

DISCOVERY BAY PROPERTY OWNERS' ASSOCIATION
CC&R ENFORCEMENT PROCEDURES

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<p style="text-align: center;">CC&R ENFORCEMENT PROCEDURES DISCOVERY BAY PROPERTY OWNERS' ASSOCIATION</p>
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1. INTRODUCTION

The major function of the Discovery Bay Property Owners' Association (DBPOA) is to help maintain the quality of life in Discovery Bay and the monetary value of its residential properties. To do this, the Association encourages voluntary compliance with the private land use restrictions known as the Covenants, Conditions and Restrictions (CC&Rs). Since voluntary compliance with the CC&Rs does not always occur, it is necessary to adopt enforcement procedures. It is the Association's responsibility to establish a fair, uniform and consistent process for addressing and resolving problems when property restrictions are violated.

The pages that follow describe a sequence of enforcement steps that emphasize a cooperative effort between the Association and its members. Only when the cooperative efforts fail will the more formal procedures, which could lead to legal resolution, be implemented. The appeal process covered in these procedures will also be used to appeal other DERC decisions.

2. GLOSSARY

- (a) **Appeal Hearing.** A Hearing requested by a Respondent who is contesting a Hearing Panel decision or some other DERC decision. The Appeal Hearing is conducted by the Board of Directors, who sits as the Appeal Hearing Panel.
- (b) **Appeal Petition.** The petition which a Respondent must file if he/she chooses to appeal to the Board of Directors a determination by the Hearing Panel that the Respondent has violated the CC&Rs or another Governing Document of the Association.
- (c) **Association.** The Discovery Bay Property Owners' Association (DBPOA), a California nonprofit mutual benefit association. Under the CC&Rs, the Association is responsible for reviewing and approving residential construction and improvement projects through its Design and Environmental Review Committee (DERC) and for enforcing property use restrictions in a uniform and nondiscriminatory manner.
- (d) **Board or Board of Directors.** The Board of Directors of the Association. Wherever these Enforcement Procedures refer to the Association taking action, that reference means action by the Board of Directors unless the context indicates that another body (such as the DERC or the Hearing Panel) is to take the action.
- (e) **CC&Rs.** The Declaration of Covenants, Conditions and Restrictions of the Discovery Bay Property Owners' Association which are recorded in the chain of title.

- (f) **CC&R Compliance & Resolution Form.** The form which is sent to a Respondent that identifies the verified violation, required action(s) for correction, and provides option choices for response.
- (g) **Complainant.** The owner or resident who lodges a formal complaint alleging that another owner or resident of the Association is in violation of the CC&Rs or other Governing Documents. The Association may issue a complaint on its own volition and, in such circumstances, the term "Complainant" shall refer to the Association.
- (h) **Complaint.** A complaint issued by the Association or made by a Complainant who feels that another property owner or resident has violated the restrictions of the CC&Rs or other Governing Documents.
- (i) **Complaint Record.** The form which is used to record the alleged violation, source of complaint, corrective action necessary, verification inspection date, and classification.
- (j) **Compliance Inspector.** The independent contractor, an officer of the Association, who works under the direction of the Association to inspect association properties for compliance with the Governing Documents, to verify that complaints received by the Association are valid, and to conduct association-wide surveys to identify non-conforming properties related to a specific use or construction item.
- (k) **Courtesy Notice.** The initial notification which is sent to a Respondent informing him/her of the confirmed violation which exists on the property.
- (l) **DERC.** The Association's Design and Environmental Review Committee. The committee is responsible for administering the Association's review and approval of any construction or property improvement project and enforcing property use restrictions as described in the CC&Rs and the DERC Construction & Usage Standards.
- (m) **Enforcement Procedures.** This set of procedures, as the same, may be amended from time-to-time. The Enforcement Procedures are designed to establish objective and uniform procedures for resolving violations of the Governing Documents of the Discovery Bay Property Owners' Association.
- (n) **Governing Documents.** A collective term which refers to the CC&Rs, the Articles of Incorporation, the Bylaws of the Association, the DERC Construction and Usage Standards, and to any other supplemental rules and procedures adopted by the Association, such as these Enforcement Procedures.
- (o) **Hearing.** A hearing conducted by the Hearing Panel to allow the opportunity for a Respondent to provide testimony regarding the facts of the matter and to determine the circumstances of a specific violation.
- (p) **Hearing Cancellation Notice.** The notification which is sent to a Respondent acknowledging resolution and, thereby, canceling the scheduled Hearing on the matter.

- (q) **Hearing Notice and Schedule of Hearing.** The notification of a Hearing, and date of, which is sent to a Respondent who fails to correct the violation within a reasonable period of time after receiving a Courtesy Notice and CC&R Compliance & Resolution Form.
- (r) **Hearing Panel.** A panel, of at least three individuals, appointed by the Board of Directors, who conduct hearings. The panel includes at least one person currently serving on DERC.
- (s) **Owner.** The person, or entity, who is the owner of record of a lot within the tracts described in Exhibit B of the CC&Rs and is, therefore, a member of the Discovery Bay Property Owners' Association and subject to its CC&Rs.
- (t) **Property Manager.** Any person(s) authorized by the property owner to represent him/her in matters of CC&R enforcement. It is the responsibility of the property owner to keep the Association informed of any property manager employed.
- (u) **Repeat Violation.** Any repeat violation for which the enforcement process was initiated within the prior twelve (12) months.
- (v) **Repeat Violation Notice and Schedule of Hearing.** The notification of a repeat violation, and scheduled Hearing date, which is sent to a Respondent who has a recurring violation within twelve (12) months.
- (w) **Request for Hearing.** A Respondent may request a hearing at any stage of the CC&R Enforcement Procedures by completing a Request for Hearing form.
- (x) **Respondent.** An owner, or resident, of property within the Association who has violated one or more provisions of the CC&Rs or other Governing Documents.
- (y) **Secretary.** The independent contractor, an officer of the Association, who performs contracted secretarial and administrative duties on behalf of the Association.
- (z) **Violation.** Any action or situation which does not conform to the CC&Rs or other Governing Documents of the Association that is usually brought to attention by inspection or the receipt of a complaint.

3. AUTHORITY FOR ADOPTION OF PROCEDURES

These Enforcement Procedures are intended to supplement the enforcement provisions found in Article 1.6 of the CC&Rs.

The authority for these procedures starts with the California State Codes and proceeds logically by way of the Association's Articles of Incorporation (1976), its Bylaws (May 2000) and the CC&Rs (June 1985). The Enforcement Procedures further refine and implement the due process requirements for disciplinary and enforcement actions involving CC&R violations.

4. ENFORCEMENT PROCEDURES

4.1 Informal Resolution by Residents Excluding Association Involvement. When any member owner or resident observes an apparent violation of the CC&Rs or other Governing Document provisions, the observer is encouraged to discuss the matter directly with the apparent violator in an effort to resolve the situation without resort to the formal complaint procedures described in Section 4.2 below. However, if circumstances negate direct contact with the apparent violator, the person observing the violation may seek Association advice or decide to register a formal complaint.

4.2 Initiation of Enforcement Procedures. The Compliance Inspector shall inspect and verify the complaint, or initiate the complaint, and notify the Secretary and/or DERC using the Complaint Record form.

When a complaint is confirmed by the Compliance Inspector, the DERC accepts the roll of Complainant.

4.3 Courtesy Notice and CC&R Compliance & Resolution Form. The Secretary shall notify an owner or resident (Respondent) who is in violation of the CC&Rs with a Courtesy Notice. Enclosed with the notice is a CC&R Compliance & Resolution Form which requests the Respondent's voluntary compliance and identifies the confirmed violation and necessary action(s) to correct it. The form provides option choices for resolution and the Respondent is requested to complete and return the form, or contact the DERC, within fifteen (15) days.

4.4 Hearing Notice and Schedule of Hearing. The Secretary shall issue a Hearing Notice and Schedule of Hearing if the Respondent fails to (1) voluntarily correct the violation within thirty (30) days, or (2) return the completed CC&R Compliance & Resolution Form, or otherwise contact the DERC.

A Hearing may not be scheduled sooner than ten (10) days following the hearing notification date.

4.5 Repeat Violation. In the event a violation is a same violation which occurred within the past twelve (12) months, the Respondent shall be sent a Repeat Violation Notice and Schedule of Hearing with an enclosed Notice of Respondent's Rights and Options, and a copy of the original CC&R Compliance & Resolution Form.

(a) The amount of the pending disciplinary fine which may be imposed, and a scheduled hearing date, shall be included in the notice.

(b) If a prior Hearing was conducted, the date on which the hearing was held, and the amount of the immediate fine imposed, shall be included on the notice.

4.6 Hearing. A Hearing shall be conducted to determine the circumstances of a violation and to provide an opportunity for the Respondent to hear or give testimony related to the facts of the matter.

A Hearing must be conducted for all violations prior to any disciplinary action being taken unless:

- (a) The violation is a repeat violation and a Hearing was held on the matter within the prior twelve (12) months; or
- (b) An immediate enforcement situation exists as described in 5.1 below.

- 4.7 Request for Hearing.** A Respondent may request a Hearing at any stage of the enforcement process by filing a Request for Hearing. The Hearing shall be scheduled as expeditiously as possible.

Note: The requirement that the Association conduct a Hearing in response to a Respondent's Request for Hearing, following initiation of enforcement proceedings, may be modified or eliminated by the action of law enforcement personnel pursuant to section 5.2(a) below, or by the terms of any court order issued pursuant to section 5.2(b) below.

- 4.8 Cancellation of Hearing.** When a property is brought into compliance prior to a scheduled hearing date, and is verified by the Compliance Inspector, a Hearing Cancellation Notice shall be sent to the Respondent.
- 4.9 Time Extensions.** At any stage of the enforcement proceedings, including the Hearing, the DERC reserves the right to extend time requirements.

5. IMMEDIATE ENFORCEMENT SITUATIONS

- 5.1 Circumstances Which Do Not Require Advance Notice or Hearing.** In some instances, immediate corrective action may be deemed appropriate. Such situations include, without limitation:
- (a) A situation judged by the Association to be, or likely to become, hazardous to life or property;
 - (b) A situation in which immediate injunctive relief is needed to preserve the status quo and the Association's ability to effectively enforce the Governing Documents.
- 5.2 Immediate Enforcement Actions Available.** If immediate enforcement action is appropriate, the Board or its duly authorized agents may undertake immediate corrective and/or disciplinary action. Such action may include, without limitation:
- (a) **Intervention by Law Enforcement or Other Third Parties.** Request for immediate assistance from law enforcement or other third parties when judged appropriate by the Association, for situations that are, or are likely to become, hazardous to life or property.
 - (b) **Referral to Legal Counsel.** Referral of the matter to legal counsel, in order to obtain appropriate legal relief.

6. CONDUCT OF HEARINGS

- 6.1 Composition of Panel.** Hearings on violations of the CC&Rs or other Governing Documents shall be conducted before a Hearing Panel comprised of at least three members, one of whom must be a member of DERC to serve as the Chairperson. The individuals and number serving on the Hearing Panel shall be designated by the Board.
- 6.2 Schedule of Hearings.** The Hearing Panel shall hold hearings at least once a month, unless there are no matters to be heard. The Hearing on any particular violation shall not be scheduled sooner than ten (10) days following mailing of the Hearing Notice and Schedule of Hearing to the Respondent.
- 6.3 Attendance at Hearings By Other Members.** All Hearings shall be open to the Association's general membership unless: (1) the Respondent requests that the Hearing be conducted in private, or (2) the Association's legal counsel advises the Board that the panel should meet in executive session in order to discuss litigation in which the Association is or may become a party to (relating to the pending case), or otherwise as required, in the opinion of legal counsel, to protect the attorney-client privilege.
- 6.4 Quorum for Valid Action.** Three (3) members are required to constitute a quorum for a Hearing Panel. The Board may increase or decrease both the number of members and the number constituting a quorum, while maintaining the minimum requirement of three (3).
- If a member of the Hearing Panel withdraws during the hearing of a specific matter, the remaining members shall continue with the Hearing provided a sufficient number of panel members remain to constitute a quorum. If there is not a remaining quorum, the specific matter shall be rescheduled to another date.
- 6.5 Discovery.** Prior to the scheduled hearing date, the members of the Hearing Panel and the Respondent shall be entitled to:
- (a) Obtain the names and addresses of the witnesses that any party intends to call to the extent known to the other party; and
 - (b) Inspect and make a copy of any statements, writings and investigative reports in the possession of the other party which pertain to the facts involved in the Hearing. During inspection and copying, original documents and confidential documents will receive appropriate safeguards. Testimony may be heard at the Hearing by the panel. The person giving testimony must be identified by name and address, as well as a statement explaining why the testimony is pertinent to the case.
- 6.6 Avoidance of Conflicts: Challenges for Cause.** No member of the Hearing Panel shall hear any matter in which he/she has or may have a conflict of interest or in which the member is an interested party, whether by virtue of (1) having an

ownership interest in the property where the violation exists, (2) initiating the complaint relating to the matter being heard, or (3) being a relative or close friend of the Respondent.

It shall be incumbent upon each member of the Hearing Panel to make a determination as to whether he/she is able to function in a disinterested and objective manner in considering any case coming before the panel. Any member who determines that he/she is incapable of objective consideration of the case shall disclose this fact to the Panel and shall remove himself/herself from the proceedings.

A panel member shall not be considered to have a conflict which will disqualify that person from serving on a Hearing Panel merely because he/she knows the Respondent or the Complainant unless the panel member feels that his/her relationship with the Respondent or the Complainant will preclude the panel member from making an objective and fair determination of the case. The fact that a member of the Hearing Panel also served as a member of the DERC which reviewed an application for architectural or design approval for a property associated with the violation shall also not constitute a conflict of interest requiring disqualification from the Hearing Panel.

The Respondent may challenge any member of the designated Hearing Panel for cause at any time prior to the taking of evidence and testimony at the hearing. In this event, the Hearing Panel shall reschedule the hearing. The Board shall meet to determine if the challenge is meritorious. Cause shall be determined to exist if the Respondent can demonstrate to the Board that facts and circumstances make it impossible for a particular member of the Hearing Panel to be fair and impartial in hearing the Respondent's case.

If the Board sustains the challenge by majority vote, the Board shall appoint an alternate member to the Hearing Panel to hear the case. All decisions of the Board of Directors regarding challenges for cause shall be final.

6.7 Procedural Rules for Hearings. The following procedural rules shall apply to all hearings conducted by the Association:

- (a) The Hearing shall open with a presentation by the Secretary, or another person who is not a member of the Hearing Panel, who is knowledgeable of all the relevant facts and circumstances pertaining to the violation of the Governing Documents.
- (b) The members of the DERC, the Complainant or any other interested owner or resident of Discovery Bay may appear and testify or present written documentation relating to the matter.
- (c) The Respondent shall then be given the opportunity to present any relevant evidence, witnesses or comments and to question any witnesses presented by any other party. Any relevant evidence may be presented at the hearing by any party, and the formal rules of evidence applicable to judicial proceedings shall not govern.

- (d) Each member of the Hearing Panel may question the Respondent or any witness, examine any evidence, or make any relevant comments.
- (e) One member of the Hearing Panel or the Association's Secretary shall be assigned to record written minutes of the proceeding and/or to make an audio recording. Such recording may be used only as an aid to accurate writing of the minutes.
- (f) The Chairperson of the Hearing Panel, in his/her sole judgment, shall resolve any disputes regarding procedural matters.

6.8 Time Limitations for Decision. The Hearing Panel may announce its decision immediately following the Hearing, but not longer than ten (10) days after the conclusion of the Hearing. Written notification of the decision shall be sent to the Respondent.

6.9 Decision Considerations. Before making a final decision in any case brought before it, the Hearing Panel shall give due consideration to the following:

- (a) Did the Association follow its Enforcement Procedures?
- (b) Was the Respondent given the opportunity to present/discuss his/her side of the situation?
- (c) Was the evidence and testimony presented at the Hearing complete and clear enough to permit a decision?
- (d) Were there overriding circumstances that prevented prompt CC&R compliance?

6.10 Decision Possibilities. Based on 6.9(a) through (d) above, the Hearing Panel may:

- (a) Affirm the existing CC&R violation.
- (b) Find the Respondent in compliance.
- (c) Return the case to DERC for further work.
- (d) Invoke a Disciplinary Fine taken from the published list of fines.
- (e) Invoke a disciplinary procedure, other than fining, giving the precise details.

6.11 Required Content of Decisions of Hearing Panel. Each decision shall be in writing and shall include the following:

- (a) A description of the exact nature of the decision and fine or penalty imposed, if any;
- (b) The opposing opinions of any dissenting member of the Hearing Panel, if requested for inclusion by the dissenting panel member; and

- (c) The signature of the Chairperson of the Hearing Panel who participated in the decision.

Copies of the decision shall be sent to the DERC, the Board of Directors, the owner of record, any property manager of record, and to any non-owner resident. The Respondent shall also be notified that he/she may appeal the decision of the Hearing Panel by submitting an Appeal Petition to the Association at P. O. Box 1977, Discovery Bay, CA 94505, no later than thirty (30) days following receipt of the Hearing Panel's written decision.

6.12 Hearing Continuance If a Respondent is unable to attend a hearing on the scheduled date, he/she must notify the DERC at least 48 hours prior to the scheduled date and show good cause why he/she cannot attend the hearing, stating the reason(s) why. If determined that good cause exists for the requested delay, the hearing will be rescheduled and written notice of the new date, time and location of the hearing shall be served upon all parties at least ten (10) days prior to the rescheduled hearing date. In its discretion, the Board, or any delegated authority, may reschedule hearings upon a showing of good cause. The requirement of "good cause" shall be strictly construed.

6.13 Effect of the Respondent's Failure to Appear If the Respondent fails to appear, or to request a postponement of a duly scheduled Hearing, the Hearing Panel may nevertheless proceed with the Hearing to reach a decision on the existing violation in determining the appropriate enforcement action, fine or condition which should be imposed. Under such circumstances, the Hearing Panel shall base its decisions and findings upon the written records and testimony, if any, of all interested parties who appear at the Hearing. A Respondent's failure to appear shall not be, in itself, grounds for an adverse determination.

7. DISCIPLINARY ACTION

7.1 Imposing Fines. The Hearing Panel or DERC is authorized to impose a fine and may do so in the following circumstances:

- (a) When a Hearing has been conducted and there has not been resolution of the violation, or a mutual agreement between the Respondent and the DERC, fining may commence and shall be billed the first day of the month following notification of the Hearing Panel's decision.
- (b) When a repeat violation occurs within twelve (12) months, and a hearing on the matter was previously held, an immediate fine may be imposed and an invoice shall be sent with the Repeat Violation Notice.

7.2 Schedule of Fines. Fines for uncorrected violations of Governing Documents pertaining to architectural matters, property use, parking, or the maintenance of structures or landscaping (Declaration, Chapters 2 and 3) are as follows:

- (a) First occurrence per violation: a \$100.00 fine will be levied for the month or any portion of the month. Following the initial fine, monthly inspections will be made to determine when compliance is achieved.
- (b) When a violation remains uncorrected for more than 30 days after the initial fine, the fine amount shall be increased by \$100 per month per violation. Additional increases in the fining rate (up to \$100 per month) shall be made for each additional 30 days the violation remains uncorrected, up to a limiting total fine of \$300 per month.
- (c) For a repeat violation(s), within one (1) year after the initial correction for each violation, DERC shall impose a \$200 per month fine if there is no change in ownership. An additional increase in the fining rate (up to \$100 per month) shall be made for each violation that remains uncorrected, up to a limiting total fine of \$300 per month.
- (d) Should total accumulated fines reach \$800.00 without achieving compliance, DERC will consider the following options:
 - 1. Continue fining.
 - 2. Refer the matter to the Board for possible legal action.

7.3 Assessments. The term Assessment includes: All monies owed by property owners to pay administrative costs, membership dues, special assessments, CC&R violation fines assigned by a Hearing Panel, or fines modified by DERC.

- (a) As provided for in Article IX of the Bylaws, fines for unresolved CC&R violations are to be considered disciplinary in nature. Fining is considered to be a final effort to achieve CC&R compliance before considering legal measures to force compliance. Fines established by the Board will be reviewed by DERC from time-to-time in order to determine their effectiveness. Whenever the DERC determines the fining process to be ineffective for a given case, the situation can be brought to the attention of the Board for their review and action.
- (b) In accordance with California Law, each year when the Association distributes its annual budget, the members shall also receive a schedule of the monetary fines which may be imposed for violations of the Governing Documents. The schedule of fines shall be maintained on a current basis in order to give notice to DBPOA members and residents of the fines they may face if they violate the Governing Documents.

7.4 Collection. The keeping of records and the collection of monies pertaining to the payment of assessments as levied by the Association will be administered by the Board of Directors. (CC&Rs, Article 1.2)

- (a) Assessments are due on the first day of the month and are delinquent if not paid by the last day of the month. If an assessment becomes delinquent, the owner shall incur a late charge of one (1) percent per month of the delinquent

assessment. Association members with delinquent assessments are considered “not in good standing” and lose some membership privileges.

- (b) If assessments remain unpaid for a period of sixty (60) days or more, the Association can pursue all appropriate legal and/or equitable remedies to compel the person to comply.
- (c) The Association may initiate a Small Claims Court action against a delinquent owner to recover any delinquent assessments, fines and other reasonable costs of collection imposed by the Association. Should the judgment be in favor of the Association, this affirmative judgment can be recorded as a judgment lien.

7.5 Waiving or Rescinding Fines.

- (a) A fine for a first violation shall be rescinded if the violation is remedied within the first thirty (30) days after the issuance of the fine invoice.
- (b) If a violation is not corrected after the first thirty (30) days, the accumulated fines shall not be rescinded except for very unusual circumstances, and then on a case-by-case basis.
- (c) Whenever the DERC, or any delegated authority, waives or rescinds a fine, the dollar amount being waived or rescinded, plus a statement of the mitigating circumstances, shall be recorded in the property owner file.
- (d) If a Respondent appeals the fine following a Hearing, the Board shall advise the DERC of the outcome of the Appeal Hearing and determine the enforcement procedures to be followed from that date forward.

8. APPEAL PROCEDURES

8.1 Deadline for Filing Appeal Petition. Within thirty (30) days following any decision by the Hearing Panel, an appeal of the panel's decision may be made to the Board of Directors. The request for an Appeal Hearing shall be made using the Appeal Petition. If the request is not made within thirty (30) days, the Hearing Panel decision will be deemed final and the right to appeal is waived.

- (a) The appeal of a DERC non-enforcement issue decision shall be prepared and forwarded to the Association.

8.2 Grounds for Appeal. An appeal must be based on one or more of the following grounds:

- (a) Failure of the Hearing Panel or DERC to substantially comply with established procedures, and which failure prejudiced the Hearing Panel's decision and/or the Respondent's right to a fair and impartial hearing;

- (b) Lack of authority of the Hearing Panel or DERC over the Respondent or the subject matter;
- (c) Lack of impartiality of a member of the Hearing Panel or DERC who participated in the hearing and or the decision;
- (d) Insufficient facts to support the Hearing Panel's or DERC decision;
- (e) The Hearing Panel's or DERC decision is arbitrary, capricious or unreasonable; or
- (f) The restriction or rule violated is too uncertain or vague to permit a reasonable person to understand and comply with it.

NOTE: In completing the Appeal Petition form, the Petitioner shall cite one or more of the grounds for appeal listed above and present a brief statement of the facts or circumstances which support the referenced ground(s) for appeal. It will not be sufficient for an appealing petitioner to merely repeat the text of the grounds for appeal listed in paragraphs (a) through (f) above.

- 8.3 Scheduling of Hearing of Appeal** Upon receipt of a timely and complete Appeal Petition, the Association's Board of Directors shall no later than their next regularly scheduled meeting review the appeal and set a date for the appeal hearing should it be meritorious.

The Petitioner shall be sent notification of the scheduled Appeal Hearing which will include the following: (1) the time, date and place of the hearing; and (2) a statement that the hearing shall be conducted in accordance with the established procedures for hearings before the Association's Appeal Hearing Panel.

Note: If the Board of Directors makes a good faith determination that the stated grounds for appeal are not meritorious, the Board may decline to hear an appeal and notify the Petitioner with a letter setting forth the reason(s) for the Board's decision to deny the hearing.

- 8.4 Conduct of Appeal Hearings.** All Appeal Hearings shall be conducted in the manner prescribed by Section 6.7(a) through (f) of these procedures, with the exception that the presentation shall be made by a member of the DERC. The following additional provisions shall apply:

- (a) The Board of Directors, sitting as the Appeal Hearing Panel, shall only have the power to (1) Affirm the decision of the Hearing Panel in its entirety, (2) Affirm the decision and impose a lesser penalty, (3) Affirm the decision of the Hearing Panel in its entirety and refer the Respondent back to DERC since (a) there is completely new information which could resolve the issue, or (b) there is a completely new Design Standard that could be considered, or (4) Overturn the Hearing Panel's decision.
- (b) All decisions shall be rendered in the manner prescribed by Section 6.11(a) through (c) of these procedures.

9. EFFECT OF FAILURE TO COMPLY WITH DECISION OF THE ASSOCIATION

If a property owner subject to the Governing Documents (1) fails or refuses to participate in a Hearing duly noticed and the violation of the Governing Documents continues, or (2) if a person who has been adjudged in a Hearing conducted by the Association to be in violation of the CC&Rs fails to cease the activity constituting the violation or to bring his or her property into compliance with any of the Governing Documents, the Association shall be entitled to pursue all appropriate legal and/or equitable remedies to compel the property owner's compliance, including injunctive relief.

Note: Property owners are advised that if legal action is required in order to bring an owner and/or his or her property into compliance with the Governing Documents, the CC&Rs provide that the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

DISCOVERY BAY PROPERTY OWNERS' ASSOCIATION CC&R ENFORCEMENT PROCEDURES

Enforcement Procedures Summary

On November 13, 2007, the Enforcement Procedures were revised by the Discovery Bay Property Owners' Association and will become effective November 13, 2007. The procedures have been modified in an effort to achieve administrative ease while maintaining fairness and consistency in resolving violations of the CC&Rs or other Governing Documents of the Association. They ensure that any member who has been verified to be in violation is given reasonable time to correct the matter without any penalty. A summary of the new process follows:

Violation Confirmation:

Complaints may be issued by the Association or by any Association member; however, all violations must be verified by the Association's Compliance Inspector.

First Time Violation:

If a property owner has not been in the Enforcement Process for the existing violation during the prior twelve (12) months, an initial Courtesy Notice will be sent. Accompanying this notice is a CC&R Compliance and Resolution Form, which identifies the violation and indicates the necessary corrective action to be taken. The form also provides a list of option choices, regarding resolution, and requests a return response within fifteen (15) days.

If a response is not received, or the violation has not been resolved within thirty (30) days, the property owner will be sent a Hearing Notice and Schedule of Hearing. Accompanying this notice is a Notice of Respondent's Rights and Options. If the violation is corrected after receipt of the Hearing Notice and prior to the hearing date, the Hearing will be cancelled. If the violation is not resolved, a Hearing will be conducted.

Repeat Violation:

If a property owner has been in the enforcement process for the existing violation during the prior twelve (12) months, a Repeat Violation Notice and Schedule of Hearing will be sent. Accompanying this notice is a copy of the original CC&R Compliance and Resolution Form, which defined the violation and indicated the necessary corrective action to be taken, and a Notice of Respondent's Rights and Options.

If the violation is not cleared, a Hearing (scheduled no sooner than 10 days following the date of notice) will be conducted. If the violation is corrected, the Hearing will be cancelled. If a prior Hearing was held, immediate fining may commence, without conducting another Hearing.

Hearing:

The Hearing Panel is empowered to declare an owner in or out of compliance, grant time extensions, or assess a monthly fine when deemed appropriate. A property owner may file a Request for Hearing at any stage of the enforcement process.

Disciplinary Fine:

If a Hearing on the matter is held and the violation is not corrected, or a mutual agreement reached, a fine may be imposed. Disciplinary fining will commence on the first of the month following the Hearing Panel's decision to fine.

Appeal Procedure:

An owner can appeal a Hearing decision, within thirty (30) days of being notified of the outcome, to the Association's Board of Directors, who sit as the Appeal Panel. This appeal procedure will also be used to appeal other DERC decisions. This is the final course of action available to an owner who is dissatisfied with the results of the Hearing Panel or other decisions by DERC.

