

# **The Kimberly Crossing HOA, Inc**

## **Update of Non-Compliance Procedures**

### **2016**

## **Background**

The Procedures for the correction of Non-Compliance issues in Kimberly Crossing (KC) were originally established in July 2009. The KC Board of Directors (Board) hereby updates those procedures

As stated in CCR 1.5, "Each Owner shall comply strictly with the provisions of this Declaration, the Certificate of Incorporation, the Bylaws of the Association and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure and refusal after written notice to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorney's fees incurred in connection therewith and interest on all of such amounts at the highest lawful rate, which action shall be maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved Owner."

As provided for in the KC Bylaws, BL Art IV 3.(a), it is the duty of the Board to "administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, and all other provisions set forth in the Declaration submitting the property to the provisions of the Real Estate Development Act of the State of Oklahoma, the Bylaws of the Association and supplements and amendments thereto."

The Board is allowed, by BL Art IV 3.(b), "To establish, make and enforce compliance with such reasonable rules as may be necessary for the operation, use and occupancy of the project with the right to amend same from time to time. A copy of such rules and regulations, or any amendments or changes thereto, shall be delivered or mailed to each owner within ten (10) days following the adoption thereof."

BL Art IV 2: "The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of a first class residential project."

The purpose of these Powers and Duties is to maintain KC as a desirable area to live and protect our homeowner investment and house values. This is to be accomplished as follows:

1. Establish a means to inform homeowners of Non-Compliance with established rules and regulations enacted by the Board or non-compliance with the Association's By Laws and CCRs.
2. Establish the process through which correction of Non-Compliance is to be accomplished.
3. Establish a structure of fines that may be assessed to homeowners for failure to correct Non-Compliance issues.

The Board's policy is that the preferred means of accomplishing compliance is by voluntary means and through corrective action by the homeowner once a Non-Compliance issue has been noted and made known to the Homeowner or third party such as tenant, guest or contractor.

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**Procedures**

The Board will use the following procedures in addressing Non-Compliance issues in Kimberly Crossing.

1. Formal notification will be made to the homeowner of a Non-Compliance issue, which shall be by written communication. This Certified Mailed letter will also set forth the Board's options including fines or other legal action, if the homeowner does not address the matter.

The homeowner will be given, per CCR 3.13, 15 days from date of mailing to remedy the situation or respond to the Board with a plan for corrective action including a time frame for completion. Upon a suitable response from the homeowner, follow-up action will be taken to insure the corrective action is taken within agreed to time frames. The expected response from the homeowner would be an acknowledgment within 15 days of the Non-Compliance notification and a plan to correct the issue in a diligent and timely manner. Upon this happening, no further action would be required, as long as the corrective action is completed as presented.

A Non-Compliance issue that would require immediate attention (such as a dangerous situation or where the Non-Compliance requires immediate attention i.e., actual construction or situations affecting the health of residents) and warrants accelerated action would bypass these steps based on direction of the President, or the Vice President if the President is not available. If the Board concurs, a "Cease and Desist" order for the homeowner, tenant, guest or contractor will be issued by Certified Mail (and, if possible, by person-to-person communication such as email or text message or the equivalent) to stop the dangerous or non-complying action pending full Board review.

2. Lacking a suitable response to the letter in step one and/or the failure by the Homeowner to carry out the corrective plan of action, the Board may propose a fine and/or take other legal action at the discretion of the Board. The homeowner will be sent written notice via Certified Mailed letter outlining the Board's action including the proposed fine. The letter will include, subject to BL XVI 3 ten (10) days notification requirement, the date, time and the place for the next Board meeting and the homeowners right to appear at this meeting and strongly encourages the homeowner to attend.

BL Art XVI 3: "In order to afford due process to each owner before any punitive action may be finally imposed by the Board of Directors, each owner shall have the right after receiving notice of the Board's intended imposition of a fine or other punitive action, of not less than ten (10) days written notice served upon the owner as provided by civil process in the State of Oklahoma. A hearing before the Board of Directors, *en banc*, shall then be available to any owner to present evidence for the purpose of avoiding or mitigating any penalty or punitive action at which hearing both the Association and the owner may produce evidence and present witnesses."

A member of the Board will present the Non-Compliance issue, the Board's view of the issue, and the fine imposed by the Board. The homeowner may present their side of the issue (By-Laws Art XVI 3) including any mitigating circumstances.

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BL Art XVI 3: "The Board of Directors shall promptly resolve the dispute and announce its decision, which in such instances shall be final as to all matters."

3. If the Board upholds the proposed fine and the fine is not paid timely, The Board shall implement legal action, as authorized by BL Art IV 3.(f), which could include filing and prosecution of a small claims lawsuit to collect the fine and the attorneys' fees and costs incurred. If a judgment is rendered in favor of the KC HOA, the judgment shall be recorded in the Public Records of Oklahoma County and a lien placed on the residence.
4. The Fine amount is \$10.00 per week or \$50.00 per month. Additionally, the property owner will also be billed for the expenses KCHOA incurs to mail out violation letters. As of September 22, 2016 the mailing charge which is subject to change, is \$54.00.

Approved and adopted by The Kimberly Crossing HOA, Inc Board of Directors on September 22, 2016.