

## Buckhead Homeowners Association of Tallahassee

### Covenants Enforcement Policy and Procedure

#### Statement of Policy

A covenant is a commitment, agreement or contract which grants a right or imposes a liability. Applicable Florida law defines “**Declaration of covenants**”<sup>i</sup> as “*a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.*” The recorded documents of the Buckhead Homeowners Association of Tallahassee, (“HOA”), which are entitled Declaration of Covenants, Conditions and Restrictions for Buckhead Subdivision, (“Covenants”) exist, in part, to preserve the integrity of our neighborhood, protect property values and reduce or eliminate activity that may become an annoyance, disturbance or nuisance to the neighborhood. The following sets forth a procedure for enforcement of the HOA’s covenants. It is the intent of the Board of Directors of the HOA that this policy be administered and enforced uniformly as applicable. Any deviations from this procedure must be documented in detail as to any special circumstances and approved by the Board.

Because these covenants “run with the land”, a person who assumes ownership of a parcel of the land also assumes ownership with the presumed knowledge of the covenants.<sup>ii</sup> However, in an effort to ensure that all homeowners have ready reference and access to the important information contained within our covenants, they are to be maintained on the HOA’s website as part of this policy. Each homeowner, as well as their tenants, guests and invitees are required to comply with the HOA’s covenants.<sup>iii</sup>

This procedure is designed to:

- provide for uniform enforcement of the HOA’s covenants;
- inform homeowners of alleged violations of the covenants;
- inform homeowners regarding applicable rules governing disputes;
- request and secure corrective action by the homeowner; and
- to monitor and ensure compliance with the HOA’s covenants.

#### Procedure - Steps To Be Taken Following Receipt of Complaint of Non-Compliance

Upon receipt by a member of the Board of Directors of a complaint of non-compliance, such member should report such complaint to a member of the Enforcement Committee (“EC”). The following steps and actions should be taken relative to this report.

**Within five (5) days of receipt of such complaint**, a member of the EC should inspect the alleged non-compliance to make an assessment as whether or not a violation appears to exist as reported. Immediately following the assessment, the EC member should report the results of the assessment to the remainder of the EC for review and action.

**If the EC ultimately believes that no violation exists**, the EC must report its findings to the Board with a recommendation that no action be taken. Upon concurrence by the Board, the EC must also report its findings to the person that originally reported the complaint. A record of the inspection, findings, and communications with the Board and the complainant should be provided to the Secretary of the HOA for filing in the official records of the HOA.

**If, however, the EC believes that a violation exists**, the Initial Notice for Corrective Action<sup>iv</sup> (“Initial Notice”) (**See Exhibit A**) should be sent, via regular first-class U.S. mail to the non-compliant homeowner, along with a copy to the HOA President and Secretary. This notice will request corrective action within ten (10) days of the date of the Initial Notice. If the homeowner has furnished an e-mail address to the HOA and consented to electronic communications, an electronic copy should also be emailed to the homeowner as a courtesy.

**On or about the tenth day following the date of the Initial Notice**, the following actions should be taken as dictated by the status of events at the time:

**Status 1**      **Response has been received from homeowner indicating they will take the necessary corrective action to achieve compliance.**

Action:      A member of the EC should re-inspect at this time to confirm the violation has been corrected. If compliance is confirmed, the EC should inform the Board via e-mail. If, upon re-inspection, compliance has not been achieved but in the judgment of the EC member, corrective action is “in process” and an extension of time is appropriate and can be mutually agreed upon with the homeowner, this should be granted and documented in writing by the EC and reported to the Board. Re-inspection should be done at the end of the agreed upon extension of time and confirmation of compliance should be reported to the Board.

**Status 2**      **No response has been received from the homeowner.**

Action:      A member of the EC should make a friendly follow up telephone call to the homeowner to request the status of corrective action. If contact is established with the homeowner who says that they did not receive the Initial Notice, the EC should re-send the Initial Notice via regular first-class U.S. mail and/or e-mail as appropriate and review with the homeowner. If contact cannot be made within 48 hours, an EC member should take actions required in Status 3 below.

**Status 3**      **Any of the following qualify as a Status 3 event:**

- **No response from, or contact with, homeowner after Initial Notice is sent; or**
- **Response has been received from homeowner indicating that they dispute the allegations of non-compliance;**
- **Homeowner communicates a refusal to take the requested corrective action;**

- **Failure by the homeowner to take the necessary corrective action after indicating a preliminary willingness to do so.**

Action: Because Florida law requires that disputes of this nature are subject to a demand for presuit mediation<sup>v</sup> served by the HOA, the EC must send the Statutory Offer to Participate in Presuit Mediation (“Statutory Letter”). (**See Exhibit B**) The Statutory Letter must be sent by *Certified Mail*, return receipt requested, with an additional copy being sent by regular first-class mail to the address of the homeowner as it last appears in the records of the HOA. NOTE: Prior to taking this action in cases where there has been no response or contact with the homeowner, a member of the EC should re-inspect and reconfirm continuing non-compliance.

In the event that a violation of the HOA covenants continues to exist, following action(s) taken pursuant to this procedure, the HOA may impose fines as permitted by Florida law<sup>vi</sup>. A schedule of fines relating to violations of the HOA’s covenants are attached and incorporated by reference as **Exhibit C**.

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<sup>i</sup> Section 720.301(4), Florida Statutes

<sup>ii</sup> The Law of Florida Homeowners Associations, 8th Edition, Peter M. Dunbar, Esq. and Charles F. Dudley, 2010

<sup>iii</sup> Section 720.305, F.S.

<sup>iv</sup> The Initial Notice of Non-Compliance will request action within 10 calendar days of the date of the Initial Notice.

<sup>v</sup> Section 720.311, F.S. – All communications in mediation proceedings are confidential and a participant may not disclosure mediation communications to a person who is not a participant in the proceedings. If a presuit mediation is not successful in resolving all the issues between the parties, the parties may file the unresolved dispute in either county or circuit court (See also Section 34.02(1)(d), F.S.

<sup>vi</sup> Section 720.305(2), F.S.

Initial Notice of Non-Compliance

***Via Regular U.S. Mail***

Name  
Street  
City, State Zip

RE: Compliance with Homeowner Association Covenants  
Address of Property: *[insert address if different from where owner will receive mail]*

Dear *[insert name]*

We are writing to you regarding an issue that has been brought our attention concerning compliance with the covenants of Buckhead's Homeowners Association (HOA). We have inspected the condition outlined below and find that it is non-compliant with our HOA's Covenants.

*[insert 2-3 sentence description; if more than one violation; number each separately]*

This condition is a violation of *[insert title(s) and article number(s)]* of Buckhead's Declaration of Covenants, Conditions and Restrictions, a copy of which can be found on our website at [www.buckheadtallahassee.web.officelive.com](http://www.buckheadtallahassee.web.officelive.com) under the "Documents Library" tab.

As you know, our HOA covenants govern certain conditions within our neighborhood and compliance with these covenants is critical in preserving the integrity and beauty of our community and protecting its property values. **Within ten calendar days** from the date of this notice, please correct or address this violation. If you are not able to do so, or if you have questions and would like to discuss this further, please contact any member of our Covenants Enforcement Committee below upon receipt of this notice.

Regards,

Name of Signor  
On behalf of Buckhead  
Covenants Enforcement Committee

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Shirley Kerns  
385-4847

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Jennifer Prather  
XXX-XXXX

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Karin Werner  
XXX-XXXX

cc: *[insert name of HOA Sec.]*, Secretary  
Buckhead HOA

## STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, \_\_\_\_\_, hereby demands that \_\_\_\_\_, as the responding party, engage in mandatory presuit mediation in connection with the following disputes, which by statute are of a type that are subject to presuit mediation:

*(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)*

Pursuant to section 720.311, Florida Statutes, this demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to participate in the mediation process, suit may be brought against you without further warning.

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. By agreeing to participate in presuit mediation, you are not bound in any way to change your position. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all options for reasonable settlement are fully explored.

If an agreement is reached, it shall be reduced to writing and becomes a binding and enforceable commitment of the parties. A resolution of one or more disputes in this fashion avoids the need to litigate these issues in court. The failure to reach an agreement, or the failure of a party to participate in the process, results in the mediator declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes. If you have failed or refused to participate in the entire mediation process, you will not be entitled to recover attorney's fees, even if you prevail.

The aggrieved party has selected and hereby lists five certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity is required ethically to decline to accept engagement. The mediators that we suggest, and their current hourly rates, are as follows:

*(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.)*

You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The Florida Supreme Court can provide you a list of certified mediators.

Unless otherwise agreed by the parties, section 720.311(2)(b), Florida Statutes, requires that the parties share the costs of presuit mediation equally, including the fee charged by the mediator. An average mediation may require three to four hours of the mediator's time,

including some preparation time, and the parties would need to share equally the mediator's fees as well as their own attorney's fees if they choose to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediators may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator's estimated fees and to forward this amount or such other reasonable advance deposits as the mediator requires for this purpose. Any funds deposited will be returned to you if these are in excess of your share of the fees incurred.

To begin your participation in presuit mediation to try to resolve the dispute and avoid further legal action, please sign below and clearly indicate which mediator is acceptable to you. We will then ask the mediator to schedule a mutually convenient time and place for the mediation conference to be held. **The mediation conference must be held within ninety (90) days of this date**, unless extended by mutual written agreement. In the event that **you fail to respond within 20 days from the date of this letter**, or if you fail to agree to at least one of the mediators that we have suggested or to pay or prepay to the mediator one-half of the costs involved, the aggrieved party will be authorized to proceed with the filing of a lawsuit against you without further notice and may seek an award of attorney's fees or costs incurred in attempting to obtain mediation.

Therefore, please give this matter your immediate attention. By law, **your response must be mailed by certified mail, return receipt requested, and by first-class mail to the address shown on this demand.**

\_\_\_\_\_  
\_\_\_\_\_

RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT CHOICE.

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in presuit mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

*(List acceptable mediator or mediators.)*

I/we further agree to pay or prepay one-half of the mediator's fees and to forward such advance deposits as the mediator may require for this purpose.

\_\_\_\_\_

Signature of responding party #1

\_\_\_\_\_

Telephone contact information

\_\_\_\_\_

*Signature and telephone contact information of responding party #2 (if applicable)(if property is owned by more than one person, all owners must sign)*



**Schedule of Fines**

**Declaration of Covenants, Conditions and Restrictions – Buckhead Subdivision**

Article Number*	Article Title	Fine Amount**
III	Architectural Control	\$100 per day up to the statutory maximum with a recommendation to the ACC to obtain a Cease and Desist Order to stop construction
IV	Land Use and Building Type	\$100 per day up to the statutory maximum with a recommendation to the ACC to obtain a Cease and Desist Order to stop construction
X	Temporary Structures	\$50 per day up to statutory maximum
XI	Signs	\$50 per day up to statutory maximum
XII	Animals and Crops	\$50 per day up to statutory maximum
XIV	Mail Boxes	\$50 per day up to statutory maximum
XV	Exterior Maintenance	\$50 per day up to statutory maximum
XVI	Boats, Trailers, Recreational Vehicles and Activities and Commercial Vehicles	\$50 per day up to statutory maximum
XVIII	Vehicles Prohibited	\$100 per incident
XIX	Garbage and Refuse Disposal	\$50 per incident
XX	Tree Removal or Damage and Mitigation	\$100 per incident (per tree)
XXI	Factory Built Structures	\$100 per day up to statutory maximum
XXIV	Utility Connections and Solar Connectors	\$100 per day up to statutory maximum
XXV	Heating and Air Conditions Systems	\$100 per day up to statutory maximum
XXVI	Walls, Fences and Gateposts	\$50 per day up to statutory maximum
XXVII	Firearms, Fireworks and Burning	\$100 per incident
XXIX	Construction of Improvements	\$100 per day up to the statutory maximum with a recommendation to the ACC to obtain a Cease and Desist Order to stop construction

\*The following Articles are omitted here as they are not conducive to levying fines:  
 Article I – Definitions  
 Article II – Easements  
 Article V – Subdivision of Lot  
 Article VI – Dwelling Size  
 Article VII – Building, Driveway and Fence Location, Sight Restrictions and Roof Pitch  
 Article VIII – Garages  
 Article IX – Nuisances  
 Article XVII – Access to Other Property  
 Article XXII – Driveways and Parking Areas  
 Article XXIII – Exterior Finishes and Shutters  
 Article XXVIII – Water Supply and Sewage Disposal  
 Article XXX – General Provisions

\*\*Florida law permits an association to levy reasonable fines of up to \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that a fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court. The provisions regarding the suspension-of-use rights do not apply to the portion of common areas that must be used to provide access to the parcel or utility services provided to the parcel.