to settle the claim at a meeting held under Step 2. (b) Either party may, not later than ten (10) days after an impasse is reached, request in writing that the claim be submitted to mediation or binding arbitration. (c) The party making the request under subsection (b) is responsible for the costs of the mediator or arbitrator.

**STEP 4.** If an impasse is reached and: (1) neither party requests mediation or arbitration; or (2) mediation or arbitration does not result in a settlement of the claim; the Board may begin legal proceedings.

**STEP 5.** (a) When a claim is settled through negotiation, mediation, or arbitration under Steps 1-4, the settlement of the claim must be documented in a written agreement signed by each of the parties. (b) If the homeowner fails to abide by the settlement agreement signed under subsection (a), the Board may begin legal proceedings without again complying with the initial steps of the resolution process. (c) If the Board prevails in those legal proceedings, the Board is entitled to recover from the homeowner: (1) court costs; (2) attorney's fees; and (3) all other reasonable costs incurred in enforcing the settlement agreement.

## **Additional Conditions**

1. Except as otherwise provided in this grievance process, each party shall bear its own costs for its application, including attorney's fees.
2. A release or discharge of a homeowner from liability to the Board with respect to the claim does not release or discharge the homeowner with respect to any other person who is not a party to the claim. For example, a homeowner receives Board approval to build a bear cage in the backyard that violates a zoning law—the homeowner is still liable to the city for the violation.
3. The board, on behalf of the homeowners association, and without the consent of the members of the homeowners association, may do any of the following: (1) Negotiate settlements of claims or legal proceedings under this grievance process. (2) Execute settlement agreements, waivers, releases of claims, or any other documents resulting from application of this grievance process.
4. Special Note: The Indiana statute is equally applicable to homeowners within the community where a homeowner has a claim against the Association, the Association's Board of Directors, or another homeowner.

## **Definitions of Terms**

**Claim:** Refers to any of the following:

- A claim arising out of or relating to the interpretation, application, or enforcement of the governing documents.
- A claim relating to the rights or duties of the homeowner's association or the board under the governing documents.
- A claim relating to the maintenance of the subdivision.
- Any other claim, grievance, or dispute among the parties involving Property or the Association.
- The term does not include an exempt claim unless the parties agree that this is applicable to the exempt claim.

**Party:** Refers to any of the following:

- The homeowner's association.
- A member of the homeowner's association.
- The board.

**Exempt claim:** Refers to any of the following which would not be subject to the above steps:

- A claim by the homeowner's association for assessments or dues and any action by the association to collect assessments or dues. **(See Section 3J of the PCV Declaration of Restrictions for details.)**
- An action by a party to obtain a temporary restraining order or equivalent emergency equitable relief: (A) to maintain the status quo and preserve the party's ability to enforce the governing restrictions; or (B) when an emergency condition exists that jeopardizes the health or safety of any of the residents within property.
- A suit to which an applicable statute of limitations would expire within the notice period of this resolution, unless a party against which the claim is made agrees to toll the statute of limitations as to the claim for the period reasonably necessary to comply with this resolution.
- A dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement.
- A claim that is substantively identical to a claim: (A) that was previously addressed by the parties; or (B) that was resolved by a judicial determination in favor of one (1) of the parties.

**Legal proceedings:** Refers to either of the following:

- An action maintained in a court.
- An administrative proceeding initiated under an applicable law.