



82 East Coach Drive, Antonito, Colorado, 81120

DISPUTE RESOLUTION POLICY AND PROCEDURES

Policy Resolution 2017-3

Policy 2015-#15-1 is hereby revoked in its entirety. Pursuant to Colorado Revised Statute 38-33.3-124(1)(b) the Bear Creek Land Owners' Association ("Association") is required to adopt a policy concerning how to handle between Lot Owners (also referred to as "members") and the Association. This *Dispute Resolution Policy and Procedure* is intended to address the mediation of disputes arising between the members of the Association, as well as of disputes between the Association and Lot Owners.

1. Purpose

The Association believes that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disagreements. Further, relationships in our community may be damaged through use of adversarial means of resolving disputes. Accordingly, the Association encourages the use of alternative methods for resolving disputes. These procedures may, in the discretion of the Board of Directors, be enforced in the matter of all Rules and Regulations of Bear Creek, including by fines or imposition of other penalties allowed by law.

2. General Policy

- a. In the event of certain disputes between the Association and Lot Owners in situations that do not involve an imminent threat to the peace, health, or safety of the community, the Association and Lot Owner(s) involved in the dispute shall endeavor to work to resolve the dispute using the procedures set forth below prior to filing a complaint in court or otherwise initiating a legal proceeding. For each of the resolution processes, Colorado law governs the process and the parties do not waive their right to employ legal counsel at their own expense to assist them. However, no provision in this policy shall apply to:
 - i. the collection of the Association's Annual or Special Assessments as the term "assessments" is defined in C.S.S./38-33.3-316(1) and the Bylaws and Declaration of Covenants, Restrictions, Easements, Charges and Liens for Bear Creek, as amended, of the Association; or
 - ii. the enforcement of an Covenant, Rule or Regulation initiated under the Association's Policy & Procedure Regarding Enforcement of Covenants, Rules and Fines, 2017-4.
- b. Additionally, in the event of a dispute between Lot Owners, the Association recommends that Lot Owners attempt to resolve the dispute between them, employing mediation, if necessary. In the Event Lot Owners are unable to resolve their dispute, and the dispute is based on a violation of the Association's Governing Documents or Rules, the complaining Lot Owner may institute a written complaint with the Association under the Associations *Policy & Procedure on the Enforcement of Covenants, Rules, and Fines*.

3. Procedures for Resolving Disputes

- a. **Request for Resolution.** The Association or any Owner wishing to resolve a dispute ("Initiating Party") will provide each other Party to the dispute with a written request, ("Request for Resolution"). The Request for Resolution shall describe:
 - i. time and date that the Initiating Party may be available to communicate directly the nature of the dispute, including the date, time, location, persons involved, and the other party's or parties' role in the dispute; and

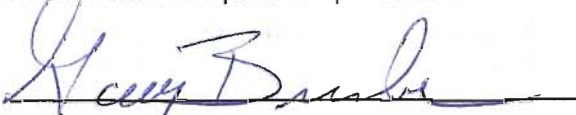
- ii. a request for what the Initiating party would like the other party or parties to do or not do to resolve the dispute; and
 - iii. the time and date that the Initiating Party may be available to communicate directly with the other party or parties to discuss in good faith ways to resolve the dispute.
- b. **Negotiation.** The parties are encouraged to make reasonable efforts to communicate directly with each other in an attempt to reach an agreement that serves the interests of all parties prior to initiating any other dispute resolution procedures. The parties are encouraged to find a trusted third party to attend meetings in a neutral location in order to prevent emotional exchanges which do not promote resolution.
- c. **Mediation.**
 - i. *Beginning the process.* Unless otherwise agreed, if the parties do not resolve the dispute within twenty (20) business days of the date of receipt of the "Request for Resolution," the parties will begin efforts to schedule a mediation session with a trained, neutral mediator to assist them in reaching their own solution. The mediator will facilitate the process but will not make decisions for the parties. The parties shall meet with the mediator within sixty (60) days of the date of receipt of the Request for Resolution.
 - ii. *Selecting a mediator.* Unless otherwise agreed, the parties shall select a mutually acceptable mediator within thirty (30) business days of the date of receipt of the Request for Resolution. Each party will provide the other(s) with the name of at least one acceptable mediator. The parties will work with the mediator to establish the date for the mediation meeting. The cost of mediation will be shared equally among the parties unless they agree otherwise.
 - iii. *Documentation of mediation.* The mediator shall provide the parties [and the Association if the Association is not a party] with documentation noting who attended the mediation and a copy of any written agreement evidencing a resolution of the dispute.
- d. **Arbitration.**
 - i. *Beginning the process.* If the parties do not resolve the dispute through mediation, any party may begin efforts to schedule a binding arbitration with a trained, neutral arbitrator who will decide the outcome of the dispute based on evidence and testimony provided by the parties. The parties must agree to accept the decision of the arbitrator as final and binding on them to the fullest extent permitted under the laws of Colorado. Judgment may be enforced in any court having jurisdiction. If the parties do not mutually agree to arbitrate a dispute, this policy shall not apply, unless the Declaration or Bylaws provide that members must arbitrate disputes between the members and the Association, in which case the Declaration or the Bylaws shall control.
 - ii. *Selecting an arbitrator.* The parties shall mutually agree on an arbitrator. Unless otherwise agreed, the parties shall select a mutually acceptable arbitrator within thirty (30) business days of the completion of mediation. Each party will provide the other(s) with the name of at least one acceptable arbitrator. If the parties cannot agree to an arbitrator, the parties shall each select two potential arbitrators, and the names of the four potential arbitrators shall be placed in a container and the name drawn from the container shall act as the arbitrator. The parties will work with the arbitrator to establish the date(s) for the arbitration, which shall be no later than ninety (90) days after the arbitrator is chosen.

- iii. *Arbitration Procedure.* The Arbitration shall comply with the provisions of the Colorado Uniform Arbitration Act.
 - iv. *Cost of Arbitration.* The cost of arbitration will be shared equally among the parties unless they agree otherwise, or unless the arbitrator finds that one or the other party is the substantially prevailing party, in which case they shall award the prevailing party their attorney's fees and costs, arbitration fees and costs, and all expenses incurred, and shall require the non-prevailing party to pay the same. In the event that one of the parties is the Board of Directors or the Association, and the Board of Directors or Association is not the party requesting arbitration, the member who is in dispute with the Board or the Association shall post a bond to cover all of the costs reasonably anticipated to be incurred by the Board or the Association to comply with this policy, as and for security of their payment of the fees and expenses incurred, to be payable in the event that the Board or the Association is deemed to be the substantially prevailing party.
 - v. *Arbitration Award.* The Arbitrator shall provide the parties [and the Association if the Association is not a party] with an award including findings of fact and conclusions. The Association shall inform the Members of the arbitration decision
- e. **Failure to comply with Agreement or Award.** If the parties resolve any dispute through mediation, or arbitration, and a party or parties fails to abide by the terms of the agreement or award, the other party may initiate legal proceedings to enforce the agreement or award without need to comply with the provisions of this Policy. Additionally, the party taking action to enforce the agreement or award shall, if that party prevails, be entitled to recover from the non-complying party all costs incurred in enforcing the agreement or Award, including without limitation, attorney fees, and costs.

SECRETARY'S CERTIFICATION: The undersigned Secretary of Bear Creek Landowners' Association, a Colorado non-profit corporation, certifies that the foregoing Policy Resolution was adopted by the Board of Directors of the Association, on October 15th, 2019, at a duly called and held meeting of the board on. In witness, the undersigned has subscribed his/her name.

Bear Creek Landowners Association

A Colorado non-profit corporation



Gary Burke, Secretary