

THE VILLA AVANTI ASSOCIATION

ENFORCEMENT POLICY & PROCEDURES

July 2008
(Revised)

THE AVALON MANAGEMENT GROUP, INC.
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TABLE OF CONTENTS

SECTION 1.	ACTIONS PRIOR TO INITIATION OF FORMAL SPECIAL RESOLUTION PROCESS	3
SECTION 2.	WRITTEN COMPLAINT.....	3
SECTION 3.	NOTICE OF NON-COMPLIANCE.....	3
SECTION 4.	NOTICE OF HEARING.....	3
SECTION 5.	NOTICE OF DEFENSE.....	4
SECTION 6.	CONSTRAINTS ON THE BOARD.....	4
SECTION 7.	HEARING.....	4
SECTION 8.	DECISION.....	5
SECTION 9.	FINE STRUCTURE.....	5
SECTION 10.	ALTERNATIVE ENFORCEMENT ACTION.....	5
EXHIBITS:		
	A - COMPLAINT FORM.....	6
	B - NOTICE OF HEARING.....	7
	C - NOTICE OF DEFENSE.....	8

SECTION 1. ACTIONS PRIOR TO INITIATION OF FORMAL SPECIAL RESOLUTION PROCESS

Any Member or Agent of the Association has the authority to request that a Member or resident cease or correct any act or omission, which appears to be in violation of the Documents or Rules & Regulations. Complainants are encouraged to attempt such informal request before this formal process is initiated.

SECTION 2. WRITTEN COMPLAINT

The following procedure shall be initiated upon the filing of a written complaint by any Member with the Association's Managing Agent on the proper form (Exhibit "A" attached). The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent (violating homeowner) is charged. The complaint shall specify the specific provisions of the Documents or Rules and Regulations which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts. Further, the written complaint must contain as much specifics as are available as to time, date, location, person involved, etc., so that the complaint may be investigated by the Association's Managing Agent. This procedure may also be initiated by the Board or its Managing Agent should any violation come to their attention during the regular performance of their duties.

SECTION 3. NOTICE OF NON-COMPLIANCE

Upon the filing of a complaint, the Association's Managing Agent shall reasonably investigate the complaint to verify that if true, the action does constitute a violation of the Documents or Rules & Regulations. If so, the Association's Managing Agent shall send a written "Notice of Violation" to the respondent summarizing the complaint and requesting compliance within a reasonable period of time. Such notice shall be sent by regular mail to the respondent's address of record.

Responsibility of Homeowners: Homeowners are responsible for violations committed or damages caused by their tenants, family, guests, or invitees. Anyone who leases their home should include a provision in the lease mandating tenant compliance with the Association's governing documents and give the tenant a complete set of the Association's governing documents.

SECTION 4. NOTICE OF HEARING

Should the violating homeowner continue to violate the Documents or Rules & Regulations as set forth in the Notice of Violation, the Association's Managing Agent shall serve a "Notice of Hearing" (Exhibit "B" attached) as provided herein, on all parties at least ten (10) days prior to the date of the Hearing. The Notice to the respondent shall be sent via Certified Mail, return receipt requested, or shall be personally delivered to the respondent's address of record. Said Notice of Hearing shall be accompanied by a copy of the original complaint and a "Notice of Defense" form (Exhibit "C" attached). Copies of all of the foregoing materials shall be provided to the Board and any complainant.

SECTION 5. NOTICE OF DEFENSE

In addition to personally attending the Hearing, an accused Member may submit a written Notice of Defense. (A form Notice of Defense is available for Member convenience.)

Said Notice of Defense shall be completed and returned to the Association's Managing Agent no later than seventy-two (72) hours prior to the Hearing, and copies shall be provided to the Board and any complainant. If timely submitted, the Board will consider the Notice of Defense even if the Member does not attend the Hearing.

SECTION 6. CONSTRAINTS ON THE BOARD

It shall be incumbent upon each Member of the Board to make a determination as to whether he or she is able to function in a disinterested and objective manner in consideration of the case before the Board. Any Member incapable of objective consideration of the case shall disclose such to the Board and remove himself from the proceedings and have it so recorded in the Minutes.

In any event, the respondent may challenge any Member of the Board for cause where a fair and impartial hearing cannot be afforded at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge. If a majority of the Board sustains the challenge, that Member of the Board shall be dismissed from participation in the hearing and the balance of the Board shall constitute an Executive Committee of the Board authorized to conduct the Hearing pursuant to Corporations Code Section 7212. All decisions of the Board in this regard shall be final.

SECTION 7. HEARING

- a. Whenever the Board has commenced to hear the matter and a Member of the Board is forced to withdraw prior to a final determination, the remaining Members shall continue to hear the case.
- b. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; and to rebut the evidence against him or her. Even if respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- c. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence shall not be sufficient in itself to support a finding.

- d. Neither the accusing party nor the allegedly defaulting party must be in attendance at the hearing. At the request of any principal, or the Board, the Hearing shall be conducted in executive session.
- e. At the beginning of the Hearing, a Member of the Board shall explain the rules and procedures by which the hearing is to be conducted. Generally, each principal is entitled to make an opening statement, starting with the complainant. Then each party is entitled to produce evidence, witnesses and testimony and to cross-examine the witnesses and opposing party. Then each party is entitled to make a closing statement. Any party may waive the right to exercise any part of this process and the Board is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted.

SECTION 8. DECISION

After all testimony and documentary evidence has been presented to the Board, the Board shall vote upon the matter, with a majority of a quorum of the Board controlling. The decision may be made at the conclusion of the hearing or may be postponed to no later than ten (10) days hence. A summary of the decision(s) shall be provided in writing to the respondent with copies to all complainants. Disciplinary action, if any, shall become effective ten (10) days after it is served upon the respondent, unless otherwise ordered in writing by the Board. All decision of the Board shall be final unless the Board, at its sole discretion, agrees to rehear the matter due to the availability of new evidence of an over-riding nature.

SECTION 9. FINE STRUCTURE

Should the Board determine that a fine is appropriate, the following fine schedule shall apply:

- ➔ First Offense -- \$50.00 fine
- ➔ Second and Subsequent Offenses -- \$100.00 fine for each

The Association's notice of hearing may provide that the Board will be considering imposition of the fine on a continuing monthly basis. If such a continuing fine is imposed by the Board after notice and hearing, the responsible homeowner will be liable for the amount of the fine imposed for each month the violation continues unabated. Homeowners subject to a continuing fine are responsible for notifying the Association promptly upon bringing their property into compliance so that the Association can reinspect the property and halt the future recurring fines once compliance is confirmed.

- a. Fines will be allowed to accrue for a period of 90 days. If compliance is not achieved at the end of 90 days, the Board, at its discretion, may file small claims action to enforce compliance and collect the outstanding debt.

SECTION 10. ALTERNATIVE ENFORCEMENT ACTION

Please note that nothing in this policy limits the action permitted by the governing documents and California law. Such enforcement action could include, but not be limited to, filing a Superior Court lawsuit for injunctive and/or declaratory relief to compel the alleged violator to bring his/her property into compliance. Any such alternative enforcement action is a matter reserved to the discretion of the Board of Directors.

THE VILLA AVANTI ASSOCIATION COMPLAINT FORM

Date:

Alleged Violation:

Name of Violator:

Address:

Description of Violation (Specify Rule, Regulation and/or Restriction you believe was violated):

Date, Time and Location of Violation:

Additional Facts or Comments (i.e. description of dog, vehicle, etc.):

Complainant:

The undersigned hereby agrees to testify at a hearing before the Board or a Committee of the Board on the above complaint, and also hereby agrees to testify in a court of law if deemed necessary. The undersigned complainant may be held financially responsible for all Association and Association court related costs relating to this matter, if not testifying as required.

Signature

Print Name

Address

Day Phone

Evening Phone

Return to: The Avalon Management Group, Inc.
43529 Ridge Park Drive
Temecula, CA 92590

Office Use Only:

(Date)

(Owner Name)

(Owner Address)

CERTIFIED MAIL

RE: THE VILLA AVANTI ASSOCIATION - NOTICE OF HEARING

Dear (Owner):

In order to fairly evaluate an alleged violation of [cite CC&R or rule section allegedly violated and a concise description of the alleged violation], a Hearing has been scheduled before the Board of Directors.

Accordingly, please be advised that the Hearing has been set as follows:

[Time, Date and Location of Hearing]

The purpose of the Hearing is to evaluate all facts, evidence and testimony concerning the alleged violation, to make a determination as to whether a violation exists, and if so, what if any disciplinary action will be taken. The Hearing will be conducted in accordance with the adopted Rules Enforcement Procedures of the Association. You have the right to attend the hearing and to address the Board at the Hearing. (Civ.Code &1363(h). You have the right to, but need not be, represented by counsel at the Hearing at your own expense. Failure to appear may result in a finding against you by default. In any event, should the Board find against you, disciplinary action may be taken including assessment of fines or the turning over of the matter to an attorney for processing up to and including litigation seeking injunctive relief.

The Board may determine that an unabated violation shall be subject to a continuing fine for each month the violation continues. Continuing violations are subject to a fine of \$100 per month for each month the violation continues unabated.

If you have any questions, please contact the undersigned at (951) 699-2918.

Sincerely,

Traci Russell, CMCA, AMS
As Agent for
THE VILLA AVANTI ASSOCIATION

cc: Board of Directors

**THE VILLA AVANTI ASSOCIATION
NOTICE OF DEFENSE**

Respondent:

Address: _____

Phone #: _____ **Home** _____ **Work** _____

Nature of Complaint: _____

I object to the complaint on the following grounds:

Please attach any supporting evidence or statement you wish to submit to the Board for its consideration at the hearing. This Notice of Defense must be filed with the Association's Managing Agent at least seventy-two (72) hours prior to the hearing. At the hearing, you are entitled to present and cross-examine witnesses, be represented by counsel and review any evidence against you.

**THE BOARD OF DIRECTORS
THE VILLA AVANTI ASSOCIATION**

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