

## **PROCEDURES FOR RESOLVING DISPUTES BETWEEN THE COMSTOCK VILLAGE HOMEOWNERS' ASSOCIATION AND ITS MEMBERS**

From time to time, disputes may arise between the Comstock Village Homeowners' Association ("CVHA") and its members over application, interpretation, or enforcement of the Comstock Village Covenants or other issues pertaining to operation of the Association, and the CVHA Board of Directors has adopted these procedures to facilitate resolution of those disputes. The Board of Directors adopted these procedures at its meeting on November 18, 2020 to govern all disputes arising after that date, and they supersede and replace procedures the Board adopted before that date.

**1. Architectural Review.** The Board of Directors acts as the Architectural Review Committee ("ARC") under the Comstock Village Covenants and will continue to do so until it appoints a separate ARC. All exterior changes to property in Comstock Village must be approved by the Board of Directors before the change is made, and the Board requires members to submit a written request for review and approval by the Board before a member makes a change to the exterior of his or her home, including landscaping. The Board will vote on each application no later than its next regularly scheduled monthly meeting, and may conduct a special vote by email or another form of communication in the event a member asks that the Board review and vote on an application sooner than the next regularly scheduled meeting. In the event the Board votes in favor of all changes a member has proposed, the CVHA Administrator will notify the member in writing that their application has been approved. In the event the Board finds that one or more changes that have been proposed do not comply with the covenants and cannot be approved, the Board will assign a director to contact the member, or delegate that authority to the Administrator, to discuss the covenants in an attempt to reach agreement on modifying the proposal so it can be approved. The director who is assigned to contact the member will report his or her progress to the Board and will recommend appropriate action in the event the proposal is modified. Monthly meetings of the Board are public meetings that are open to all members, and every member has the right to appear before the Board to explain why he or she believes that a proposal to change the exterior of his or her property complies with the covenants. In the event that the Board of Directors and a member cannot resolve a disagreement by discussion and the member makes a change to his or her property without the Board's approval, the Board will proceed in accordance with the procedures that are outlined in "Enforcement of the Comstock Village Covenants – Changes to Property" that appear below.

### **2. Enforcement of the Comstock Village Covenants.**

**a. Changes to property.** When the Board of Directors receives information which suggests that a member of the Association or a tenant has made a change to his or her property, including landscaping, that violates the Comstock Village Covenants, it will assign a director to inspect the member's property. The director will report his or her findings to the Board, and if the Board agrees that there is a violation, the director will be instructed to contact the member in person or by mail or email to discuss the violation and ask that it be corrected. In the event the member refuses to correct the violation, the director will report that fact to the Board of Directors and the Board will discuss the issue and decide on further action. Article VI, Section 6 of the Comstock Village Covenants

allows the CVHA, after approval by two-thirds of the Board of Directors, to enter a member's property to repair, maintain, and restore the property, and Colorado law allows the CVHA to file suit against a member who is violating the Comstock Village Covenants to obtain a court order which requires the member to comply with the covenants. If the Board finds that a member is violating the covenants and votes to take action under Article VI, Section 6 of the covenants or by filing suit against the member, it will notify the member in person or by mail or email that it has taken that vote and will offer the member the opportunity to appear in person before the Board, with or without counsel, to discuss the situation. If the member appears before the Board, the Board will consider all arguments the member presents, will discuss those arguments, and will take a new vote on its decision to proceed under Article VI, Section 6 or by filing suit. If the Board and the member cannot resolve the dispute after the member is given the opportunity to appear before the Board and the member requests that the dispute be referred to mediation, the Board will consider and vote on the member's request. Colorado law does not require the CVHA to refer a dispute to mediation, even if a member requests mediation, and if the Board agrees to mediation it will be under the understanding that each party (the CVHA and the member) will bear its own costs, including attorney's fees, but will equally divide the mediator's fees.

**b. Annual assessments.** Article IV of the Comstock Village Covenants allows the CVHA to impose an annual assessment on each lot in the Association to pay for maintaining the common areas and operating the Association, and the Board of Directors votes each year on whether it will make the assessment for the following year and in what amount. Members are sent a bill at the beginning of each year and are given at least 30 days to pay the assessment. In the event the assessment is not paid on time, a rebilling fee is assessed and the member is rebilled. If the member does not pay the assessment and the rebilling fee, the Board of Directors will place a lien on the property. However, before the Board places a lien on a member's property, it will notify the member that he or she has one last opportunity to pay the assessment and the rebilling fee. If a member believes that he or she should not be charged the rebilling fee (e.g., because they did not receive the original assessment), they have the right to contact the Board to discuss the situation, either in person at a regularly scheduled meeting of the Board or by mail, email, or telephone.

**c. Resolution of other disputes.** The Board of Directors becomes aware of violations of the Comstock Village Covenants in a variety of ways, including complaints received from homeowners, when a director notices a violation, etc. If the Board receives information which suggests that a member of the Association or a member's tenant has violated or is violating the Covenants by engaging in some activity other than an unauthorized change to the exterior of a member's property (e.g., by misusing the common areas or engaging in activity that violates the Comstock Village Covenants), it will assign a director to review the situation. The director will report his or her findings to the Board of Directors, and if the Board finds there is a violation, it will instruct the director to contact the member or tenant in person or by mail or email to discuss the violation and ask that it be corrected or stopped. The director will cite the provision of the covenants the homeowner is violating, explain why there is a violation, and explain what the homeowner must do to correct the violation. If the homeowner or tenant agrees to make changes that eliminate the violation, the director will report the homeowner or tenant's decision to the Board and will

follow-up to ensure that the homeowner or tenant took corrective action and is in compliance with the Covenants. Homeowners are responsible for the actions of their tenants and if a homeowner refuses to correct a violation, the director will report the homeowner's decision to the Board and the Board will decide on an appropriate course of action. An appropriate course of action can include, by way of example, (1) having the same director contact the homeowner, (2) having another director contact the homeowner, and/or (3) authorizing litigation. An appropriate course of action will be determined by a majority vote of all directors who attend the meeting where the issue is discussed.

**3. Litigation.** Article VI of the Comstock Village Covenants states that "The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration." This provision gives the Board of Directors, acting on behalf of the CVHA, power to file suit against homeowners to enforce the Comstock Village Covenants. If the Board decides that a homeowner or a homeowner's tenant has violated or is violating the covenants, and the homeowner or tenant has been contacted and has refused to correct the violation, the Board may vote to authorize a lawsuit against the homeowner. To facilitate this process, the Board will appoint a director to pursue litigation. Before that director files a lawsuit, however, he or she will send the homeowner a letter which (1) informs the homeowner that the director has been authorized by the Board to file a lawsuit, (2) provides a short explanation of contacts that have been made by the Board and why the lawsuit is being filed, (3) gives the homeowner an opportunity to appear before the Board, with or without counsel, to explain why he or she believes they or their tenant are not in violation, and (4) sets a deadline for the homeowner's response. If the homeowner asks to appear before the Board, a meeting will be scheduled as soon as possible. After hearing the homeowner's presentation, the Board will vote on an appropriate course of action. Appropriate courses of action include, by way of example: (1) a vote to dismiss the complaint against the homeowner; (2) a vote that reaches a compromise with the homeowner; or (3) a vote to proceed with litigation. If the Board and the member cannot resolve the dispute after the member is given the opportunity to appear before the Board and the member requests that the dispute be referred to mediation, the Board will consider and vote on the member's request. Colorado law does not require the CVHA to refer a dispute to mediation, even if a member requests mediation, and if the Board agrees to mediation it will be under the understanding that each party (the CVHA and the member) will bear its own costs, including attorney's fees, but will equally divide the mediator's fees. An appropriate course of action will be determined by a majority vote of all directors who attend the meeting where the issue is discussed.