

TURTLE CREEK NEIGHBORHOOD ASSOCIATION

RESOLUTION ADOPTING ENFORCEMENT PROGRAM

THIS RESOLUTION is adopted this 21 day of March, 2022, by the Board of Trustees (“Board”) of Turtle Creek Neighborhood Association (“Association”), at a meeting duly called and a quorum being present.

WHEREAS, Turtle Creek Subdivision (“Planned Community”) exists by virtue of the "First Restatement and Seventh Amendment to Indenture of Trust and Restrictions for Turtle Creek" as recorded in Book DE6120, Page 1493 of the records of St. Charles County, Missouri, as amended (“Declaration”); and

WHEREAS, compliance with the Association’s Governing Documents, including its rules and regulations, which all owners agreed to comply with upon acceptance of their deed, is important for harmony within the community; and

WHEREAS, it is vital for enforcement of the Association’s Governing Documents be carried out without selectivity or bias through consistent application while preserving the Association’s discretion; and

WHEREAS, the Board, with the assistance of counsel, has prepared an “Enforcement Program,” which is attached hereto and incorporated herein by reference.

NOW THEREFORE, the Board resolves that the Enforcement Program is adopted by the Board.

The President and Secretary of the Board of Trustees of Turtle Creek Neighborhood Association, by their signatures below, certify that this Resolution has been duly unanimously approved by the Board at a meeting duly held on the date and year appearing above.

Board of Trustees
Turtle Creek Neighborhood Association

By: _____
Trustee #1

By: _____
Trustee #2

By: _____
Trustee #3

TURTLE CREEK NEIGHBORHOOD ASSOCIATION ENFORCEMENT PROGRAM

Section 1. Purpose. The purpose of the Enforcement Program (“Program”) is to reach an appropriate balance between very strict enforcement and biased or capricious enforcement by incorporating the principles of Uniform Common Interest Owners Act Bill of Rights, Section 8(b) and its comments (“BOR”) as provided under Section 8 below. For convenience, the alleged violator is referred to as “Respondent.”

Section 2. Remedies. As one goal of enforcement is to foster compliance moving forward under the individual and unique facts and circumstances of the alleged violation, it is imperative that the Board have flexibility to obtain a voluntary and amicable resolution. Without limiting the Association’s remedies at law or equity, the Board may exercise any (or in combination) of the following remedies:

- a. Send a warning letter,
- b. Levy a one-time fine, after notice and opportunity to be heard, including the ability to suspend a fine,
- c. Levy a daily fine, after notice and opportunity to be heard, including the ability to suspend such fines,
- d. Mediation, Arbitration, or Binding Arbitration if agreed upon by the Association and the Respondent,
- e. File a lawsuit to compel compliance and recover any unpaid fines, and
- f. Any other rights and remedies contained in the Association’s Governing Documents or at law or equity.

Section 3. Intake. Any person may notify the Association of an alleged infraction of the Association’s Governing Documents, and such person has the right to remain anonymous. If the Board determines that a violation is more likely to have occurred than not, the Board may exercise any of its available remedies.

Section 4. Notice of Violation and Intent to Levy Fine. If the Board determines that the alleged infraction warrants a fine, the Association shall provide notice to the Respondent with an opportunity to be heard. The notice shall be substantially similar as the enclosed form.

Section 5. Hearing Procedures. The purpose of a hearing is to provide the Respondent with an opportunity to be heard by presenting facts and witnesses in response to the alleged violation prior to the levy of a fine. *The hearing is not a formal trial and is not necessary unless the Board intends to impose a fine.* Unless otherwise requested by the Respondent, the hearing shall be conducted in executive session.

Any hearing held under this Program shall utilize the following procedures:

- a. The Chair of the meeting shall summarize the alleged violation,
- b. The Respondent shall be given the floor to speak and present facts and witnesses,
- c. After such presentation by the Respondent, the Board may, but is not required, to ask questions, and

- d. The Respondent shall be provided an opportunity to make a final statement.
- e. The Chair of the meeting shall announce that the hearing has concluded, and that a final decision of the Board shall be provided to the Respondent as provided in Section 6 below.

Section 6. Determination of the Board. The Board shall provide the Respondent a written result of the Board's decision. If a fine is levied, such fine(s) shall be recoverable in the same manner as unpaid assessments under the Association's Governing Documents.

Section 7. Fines. As provided in the Association's Governing Documents, the Association has the authority to levy reasonable fines after notice and opportunity to be heard.

In recognition that treating all violations equally for purposes of fines is inequitable, the Board does not adopt such a schedule; i.e., a violation that threatens the safety of others is not equal to a nominal violation. Instead, the Board shall adopt a fine schedule for the most common violations, which may be increased or changed annually simultaneously with the Association's budget. For all violations not otherwise identified on the schedule, the fine shall be reasonable to obtain compliance and prevent the Respondent from obtaining any monetary benefit, if any, related to the violation.

Section 8. Discretion. As provided in the BOR, the Board may determine to enforce its Governing Documents, but does not have a duty to do so if, under the facts and circumstances presented, that:

- a. The Association's legal position does not justify taking any, or further, enforcement action;
- b. The provision being enforced is, or likely to be construed as, contrary to law;
- c. Although a violation may exist, or have occurred, it is not so material as to be objectionable to a reasonable person or justify expending the resources of the Association; or
- d. Enforcement is not in the best interests of the Association.

The Board's decision to exercise its discretion under this Section does not prevent the Board from taking enforcement action so long as the Board is not doing so for a discriminatory purpose. No decision of the Board shall be considered waiver of any future violations.

Section 9. Owner Enforcement. Independent of this Enforcement Program, each Owner has the right to enforce the Association's Governing Documents in any particular instance; provided, however, an owner shall not have the authority to levy fines.

Section 10. Material Omission. Absent a material omission or intentional failure to comply with this Program, such omission or failure shall not invalidate or excuse enforcement.

Section 11. Forms & Notice. Enclosed are forms for the Association's administration of this Program, which are incorporated herein by reference. Any notices shall be provided in writing and sent to the Respondent's residence within the community unless the Respondent has provided a different mailing address.

Section 12. Attorneys' Fees and Costs. Any attorneys' fees and costs incurred by the Association shall be levied against the Respondent's residence and shall be the responsibility of the Respondent unless otherwise determined by a court.

[Association's Letterhead]

DATE
WARNING NOTICE

Owner's Name
On-Site Address
City, ST Zip

Owner's Name
Off-Site Address
City, ST Zip

Re: **Turtle Creek Neighborhood Association**
On-Site Address

Dear Owner's Name:

Please be advised that the Board received notice of an alleged infraction, and, in response, the Board is providing you with this warning notice.

On or about _____, it is alleged that _____.
Such acts violate [CITE]. When you accepted title to your residence, you agreed to comply with the Governing Documents of the Association, including its rules and regulations.

The Board determined that a violation likely occurred and that this warning notice is the appropriate response under these circumstances. The Board will not be taking any additional action related to this matter, but the Board trusts you recognize that in the event of a similar violation in the future, the Board may exercise a different remedy, including the potential to levy a fine.

The Board sincerely looks forward to your voluntary compliance in the future as each individual owner and resident has the same responsibility to comply for the best interests of the community as a whole.

[Signature]

[Association's Letterhead]

DATE

NOTICE OF VIOLATION

Owner's Name
On-Site Address
City, ST Zip

Owner's Name
Off-Site Address
City, ST Zip

Re: **Turtle Creek Neighborhood Association**
On-Site Address

Dear Owner's Name:

Please be advised that the Board received notice of an alleged infraction, and, in response, the Board is providing you with this notice of violation.

On or about _____, it is alleged that _____.
Such acts violate [CITE]. When you accepted title to your residence, you agreed to comply with the Governing Documents of the Association including its rules and regulations.

The Board determined that a violation likely occurred and intends to impose a fine as follow:

- One-time fine of \$ _____; [and]
- A daily fine of \$ _____ beginning [date].

Prior to the fines being levied, you are entitled to a hearing with the Board to offer facts and witnesses (if any) in support of your position. To schedule the hearing, please contact [contact information]. You must contact the Association to schedule the hearing within ten (10) days from the above-date, and the hearing must be held within thirty (30) days of the above date.

Enclosed please find the Association's Enforcement Program for further information. The Board reserves its rights and remedies at law and in equity, such as filing a lawsuit to compel your compliance, and to recover any unpaid fines, costs, and attorney's fees incurred by the Association.

The Board sincerely looks forward to your voluntary compliance as each individual owner and resident has the same responsibility to comply for the best interests of the community as a whole.

[Signature]

[Association's Letterhead]

DATE

NOTICE OF LEVY OF FINES

Owner's Name
On-Site Address
City, ST Zip

Owner's Name
Off-Site Address
City, ST Zip

Re: **Turtle Creek Neighborhood Association**
On-Site Address

Dear Owner's Name:

As you recall, the Association provided you a notice of violation dated [date] ("Notice"). As requested, a hearing was conducted and the Board has determined that the facts warrant the levy of fine [or fines].

OR

As you recall, the Association provided you a notice of violation dated [date] ("Notice"). You did not request a hearing. Accordingly, this is your notice that the Board has levied fines as provided in the Notice.

You are hereby notified that the Board has levied fines as follow:

- One-time fine of \$ _____; [and]
- A daily fine of \$ _____ beginning [date].

The Board shall not take any additional action so long as you pay all outstanding fines within thirty (30) days of the above date and no further violation as provided in the Notice occur. If you fail to do so, the Board reserves its rights and remedies at law and in equity, such as filing a lawsuit to compel your compliance, and to recover any unpaid fines, costs, and attorney's fees incurred by the Association.

The Board sincerely looks forward to your voluntary compliance as each individual owner and resident has the same responsibility to comply for the best interests of the community as a whole.

[Signature]

TURTLE CREEK NEIGHBORHOOD ASSOCIATION

ENFORCEMENT PROGRAM-FINE SCHEDULE

This Fine Schedule lists the most common violations within the community, and, pursuant to the enforcement program, the Board has adopted this fine schedule. We trust you recognize that not all violations are equal. For example, a violation that results threatens the safety of others or property is not the same as a technical violation. All fines shall be levied after notice and opportunity to be heard is provided in the Enforcement Program.

Violation	Fine*
Parking/Storage of Vehicles	\$250.00
Lot maintenance	\$250.00
Architectural violation	\$250.00
Trash receptacles	\$250.00
Pets	\$100.00

*Amount list may be levied as a one time fine, and may also be levied on a continuing daily basis for each day the violation continues.

[Date Adopted_____]