

# **THE KEEP Homeowners Association, Inc.**

## **Governance Policies**

To the extent the context allows, these Governance Policies also establish rules and regulations of the Association.

Adopted: August 29, 2018  
Effective: August 29, 2018

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**The Keep Homeowners Association, Inc.**

**Governance Policies**

**Conduct of Meetings Policies/Additional Notice**

- In addition to any notice required in the Bylaws, notice of any meeting of the Owners will be posted at the entry to the Community prior to the meeting.
- Notice may also be conspicuously posted at the location of the meeting, during the meeting.
- The Association may also post notice on its website (if any) of all member meetings. That notice may be posted the day of the meeting.
- If any Owner has requested that the Association provide notice via email and has provided the Association with an email address, and the Association has its own email address from which to send notices, then, the Association may send notice of all Owner meetings to such Owner at the email address provided.

## Collection of Unpaid Assessments and Other Sums Policies

- Due Dates.

The quarterly installments of any assessment, as determined by the Association and as allowed for in the Declaration, are due and payable on the 1st day of each quarter. Assessments or other charges not paid in full to the Association within 25 days of the due date are considered past due and delinquent. Assessments or other charges not paid in full to the Association within 25 days of the due date incur late fees and interest as provided below. In the event notice of acceleration is given to delinquent Owner(s), the Owner(s) of the Parcel will also be charged any costs incurred by the Association in giving notice of such acceleration.

- Late Charges on Delinquent Installments.

The Association is to impose a \$50 late charge for each Owner who fails to pay his/her monthly installment of any assessment within 25 days of the due date.

- Interest on Delinquent Installments.

The Association is to impose interest from the date due at the rate of 21% per annum on the amount owed for each Owner who fails to pay their monthly installment of the annual assessment within 25 days of the due date.

- Return Check Charges.

In addition to any and all charges imposed under the Declaration, Articles of Incorporation and Bylaws, the Rules and Regulations of the Association or this Resolution, a \$20 fee or other amount deemed appropriate by the Board of Directors is to be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds.

- Notice to Owner before Referral for Collection.

- If payment is not received within 60 days after the due date, the Association must send a notice to the Owner. The notice must inform the Owner:
  - ◇ of the total amount due
  - ◇ account for total due
  - ◇ that a notice of assessment lien (in addition to the lien established by the Declaration and recognized by state statutes) may be recorded against the property of the Owner
  - ◇ whether the opportunity to enter into a payment plan exists (as provided in this Collection Policy)
  - ◇ how the Owner may contact the Association to enter into a payment plan (if a payment plan is available)

- ◇ of the name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger to verify the amount of the debt
- ◇ that a lien is in place on the Owner's property, as provided under the Declaration and state law
- ◇ that payment is required to cure the delinquency
- ◇ that failure to pay within 30 days may result in the Owner's delinquent account being turned over to the attorneys for the Association or a collection agency
- ◇ that a lawsuit on the Owner's promise to pay, a foreclosure of the Association's lien, or both may be filed against the Owner
- ◇ that other remedies available under Colorado law may be sought by the Association

- Payment Plans.

- The Association, through its managing agent, will make a good faith effort to coordinate with the Owner to set up a payment plan
- An Owner may enter into a payment plan to pay off a deficiency in equal installments over a minimum period of six months or such longer period as authorized by the Board of Directors
- If the Owner fails to comply with the terms of the payment plan, the Association may pursue legal action
- The Association is not obligated to negotiate a payment plan with an Owner who has previously entered into a payment plan
- The Association is not obligated to enter a payment plan if the Owner does not occupy the Residence and has acquired the property as a result of a default of a security interest encumbering the Parcel or foreclosure of the Association's lien

- No Prior Notice Required for Super Lien Payments from First Mortgagees.

- Lenders to Owners, particularly First Mortgagees, who are responsible for the so-called "super lien" of the Association, are not entitled to any prior notice from the Association.

- Certificate of Status of Assessment.

The Association is to furnish to an Owner or such Owner's designee (upon written request, first class postage prepaid, return receipt), to the Association's agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's property. The person or company proving that certificate may charge a fee not to exceed \$350.00.

- Judicial Foreclosure.

The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action. The Association will

not commence a foreclosure action unless the balance of the assessments and charges secured by its lien (which may include late fees, fines and other charges) equals or exceeds six months of common expense assessments based on the Association's periodic budget. Prior to filing a foreclosure lawsuit, the Board must resolve, by a recorded vote, to authorize the filing against the specific Parcel, on an individual basis.

- Waivers.

The Association is authorized to extend the time for the filing of lawsuits and liens, or otherwise modify the procedures contained herein, as the Association may determine appropriate under the circumstances.

- Defenses.

Failure of the Association to comply with any provision in this Policy is not a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Policy.

## Inspection and Copying Of Association Records Policies

- Inspection/Copying Association Records.

An Owner or his/her authorized agent is entitled to inspect and copy any of the books and records of the Association, subject to the exclusions, conditions and requirements of state law and as set forth below:

- The inspection and/or copying of the records of the Association is to be at the Owner's expense.
- The inspection and/or copying of the records of the Association is to be conducted during regular business hours at the office of the registered agent of the Association as maintained with the office of the Colorado Secretary of State.
- The Owner is to give the Association's registered agent a written demand at least 10 business days before the date on which the Owner wishes to inspect and/or copy such record. In the alternative, the Association may make the records available at the next meeting of the Board (if within 30 days of the request).
- The Owner may be asked to complete and sign the Agreement Regarding Inspection of Association Records prior to the inspection and copying of any Association record. A copy of the form of Agreement may be obtained from the Association. Failure to properly complete or sign the Agreement will be valid grounds for denying an Owner the right to inspect and/or copy any record of the Association.

- Proper Purpose/Limitation.

Association records may not be used by any Owner for:

- Any purpose unrelated to an Owner's interest as an Owner
- The purpose of soliciting money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association
- Any commercial purpose
- For the purpose of giving, selling, or distributing such Association records to any person
- Any improper purpose as determined in the sole discretion of the Board

- Permissive Exclusions.

The following records MAY be withheld from inspection and copying to the extent that such records are or concern:

- Architectural drawings, plans, and designs, unless the legal Owner of such drawings, plans, or designs provides written consent to the release

- Contracts, leases, bids or records related to transactions to purchase or provide goods or services that are still in or under negotiation
  - Communication with legal counsel protected by the attorney-client privilege or the attorney work product doctrine
  - Disclosure of information in violation of the law
  - Records of an executive session of the Board
  - Records related to an individual Parcel other than the Owners'
- Mandatory Exclusions.

The following records will NOT be available for inspection and/or copying:

- Personnel, salary, or medical records related to specific individuals; and
  - Personal identification and account information of Members, including:
    - ◊ bank account information
    - ◊ phone numbers
    - ◊ email addresses
    - ◊ driver's license numbers
    - ◊ social security numbers
- Maintenance of Records.

In addition to any records specifically required by the Association's declaration or bylaws, the Association will maintain the following records:

- Documents or records required to be kept under the governing documents and state statutes
- Minutes of all Board and Owner meetings
- All actions taken by the Board or Owners by written ballot or email in lieu of a meeting
- All actions taken by a committee on the behalf of the Board instead of the Board acting on behalf of the Association
- Written communications (including email communications) among, and the votes cast by Board members directly related to an action taken by the Board without a meeting
- All waivers of the notice requirements for Owner meetings, Board member meetings, or committee meetings
- Detailed records or receipts and expenditures affecting the operation and administration of the Association
- Records of claims for construction defects and amounts received pursuant to settlement of those claims



- The names of Owners in a form that permits preparation of a list of names and physical mailing addresses of all Owners, showing the number of votes each Owner is entitled to vote
- The current articles of incorporation, declaration, covenants, bylaws, rules and regulations, responsible governance policies required pursuant to Colorado law, and any other policies adopted by the Board
- Financial statements, to the extent available, showing, in reasonable detail, the Association's assets and liabilities and results of its operations for the past three years
- Tax returns for the past seven years, to the extent available
- A list of the names, email addresses and physical mailing addresses of its current directors and officers
- The Association's most recent reserve study, if any
- Current written contracts to which the Association is a party
- Written contracts for work performed for the Association within the immediately preceding two years
- Records of Board or committee actions to approve or deny requests for design or architectural approval from Owners
- Ballots, proxies, and other records related to voting by Owners for one year after the election, action, or vote to which they relate
- Resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class of Members
- Written communications within the past three years to Owners generally as Owners
- The following additional information as required by C.R.S. 38-33.3-209.4 as part of the Association's annual disclosures
  - ◊ the date on which the fiscal year commences
  - ◊ the operating budget for the current fiscal year
  - ◊ a list, by Parcel, of the Association's current assessments
  - ◊ the annual financial statements, including any amounts held in reserve, for the fiscal year immediately preceding the current annual disclosure
  - ◊ the results of the most recent available financial audit or review, if any
  - ◊ a list of all Association insurance policies, including company names, policy limits, policy deductibles, additional names insureds, and expiration dates

- Fees/Costs.

Any Owner requesting copies of Association records is responsible for all actual costs incurred by the Association, including the cost to search, retrieve, and copy the record(s) requested. The Association may require a deposit equal to the anticipated actual cost of the requested records. Failure to pay such deposit may be valid grounds for denying an Owner copy of such records. If after payment of the deposit it is determined that the actual cost was more than the deposit, Owner is to pay such amount prior to delivery of the copies. If after payment of the deposit it is determined that the actual cost was less than the deposit, the difference is to be returned to the Owner with the copies.

- Inspection and Presence of an Association Representative.

The Association reserves the right to have a third person present to observe during any inspection of record by an Owner or the Owner's representative.

- Association and Original Records.

No Owner may remove any original book or record of the Association from the place of inspection nor will any Owner alter, destroy or mark in any manner, any original book or record of the Association.

- Creation of Records.

Nothing contained in this Policy will be construed to require the Association to create records that do not exist or compile records in a particular format or order.

**Governance Policies on Disputes between the Association and Owners, And From Owner to Owner**

- For any dispute between the Association and any Owner; between one Owner and another Owner; or between any Owner and the Association, the parties' rights are not limited and no pre-conditions or requirements apply other than as to the Association as set forth in these policies.
- A written notice of a claim is preferred to be given by the claimant against the person to whom the claim is asserted. This notice is preferred, but not required, unless specifically required in any of the Governing Documents for the Community or in other provisions of these policies.
- Mediation or arbitration are not required, but may be entered into by the parties, either to be binding, or non-binding.

## **Association Covenant and Rule Enforcement Policies**

- **Reporting Violations to the Association.**

Complaints regarding alleged violations may be reported by submission of a written complaint to the Association by an Owner, resident or tenant within the community, a group of Owners, residents or tenants, the Association's management company, if any, Board member(s) or committee member(s).

- **Complaints to the Association.**

- Complaints by Owners, residents or tenants are to be in writing and submitted to the Management Company, if any, if none, to the Board of Directors. The complaining person must have observed the alleged violation, identify the complainant ("Complainant"), the alleged violator ("Violator"), if known, and set forth a statement with any other pertinent information. Verbal complaints or written complaints failing to include any information required by this provision may not be investigated or prosecuted at the discretion of the Association.
- Complaints by a member of the Board of Directors, a committee member, or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed.

- **Investigation by the Association.**

Upon receipt of a complaint by the Association, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by the Management Company or by the Board designated individual or committee. The Board has sole discretion in appointing any individual or committee to investigate the matter.

- **Vehicle Parking/ in a Drive Aisle/ Towing.**

Vehicles parked in a no parking area or drive aisle are prohibited at all times. Vehicles parked in a drive aisle may be immediately towed.

- **Initial Warning Letter from the Association.**

If a violation is found to exist, a warning letter may be sent to the Violator explaining the nature of the violation. The Violator will have 30 days from the date of the letter to come into compliance.

- **Continued Violation After Initial Warning Letter.**

If the alleged Violator does not come into compliance within 30 days of the first warning letter, this will be considered a second violation for which a fine may be imposed following notice and opportunity for a hearing. A second letter may then be sent to the alleged Violator, providing notice and an opportunity for a hearing, and explaining if a violation is found to exist, a fine may be imposed pursuant to this Policy. The letter may further state that the alleged Violator is entitled to a hearing on the merits of the matter

provided that such hearing is requested in writing within 30 days of the date on the second violation letter.

- Notice of Hearing from the Association.

If a fine is sought to be imposed and a hearing is requested by the alleged Violator, the Board, committee or other person conducting such hearing (as may be determined in the sole discretion of the Board) may serve a written notice of the hearing to all parties involved at least 5 days prior to the hearing date.

- Hearing before the Association.

At the beginning of each hearing, the presiding officer, may introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer must observe statutory guidelines on the hearing (regarding disinterested Board Members to hear the matter) and may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator is required to be in attendance at the hearing. The hearing officer may base a decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the hearing officer, all hearings may be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the hearing officer may, within a reasonable time, not to exceed 60 days, render written findings, a decision, and impose a fine, if applicable. A decision, either a finding for or against the Owner, may be by a majority of those composing the hearing officer and present at the hearing. Failure to strictly follow the hearing procedures set forth above will not constitute grounds for appeal of the hearing officer's decision absent a showing of denial of due process or violation of law.

- Failure to Timely Request Hearing before the Association.

If the alleged Violator fails to request a hearing within 30 days of a fine being sought to be imposed, or fails to appear at the hearing, the hearing officer may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these Governance Policies.

- Association Fine Schedule.

The following fine schedule has been adopted for all recurring covenant or rule violations:

- |   |                |
|---|----------------|
| ▪ First violation:  | Warning letter |
| ▪ Second violation (of same covenant or rule):                | \$100 - \$200  |
| ▪ Third and subsequent violations (of same covenant or rule): | \$200 - \$500  |

The Board may establish the amount of the fine within the above ranges based on the nature and severity of the violation as determined in the sole discretion of the Board. The Board reserves the right to fine for first violations of rules that involve health and safety issues and other violations where a warning may not be deemed necessary by the Board in its reasonable discretion. Additionally, upon prior written notice, the Board reserves the right to levy fines in excess of the above referenced schedule, if the fines set forth in this schedule are not likely to provide effective incentives to induce compliance.

- Continuous Violations.

Continuous violations are defined as violations of Owner obligations that are uninterrupted by time. Each day of non-compliance with such violations constitutes a separate violation. *For example: the failure to remove an unapproved exterior improvement or the continuous parking on a private road in the community.*

- Continuous Fines.

If an Owner is determined as having a continuous violation, in accordance with the terms of this Policy, such Owner may be subject to a daily fine of \$50.00 each day the violation of the covenant is not corrected, following a notice and opportunity for a hearing as set forth above.

- Waiver of Fines.

The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Articles, Declaration, Bylaws or Rules.

- Other Enforcement Means/Optional Mediation or Arbitration.

The fine schedule and enforcement process of the Association has been adopted in addition to all other enforcement means which are available to the Association through its Declaration, Bylaws, Articles of Incorporation and Colorado law. The use of this process does not preclude the Association from using any other enforcement means. Additionally, the parties to any dispute may mediate or arbitrate any dispute, but are not required to mediate or arbitrate.

## **Board Member Conflicts of Interest Policies**

- **Disclosure of Conflict/Voting Restriction and Applicable Law.**

Any conflict of interest on the part of any Director may be verbally disclosed to the other Directors in open session at the first open meeting of the Board of Directors at which the interested Director is present prior to any discussion or vote on the matter.

After disclosure, the Director may participate in the discussion but may not vote on the matter, unless voting is allowed by applicable state statutes.

- **Definition of 'Conflict of Interest'.**

A conflict of interest exists whenever any contract, decision or other action taken by or on behalf of the Board would financially benefit: (i) a Director; (ii) a parent, grandparent, spouse, child, or sibling of the Director; (iii) a parent or spouse of any of the persons in subsection (ii); (iv) an entity in which a Director is a director or officer or has a financial interest.

### **Reserve Study and Funding Policies**

- The Association is not required to have a reserve study, and the Association does not require reserve studies to be done on a periodic basis (i.e., once every three years).
- If the Association has a reserve study prepared, it may be based on a physical analysis and a financial analysis.
- The Association's funding plan for replacement and improvement is assessing Owners as the Board determines and as provided for in the Declaration.
- The Association requires separate reserve funds be established and maintained (See provisions of the Declaration).



## **Investment of Reserves Policy**

The Board of Directors of the Association may invest funds held in the Reserve Funds accounts to generate revenue that will accrue to the Reserve Funds accounts balance pursuant to the following goals, criteria and policies, listed in order of importance.

- Safety of Principal.

Promote and ensure the preservation of the Reserve Fund's principal.

- Liquidity and Accessibility.

Structure maturities to ensure availability of assets for projected or unexpected expenditures.

- Minimal Costs.

Investments costs (redemption fees, commissions, and other transactional costs) should be minimized.

- Diversify.

Mitigate the effects of interest rate volatility upon reserve assets.

- Return.

Funds should be invested to seek the highest level of return, recognizing the above factors.

## **Policy on the Adoption of Policies, Procedures, Rules, Regulations, or Guidelines**

- **Scope.**

The Board of Directors of the Association may, from time to time, adopt policies, procedures, rules, regulations or guidelines as may be necessary or desirable to facilitate the efficient operation of the Association. This includes the clarification of ambiguous provisions in other documents, or as may be required by law.

In order to encourage Owner participation in the development of such Policies and to insure that such Policies are necessary and properly organized, the Board may follow the following procedures when adopting any Policy.

- **Drafting Procedure.**

The Board may consider the following in drafting a policy, procedure, rule regulation or guideline:

- Whether the governing documents or Colorado law grants the Board authority
- The need based upon the scope and importance of the issue and whether the governing documents adequately address the issue
- The immediate and long-term impact and implications
- Comments or requests of Owners

- **Notice of Adoption.**

Upon adoption of a policy, procedure, rule, regulation or guideline, the document or notice of same, including the effective date, may be provided to all Owners by any reasonable method as determined in the sole discretion of the Board, including but not limited to posting on the Association's website (if any) or mailing or electronic distribution.

## General Terms

These Governance Policies are subject to the following:

- Definitions.

Unless otherwise defined, initially capitalized or terms defined in the Declaration shall have the same meaning.

- Supplement to Law.

The provisions of these Governance Policies in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the community.

- Deviations.

The Board may deviate from the procedures set forth if in its sole discretion such deviation is reasonable under the circumstances.