

**POLICY CONCERNING ENFORCEMENT OF COVENANTS AND RULES (INCLUDING NOTICE AND HEARING PROCEDURES AND THE SCHEDULE OF FINES)**  
**OF**  
**MOUNTAIN SIDE HOMEOWNERS' ASSOCIATION, INC.**  
**AND**  
**MOUNTAIN SIDE CONDOMINIUM ASSOCIATION**

*WHEREAS* Mountain Side Homeowners' Association, Inc. and Mountain Side Condominium Association, Colorado nonprofit corporations (collectively the "**Association**") are required to adopt a responsible governance policy concerning enforcement of covenants and rules (including notice and hearing procedures and the schedule of fines) pursuant to COLO. REV. STAT. § 38-33.3-209.5(1)(b)(IV).

*NOW THEREFORE*, the Association has adopted the following responsible governance policy as part of its rules and regulations:

1. Review of Suspected Violations. The Association's executive board will review all suspected violations of the governing documents coming to its attention and take appropriate action in its discretion. Before imposing a fine for any violation of the governing documents, the Association will provide notification and the opportunity for a hearing as described below. Nothing herein shall prevent the Association from taking enforcement action other than imposing a fine in any manner provided by law or in equity and at any time.
2. Persons Not Entitled to Participate in Proceedings as a Director. The following shall not be entitled to participate in any proceedings to review suspected violations as a director: (a) the Owner suspected of the violation; and (b) any other Owner having a direct personal or financial interest in the outcome. An Owner shall not be deemed to have a direct personal or financial interest in the outcome if the Owner will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association. Owners that are not entitled to participate in the proceedings may nonetheless be counted in determining the presence of a quorum at a meeting of the Association's executive board to consider the suspected violation, but any such Owner will be recused and the remaining directors may take action even if they are less than a quorum.
3. Mandatory Notice Before Fine. Before imposing a fine for any violation of the governing documents, a written complaint will be provided to the Owner generally describing the nature of the suspected violation, which need not be formal. The executive board shall give the Owner an opportunity for a hearing at a regular or special meeting of the executive board. The notice may be given by any method provided in the governing documents or otherwise reasonably calculated to provide the Owner with actual notice. The risk of nondelivery of notice is on the Owner.
4. Fair and Impartial Factfinding Process Before Fine. At any hearing to consider whether to impose a fine for a suspected violation of the governing documents, the executive board will employ a fair and impartial factfinding process concerning whether the alleged violation actually occurred and whether the subject Owner is the one who should be held responsible for the violation. As part of the factfinding process, the executive board may consider any evidence that it deems relevant and need not have "proof" that the violation occurred if it finds it more likely than not that it occurred on the basis of the available evidence. The decision of the Association's executive board will be final and binding. If it is determined that the Owner suspected of a violation should not be held responsible for the alleged violation, the Association shall not allocate to the Owner's account any of the Association's costs or attorney fees incurred in asserting or hearing the claim or impose any fines. The hearing process described in this policy will be treated as an arbitration under an arbitration agreement pursuant to the Colorado Uniform Arbitration Act, COLO. REV. STAT. § 13-22-201 *et. seq.*

5. Fine Schedule. The Association will determine whether any violation was a single occurrence or a continuing violation. In the case of a single occurrence, meaning a violation that occurred on a single day, the Association may levy a fine of up to \$200 for a first violation of the rules, \$400 for a second violation of the rules, and \$600 for any subsequent violation of the rules by the same Owner. The Owner need not violate the same provision of the rules in order to be liable for repeat violations. In the case of a continuing violation, meaning a violation that occurred on more than one day, the executive board may levy a fine of up to \$100 per day that such violation continued. For smoking violations only, the fine will be \$100 per occurrence. If an Owner does not request a hearing, or if the Owner is determined to be in violation at the hearing, fines will be imposed retroactively to the date notice of the violation was given unless otherwise determined by the Association.
6. Collection Provisions. Except as otherwise provided, all costs and attorney fees incurred by the Association to enforce the governing documents, and all imposed fines, shall be an Assessment subject to all collection powers of the Association.

**Certification:**

The foregoing policy was revised and adopted unanimously by both Boards at the Combined Boards of Directors meeting held on 5/16/15 and is so reflected in the minutes.

The  
**K**lug Law Firm, LLC