

## FALLS CREEK RANCH ASSOCIATION, Inc.

### **Policy # 1: DISPUTE RESOLUTION and ENFORCEMENT of COVENANTS and RULES; SCHEDULE OF FINES POLICY**

Date adopted: June 19, 2012

- 1. General Policy.** Falls Creek Ranch Association, Inc., (“FCRA” or the “Association”) desires to provide for the resolution of Disputes (defined herein) involving the Association’s Protective Covenants, bylaws, and Rules and Regulations (the “Governing Documents”) either between the Association and a member(s) or between Association members in a prompt, fair, and efficient manner which conforms to the Association’s culture of whenever possible encouraging voluntary compliance with the Governing Documents and person to person resolution of neighborhood disputes while adhering to the requirements of the Colorado Revised Statutes (“CRS”) Sections 38-33.3-209.5, 38-33.3-308 regarding enforcement procedures and Section 38-33.3-124 regarding Alternative Dispute Resolution (“ADR”).

FCRA acknowledges that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving most neighborhood disputes and, accordingly, has adopted these Policies, Procedures and Protocols providing for resolution of disputes and enforcement of the Association’s Governing Documents in a simple and expeditious manner while enabling the Board to discharge its duty to manage the Association and regulate use of the common property.

Notwithstanding the adoption of this ADR Policy, Members of FCRA are expected to make reasonable efforts to resolve their Disputes before requesting Board intervention.

These Policies and Procedures (referred to herein as the “Policy”) were adopted at a duly noticed, regular Meeting of the Board on the date indicated above.

- 2. Disputes and Exempted Disputes.**

- a. Dispute (s).** A “Dispute” is any controversy, grievance, alleged violation, or disagreement arising under the Governing Documents relating to the actions, rights, duties or obligations of any Association Member (s) and the Association or its officers and directors or between Members of the Association brought to the Board’s attention as provided for in this Policy whether or not enforceable by fine unless such Dispute is determined by the Board to be either specifically exempted or otherwise not ready for resolution as described herein.

**b. Specifically Exempted Dispute(s).**

- (i.) **Present Dangers.** The Board may in its sole discretion determine a Dispute is an immediate or substantial threat to the health, safety or welfare of FCRA or an individual and may impose any sanction and take any action the Board deems appropriate to abate the threat including filing suit to obtain a temporary restraining order or injunction and other ancillary relief deemed necessary by the court without conducting any hearing provided for herein. Following the successful implementation of its action(s) to abate the present danger, the matter may be addressed as provided for herein should such further action be necessary or appropriate in the Board's judgment.
- (ii.) **Assessment Collection.** Any action by the Association to collect Assessments or other sums allegedly due the Association, including judicial collection and foreclosure proceedings.
- (iii.) **Statute of Limitations.** Any Dispute or claim by the Association which, if not pursued by the filing of a lawsuit, would be deemed barred due to the applicable statute of limitations.
- (iv.) **Business Judgment.** As described more fully in the **Business Judgment Rule** section of the **General Provisions** hereto, the Board may for the reasons specified in that section decline to pursue enforcement.

**3. Dispute Resolution Process and Procedures.**

**a. Notice of Dispute.** The process of resolving a Dispute begins when a Notice of Dispute in the form attached as Appendix A is delivered by the Member initiating the process to the Board Secretary and the Association Member or Members allegedly involved. The Board or a member thereof may initiate the process by filing a Notice and delivering a copy to the Member or Members allegedly involved. The Notice shall state the specific provision(s) of the Governing Documents allegedly violated with as many specific factual allegations as are available and the names of the persons involved. The Notice shall be signed by the party or parties filing it and delivered by either email, regular surface mail, or personal delivery.

**b. Board Action.** Upon receipt of a Notice of Dispute, the Board, at its next scheduled regular meeting or sooner if warranted in the Board's judgment, shall determine whether the situation is a Specifically Exempted

Dispute, whether all remedies and procedures provided for in the Governing Documents have been exhausted, or whether reasonable efforts have been made to resolve a dispute between members without involving the Board. If none of those provisions apply, the Board will determine the appropriate Protocol or other action described herein for resolving the Dispute in accordance with the Association's goal of resolving conflicts as promptly, simply, and fairly as possible given the nature of the violation alleged and its impact on the Association's general safety, health, and welfare. The Board may, in its sole discretion, determine that alternative dispute procedures such as an informal meeting(s), mediation, or arbitration are preconditions upon the filing of a complaint between an Association member and FCRA in situations not involving an imminent threat to the peace, health, or safety of the Association or its members. ((CRS Section 38-33.3-124 (1)(a)(i)) Notwithstanding the foregoing, the parties to a Dispute must exhaust all remedies and procedures required by the Governing Documents prior to making use of any process described herein.

**c. Notification To Members.** Within three (3) business days following Board Action, the Board shall notify the involved parties, as to one or more of the following:

(i) That the Board shall implement one or more of the Resolution Protocols (described below) and the date and time when such Protocol will begin.

(ii) That the situation is Specifically Exempted;

(iii) That the remedies and procedures required by the Governing Documents have not been exhausted;

(iv) That efforts to resolve a Member to Member dispute without involving the Board have not been adequate; or

(v) That facts and circumstances of the Dispute warrant utilizing a different Protocol and explanation as to the terms and conditions of such Protocol.

In the event, the Board requests that a party attend a hearing or meeting, the notification shall set forth the specific time, date and place of the hearing or meeting. The Board's notice shall also advise the parties that the Board may determine a Member's failure to respond or appear at any scheduled meeting may constitute an admission to the alleged violation and the Board may then proceed with or without a further hearing to make its determination of the allegations based on all available relevant facts and enforce the provisions of the Governing Documents as the Board deems necessary and appropriate.

#### **d. Resolution Protocols.**

- (i) **Informal Meeting.** At a time and date established by the Board, the members involved will be invited to meet with a designated Board member or members to discuss the situation, the Governing Documents involved, and attempt to reach a resolution acceptable to the Member(s) and the Board. Results of the meeting shall be reported to the Board which, if necessary, may schedule additional Informal Meetings or schedule other Resolution Protocols.
- (ii) **Cease and Desist.** The Board may in its sole discretion notify the Member alleged to have violated the Governing Documents to cease and desist the actions constituting the alleged violation while the Dispute resolution process is pending. (See, Cease and Desist Notice attached as Appendix B.) The Notice shall advise the Member that if the violation does not cease and desist within the time specified or if any similar violation occurs, the Board may impose additional sanctions and fines against the Member. If within 30 days of the date specified in the Cease and Desist Notice the apparent violation has not ceased, the Board may notify the Member of a hearing to be held by the Board to determine what action is necessary to cause the apparent violation to cease including but not limited to levying additional sanctions and fines.
- (iii) **Board Hearing.** The Board has the power and duty to hear and make decisions regarding violations of the Governing Documents and to levy fines or impose other sanctions against Members.

If the Board determines the Notice of Dispute allegations are apparently sufficient to constitute a violation of the Governing Documents and a Board Hearing is appropriate, the Board shall notify the alleged violator of that determination and the scheduled time, date, and place of the hearing. The Board may grant continuances for good cause.

The hearing shall be conducted in a manner that will enable the Board to determine whether it is more likely than not that a violation(s) of the Governing Documents occurred. The Board and the parties may question witnesses and review evidence such as notice, an opportunity to be heard,

present evidence, and cross examine witnesses. The alleged violator and other parties involved shall be afforded a reasonable opportunity to be heard and may, at the Member's expense, be represented by counsel. Hearings shall be open to all Members except those portions that necessitate an executive session of the Board. For purposes of a Board Hearing, three (3) Board members shall constitute a quorum.

If the alleged violator does not appear but files a written response, the Board will render its decision based on the information contained in the Notice of Dispute and the written response, considering all relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing and may determine the Member's failure to appear constitutes an admission of the allegations made, and the Board may impose appropriate sanctions and fines or otherwise enforce the provisions of Governing Documents.

After all evidence has been presented at the hearing or through the parties written response, the Board shall render its decision based on all relevant facts and circumstances and will either inform the parties of its decision at the hearing or will provide a written decision to the parties at either their email addresses, regular surface mail or personal delivery within five (5) business days after the hearing.

- (iv) **Alternative Dispute Resolution (“ADR”)**. ADR is a Protocol for resolving Disputes by means other than a hearing before the Association's Board or a Court through mediation or binding or non-binding arbitration making use of public and private resources for ADR including without limitation the resources offered by the Office of Dispute Resolution of the Colorado Judicial Branch.

If the Board determines ADR is the appropriate remedy for the alleged violation, it shall meet with the parties involved to determine the specifics of this Protocol. Nothing in this Protocol shall be construed to require any specific form of ADR. Neither the Association nor the members involved waive any right to pursue whatever legal or other remedies and Protocols are available to either party by participating in ADR. However, the Board may determine making use of

ADR is a precondition to filing a complaint between a member and the Association in situations that do not involve an imminent threat to peace, health, and safety. ((CRS, Section 38-33.3-124, (1)(a)(i)).

### **General Provisions**

**Business Judgment Rule.** The decision of the Board to pursue enforcement shall be at the discretion of the Board subject to its duty to exercise business judgment and not be arbitrary or capricious. Without limiting the generality of the foregoing, the Board may determine that under the circumstances of a particular case: 1. the Association's position is not strong enough to justify taking any further action or that the Governing Document sought to be enforced is or is likely to be construed as inconsistent with applicable law; 2. although a technical violation may exist or may have occurred, it is of such a minor nature as to be unobjectionable to a reasonable person or to justify expending FCRA resources to correct; or, 3, it is not in the Association's best interests based on hardship, expenses, or other reasonable criteria to pursue the enforcement action.

**Constraints on the Board.** It is incumbent upon each member of the Board to determine whether he or she is able to function in regard to a Dispute in a disinterested and impartial fashion. If a member determines he or she is not capable of objective consideration of the Dispute, the member shall disclose that determination to the Board and shall remove him/herself from further consideration of the Dispute and the removal shall be recorded in the Board minutes. The Board may require a member to abstain from considering or making a decision regarding a Dispute if the Board determines such member is not capable of making a disinterested or impartial decision.

**Enforcement: attorney's fees, costs, fines, sanctions.** FCRA is entitled to reimbursement of all reasonable attorney's fees and costs incurred by FCRA in connection with any Dispute Resolution or enforcement action including any proceedings under this Policy. Without limiting FCRA's remedies under the Governing Documents, FCRA may assess fines, impose sanctions, and suspend membership privileges in accordance with this Policy. The Board may revoke or suspend a violator's membership privileges, including suspension of voting rights, for a period of time equal to the duration of the violation. If the violation involves damage to FCRA property, the violator shall pay the cost of repair and replacement.

**Schedule of Fines.** Fines may be levied, after notice and hearing, for violations of the Governing Documents as follows:

<u>Number of Violations of any type in a 12 month period:</u>	<u>Fine:</u>
First violation	Warning
Second violation	\$100.00
Third violation	\$200.00
Fourth violation	\$400.00

**Additional Fines.** In addition, if the Board determines that a violation or a series of violations is evidence of a willful, wanton, or flagrant disregard for the provisions of the Governing Documents then, based on the severity of the violation(s), the Board may impose additional fines as it deems reasonable without regard to the Schedule of Fines above. Further, the Board is under no obligation to first issue a “warning” in such instances.

**Member Obligation.** The Member or Members as defined in the Governing Documents has the primary obligation to comply with sanctions and pay fines imposed for their actions and the actions of their tenants, family members, guests, visitors, contractors, employees, or occupants. Fines imposed hereunder shall become an Assessment obligation imposed against the Member’s Lot and enforceable as an Assessment as provided in the Governing Documents.

**Joint and Several Liability.** If there are multiple owners, each shall be jointly and severally liable for any fine or other monetary penalty imposed including, but not limited to, attorney’s fees, expert witness fees and costs incurred by the Association resulting from or in any way related to the violation or the collection of fines.

**No Waiver.** Failure by the Association to enforce any provision of this Policy shall not be deemed a waiver of the right to do so thereafter.

**Additional Remedies.** The enforcement provisions contained herein are in addition to other specific provisions in the Governing Documents and FCRA is not required to follow these enforcement provisions or protocols before seeking other remedies. The Board may choose a legal remedy or seek assistance from other enforcement authorities such as-but not limited to-police, fire, or animal control, as it deems appropriate.

**Delivery of Notice.** Any notice required by the provisions of this Policy may be delivered by email addressed to the Member’s last known email address or by regular surface mail or personal delivery. A statement of the date and manner of delivery shall be entered in the record of any Board

Hearing. Personal appearance at a hearing by a Member satisfies the notice requirement.

**President's Certification:** The undersigned as President of Falls Creek Ranch Association, Inc. certifies the foregoing Policy was approved and adopted by the Board at a duly called meeting on June 19, 2012.

Falls Creek Ranch Association, Inc.

**By:** /s/Mary Ann Bryant  
Its President

Appendix A: Notice of Dispute

Appendix B: Notice to Cease and Desist



APPENDIX A

**Notice of Dispute  
Falls Creek Ranch Association, Inc.**

Name of Party Alleging Complaint: \_\_\_\_\_

Address of Party Alleging Complaint: \_\_\_\_\_

Phone Number/Email of Party Alleging Complaint:  
\_\_\_\_\_

**Nature of Complaint/Description of Violation:**

Please provide detailed description of facts and circumstances of the alleged violation(s) of the Association covenants and/or rules and regulations. State names and addresses of parties involved, specific dates and times, and reference to Association covenants and rules allegedly violated. Use additional sheets as necessary.

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

**Description of Steps Taken By Party Bringing This Dispute to Resolve Situation:**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX B

**CEASE AND DESIST NOTICE**  
**Falls Creek Ranch Association, Inc.**

Name of Party in Violation: \_\_\_\_\_

Address of Party in Violation: \_\_\_\_\_

Description of Violation(s):

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

Cease and Desist:

[Provide time period within which violation must cease or be corrected i.e., immediately, within 3 days... etc; provide description of any additional corrective measures to be taken by violating party.]

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

Failure to comply with this Cease and Desist may result in additional action by the Board as provided in the Association's Dispute Resolution and Enforcement of Covenants and Rules; Schedule of Fines Policy, including but not limited to, a hearing and the imposition of sanctions and fines. In addition to this Cease and Desist, the Board has the discretion to take such other action as warranted under the above referenced Policy.

Falls Creek Ranch Association Board of Directors

By(name): \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_