

**MCCLELLAND'S CREEK HOMEOWNERS ASSOCIATION  
POLICY AND PROCEDURES FOR ADDRESSING DISPUTES WITH OWNERS**

Effective: ~~February~~ 2016  
*MARCH 9th,*

**1. Introduction.**

The Board of Directors ("Board") of McClelland's Creek Homeowners Association, a Colorado nonprofit corporation ("Association"), acting pursuant to the powers set forth in the Association's Bylaws, Articles of Incorporation, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for McClelland's Creek ("Declaration") (such documents being collectively referred to as the "Association Documents"), and the Colorado Common Interest Ownership Act, as amended ("CCIOA"), has enacted the following Policy effective as of the date set forth above. Unless the context otherwise indicates, capitalized words and terms shall have the meanings set forth in the Association Documents and, if not defined in the Association Documents, then as set forth in CCIOA. This Policy supersedes any previously adopted Policy on the same subject matter.

**2. Policy Purposes.** The purposes of this Policy are to:

2.1 Set forth procedures to promote amicable resolution of disputes; and

2.2 Provide an optional framework for addressing disputes between the Association and Owners, but to protect the Association and other Owners from delay or an adverse effect on their rights by allowing proceedings to collect past due assessments, to remedy violations of Association Documents or any matter that may require an injunction, restraining order or protection order to proceed on a parallel track independent of the optional dispute resolution framework described in this Policy.

**3. Types of Disputes.**

3.1 Matters involving past due assessments are not ordinarily considered disputes subject to this Policy. Rather, these are considered collection matters to be handled in accordance with the Policy for Collection of Unpaid Assessments. If any Owner claims that payment of assessments should be excused or offset by any alleged act or omission of the Association, such Owner's claim will be considered a dispute subject to the procedures in this Policy.

3.2 Enforcement actions regarding violations of the Association Documents, including proceedings seeking compliance by way of injunctive relief and/or proceedings to impose fines, shall be handled in accordance with the Policy for Enforcement of Covenants and Rules (Including Notice and Hearing Procedures and Schedule of Fines). If any Owner claims that any enforcement action should be abated because of any act or omission by the Association, such claim of abatement shall be considered a dispute subject to the procedures of this Policy.

3.3 All other disputes arising between the Association and any Owner shall be addressed as set forth in this Policy.

3.4 The types of disputes described above which are subject to this Policy are collectively referred to as "Disputes."

**4. Notice of Dispute.**

In the event of a Dispute between the Association and any Owner, either the Association or an Owner may provide written notice ("Notice") of the Dispute by U.S. Mail, first class postage prepaid to such address for the recipient shown by the public records. The Notice shall be considered effective three days following deposit in the mail. The Notice must contain specific information regarding the facts, circumstances and concerns giving rise to the Dispute.

**5. Resolution or Mediation of Dispute.**

5.1 Request for Mediation. Within thirty (30) days of receipt of the Notice, the Association and Owner shall make good faith efforts to discuss and resolve the Dispute amicably. If the parties are unable to reach an amicable resolution of the Dispute, either the Association or an Owner may request mediation by an independent, third-party mediator. A request for mediation ("Request") must be in writing and mailed to the Association or Owner by U.S. Mail, first class postage prepaid to such address for the recipient shown by the public records. The Request shall be considered effective three days following deposit in the mail. The parties shall make reasonable efforts to select a mediator and schedule mediation of the Dispute within 30 days after the effective date of the Request, or such longer time as the parties may agree upon in writing. The parties shall make reasonable efforts to use free or low cost mediation services to minimize expenses (i.e.: the Neighborhood Resources Office with the City of Fort Collins), if available. If the mediation does not occur within 30 days (or longer if so agreed in writing), or the parties are unable to settle the Dispute through mediation, the Association or Owner may pursue any other lawful remedy allowed by the Association Documents or Colorado law.

5.2 Mediation Fees and Costs. Fees and costs associated with the mediation, if applicable, including payment of fees to the mediator, shall be paid as follows:

5.2.1 The requesting party shall pay the mediator in advance for the first two hours of mediation.

5.2.2 If the mediation lasts more than two hours, the mediator's fees for time beyond the first two hours shall be divided equally between the Association and Owner(s), and paid at the conclusion of the mediation.

5.2.3 The Association and any participating Owner may be represented by their respective attorneys at the mediation. Each party shall pay their respective attorney fees associated with the mediation.

5.2.4 If an Owner requests mediation but fails to appear at the date and time scheduled for the mediation, the Owner shall pay all expenses of the Association related

to the mediation, including attorney fees and costs, and those expenses shall be assessed against the Owner as part of the Owner's Assessment.

5.3 Continuation of Hearing and Imposition of Fines. A Notice or Request by an Owner based on a matter where the Owner is asserting a defense or excuse shall not suspend or stay any fine hearing or imposition of fines in accordance with the Policy for Enforcement of Covenants and Rules (Including Notice and Hearing Procedures and Schedule of Fines). Any fines imposed prior to or after a Notice or Request is provided shall remain in place or continue to accrue (in the event of a continuing violation where a daily fine is imposed) pending mediation of the Dispute. Unless otherwise agreed by both parties, such fines shall remain legally collectable as Assessments in accordance with the Association Documents and Colorado law.

5.4 Continuation of Legal Proceedings. A lawsuit for the collection of Assessments or enforcement of the Association Documents may be commenced prior to or after receiving a Notice or Request, and such request shall not suspend or stay the lawsuit. The lawsuit shall continue forward, in addition to the mediation process described above, unless otherwise agreed upon by the parties in writing.

6. Variances.

The Board may from time to time vary from the requirements set forth in this Policy if the Board determines in its sole discretion that such variance is reasonable under the circumstances.

7. Amendment.

This Policy may be amended from time to time by the Board.

**CERTIFICATION**

The undersigned, being the duly elected and acting President or Secretary of the McClelland's Creek Homeowners Association, a Colorado nonprofit corporation ("Association") certifies that the foregoing Policy and Procedures for Addressing Disputes with Owners was approved by the vote of a majority of the Association's Directors at a meeting of the Association's Board of Directors held on MARCH 9<sup>th</sup>, 2014.

McClelland's Creek Homeowners Association, a  
Colorado nonprofit corporation

By: Chip Boock  
President