

APP I – Compliance and Appeals

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A. Objective

1. To ensure that the requirements of the Project Documents (APPs) and governing documents are carried out uniformly for the purpose of enhancing and protecting the value, desirability and attractiveness of the property subject to those documents.

B. Policy

General

1. Members of Kala Point, the Board and Committees have the right to seek enforcement of the Project Documents and/or appeal a Committee decision to the Board by using the procedures for Compliance and Appeals.
2. The Board strives to provide a positive atmosphere where violations do not occur. However, if a complaint of non-compliance does occur, the Board encourages resolution in as amicable a manner as possible. As a last resort, if a member refuses to rectify a correctable problem, or, in fact, violates these requirements irrevocably, the Board may impose a fine, legal action, or other penalty under.

3. No decision that has become final will be modified or reversed absent a showing of a material or significant change in circumstances occurring after the final determination was made.

Types of Non-Compliance

1. Type 1 Minor Infraction - Violations and activities that cause general problems to neighbors and the community are handled at the lowest level possible but may result in Board action.
2. Type 2 Repairable Damage - Violations that are correctable are handled at the lowest level possible but may result in Board action. The Board may direct corrective action and/or fines with the costs charged to the member as a special assessment.
3. Type 3 Irreparable Damage - Violations that are not correctable at the Committee level are handled by the Board. The Board may levy fines or penalties with the costs charged to the member as a special assessment.
4. Type 4 Health, Safety & Security - Violations that endanger the health, safety and/or security of members, guests or staff of the Kala Point community are addressed as promptly as possible. Because improper use of Common Area facilities may require a timely response, the Board delegates enforcement of these rules to the General Manager and the staff. Violators may be penalized by suspension of their right to use the recreational facilities located on the common areas for a period not to exceed sixty (60) days for each infraction of KPOA's published Rules and Regulations. In extreme situations the Board may also levy fines or penalties charged to the member as a special assessment. When applicable, the violation is reported to appropriate county authorities. Compliance is handled at the lowest level possible but may result in Board action.
5. Type 5 Architectural Standards - Violation of Architectural Standards by members or their contractors are handled at the lowest possible level but may result in Board action.
6. Type 6 Assessments - Assessments not paid by the due date are handled in accordance with CC&Rs Article VII, Non-Payment of Assessments. The CC&Rs state that members with delinquent assessments are subject to (1) suspension of rights to vote and to use the recreational facilities located on the Common Areas, (2) Notice of Default, Notice of Claim of Lien and foreclosure proceedings, and (3) the Association's assessment and collection policies.

C. Procedure

Resolving Compliance Issues

Violations of Type 1 or 2 non-compliance with the Association's governing documents and disputes arising from their enforcement will be addressed via a step- by-step process. These violations or disputes are addressed by the Board after this process is exhausted. Violations of Type 3 or 4 non-compliance may proceed directly to the Board. All discussions and documentation between the Committee Chair/GM must cite the authority for the non-compliance.

1. Individual members and staff who observe a violation or are involved in a non-compliance issue are encouraged to work out the problem with the non-complying member or guest, if possible.
2. If the situation is not resolved at step #1, the member/staff contacts the appropriate Committee Chair/General Manager directly (if an emergency) or the Association Office, 1760 Kala Point Drive, (360) 385-0814. Violations must be witnessed or supported through documentation. Anonymous complaints will not be acted upon.
3. In the case of Type 1 or 2 violations, the Committee involved or the General Manager contacts the non-complying member in person whenever possible and discusses the problem in an informal manner. If compliance is not achieved or if a repeat of the violation occurs, the Committee or General Manager sends a written request for compliance.

If necessary, a second request for compliance is sent. If the issue remains unresolved, and if either party feels it may be productive, the Committee Chair may schedule a follow-up meeting, possibly with different Committee representatives and the non-complying member. Any discussions with the member must be documented by the Committee member or Manager. Copies of the documentation are provided to the member/Committee filing the complaint, the non-complying member, and the Association office. If compliance is still not achieved, the Committee prepares and submits a [Request-for-Compliance-Hearing.pdf](#) form to the Board.

4. In the case of Type 3 violations, the Committee involved investigates the alleged violation and, if possible, speaks with the member/staff member reporting the violation and the alleged non-complying member in person. This shall be documented and if justified, a [Request-for-Compliance-Hearing.pdf](#) form is prepared.
5. In the case of Type 4 or 6 violations), the General Manager may prepare a [Request-for-Compliance-Hearing.pdf](#) form. All attempts to obtain compliance are documented.

6. In the case of Type 5 violations, Steps 3, 4, or 5 should be used, depending on the severity of the situation.
7. If the issue is not resolved, the staff notifies the non-complying member in writing with a copy of the *Request for Compliance Hearing* form.

Preparation for Compliance Hearing

Compliance hearings are the process by which the Board addresses compliance issues that have not been resolved at the Committee level. The General Manager and Committees have the right to request a Compliance hearing anytime; Members, however, may only do so after utilizing all channels available.

1. Upon receipt of a *Request for Compliance Hearing* form, the President, or in his/her absence, the Vice President, completes and distributes a [Notice-of-Hearing.pdf](#) form to the non-complying member, the staff/Committee filing the complaint, Board members, and the Association office. The non-complying member is notified by certified mail at least 14 business days prior to the hearing date.
2. The President ensures that a notice which states the nature and location of the hearing is posted on the bulletin boards and, if timely, placed in the *Kala Pointer* and on the Board agenda.
3. The staff/member/Committee filing the Complaint submits information and materials related to the complaint, if any, to the Association office at least five business days prior to the hearing. If the non-complying member submits new information for review consideration, the complaint is returned to the appropriate committee or General Manager. If the committee/General Manager does not resolve the issue, the committee Chair/General Manager or designated representative notifies the complainant in writing of the committee's decision and include another [Request-for-Compliance-Hearing.pdf](#) form. Members of the Board may, at their discretion, meet informally with the non-complying member and/or the Committee/General Manager prior to the hearing to gather additional facts.
4. The administrative staff distributes the Board agenda, copies of the *Request for Compliance Hearing* form and related materials from the non-complying member and the staff/member/Committee filing the complaint to Board members at least five business days prior to the hearing.

Preparation for an Appeal Hearing

Appeal hearings are the process by which a member appeals to the Board a Committee/General Manager decision.

In the event a member disagrees with any ruling/decision of a Committee/General Manager, she/he may appeal in writing to the Board. The written request must be received by the Board within 30 calendar days following the final decision of the Committee/General Manager. Within 45 business days following receipt of [Request-for-Appeal-Hearing.pdf](#) form, the Board renders its written decision. Such written decision is binding upon the Committee/General Manager and the Appellant.

1. Upon receipt of a *Request for Appeal Hearing* form, the President, or in his/her absence, the Vice President, completes and distributes a [Notice-of-Hearing.pdf](#) form to the Appellant, the Committee, Board members, and the Association office. The Appellant is notified by certified mail at least 14 calendar days prior to the hearing.
2. The President ensures that a *Notice of Hearing* form which states its nature and location is posted on the bulletin boards, placed in the *Kala Pointer*, on the KPOA website, and on the Board agenda.
3. The Appellant submits information and materials related to the appeal, if any, to the Association office at least five business days prior to the hearing. If the Appellant submits new information, the appeal is returned to the appropriate committee. If the committee does not resolve the issue, the Committee Chair or designated representative notifies the Appellant in writing of the Committee's decision and include another [Request-for-Appeal-Hearing.pdf](#) form.
4. The Committee submits information and materials related to the appeal, if any, to the Association office at least five business days prior to the hearing. Members of the Board may, at their discretion, meet informally with the Appellant and/or the Committee/General Manager prior to the hearing to gather additional facts.
5. The administrative staff distributes the Board agenda, copies of the *Request for Appeal Hearing* form, and related materials from the Appellant and the Committee to Board members at least five business days prior to the hearing.

Hearing Conduct

1. Members of Kala Point with an interest in the issue may make a three-minute statement during the public comment period.
2. A quorum of Directors must be present for the hearing. A quorum consists of a majority of eligible Directors. Any Directors who serve on a committee filing the complaint/appeal may participate in the hearing but may not vote.
3. The non-complying member or Appellant or his/her representative has 30 minutes to make a presentation and may provide witnesses to speak to the issue. A written "expert" opinion may be accepted in lieu of the witness appearing in person.

4. The member/Committee filing the complaint or the Committee involved in the appeal has 30 minutes to make a presentation and may provide witnesses to speak to the issue during the period. A written "expert" opinion may be accepted in lieu of the witness appearing in person.
5. Board members may discuss the complaint/appeal before voting on the request and may ask questions of the non-complying member or Appellant, the member/Committee and any witness who participated in the presentation.
6. The vote is taken on a motion to approve or deny the complaint/appeal by a show of hands.
7. Any motion to dismiss the complaint/appeal must state the reason which may include (1) lack of supporting evidence, (2) extenuating circumstances, (3) community input and impact on the community, or (4) infringement on the owner's rights.
8. If the Board determines that a violation has occurred or upholds the Committee's/General Manager's decision, the Board determines what action is to be taken, the deadline for that action, and the potential penalty. The Board establishes and records findings on which the determination was based. See Penalties for Non-Compliance listed below.
9. The President ensures that the non-complying member or Appellant is sent by certified mail a [Notice-of-Determination.pdf](#) form within 45 business days following receipt of the *Request for Compliance Hearing* form or *Request for Appeal Hearing* form. The notice includes the non-complying member's or Appellant's name, nature of the complaint or appeal, date of hearing, and the Board's decision including the motion and number of votes for, against, and abstaining. The failure of the Board to render a written decision within 45 business days is deemed a decision in favor of the non-complying member or Appellant. If a complaint document or appeal is remanded to the applicable committee for consideration, the forty-five (45) business day period is suspended.

Penalties for Non-Compliance

Before levying any penalty, the Board considers, if information is available, the member's explanation, past history of violations, degree of damage, impact on the community, and implications on enforcement of KPOA governing documents in the future.

The Board may take one or more of the following actions:

1. Suspend the privileges for the use of KPOA Common Areas, tow unauthorized vehicles, or remove unauthorized signs.
2. Correct the problem, with costs levied as a special assessment on the non-complying member.

3. Levy a fine, not to exceed \$2,500, per occurrence, as a special assessment. The determination of whether a violation constitutes a Minor Infraction, Repairable Damage, Irreparable Damage, a threat to Health, Safety & Security, or a breach of Architectural Standards is a matter of discretion of the Board. Guidelines for the Board's use in determining the level of fine to impose are provided below. The fine may be suspended, repeated or escalated for repeated violations or lack of corrective action.
 - a) Minor Infraction - up to \$500
 - b) Repairable Damage - up to \$1,000
 - c) Irreparable Damage - up to \$2,500
 - d) Health and Safety - up to \$2,500
 - e) Architectural Standards - up to \$2,500
4. Pursue legal action.