

# **The Timbers at the Pinery Filing #22, Home Owners Association**

## **Code of Ethics**

### **1. Definitions.**

For the purpose of this Policy the terms listed below shall have the following meaning:

*Board member* means any person elected or appointed to an HOA board or committee by the board under authority of the Declarations and By-Laws, ordinance or State law (collectively referred to as *board*).

*Confidential or privileged information* means matters required by state or federal law or regulation to be kept confidential, attorney-client communications, and other matters which may be discussed in executive session.

*Member* means any board member or committee person.

### **2. Restrictions generally.**

(a) Members shall not disclose or use any confidential or privileged information in furtherance of any personal or pecuniary interest or to further the personal or pecuniary interest of any other person.

(b) Members shall not vote or render a final decision on an issue that directly affects a business or project in which the member either has a financial interest or is engaged as counsel, consultant, representative or agent.

(c) Members shall not solicit or accept any gift, compensation, reward, gratuity or any item of value which would tend to influence a reasonable person in the member's position to depart from the faithful and impartial discharge of their public duties; or which the member knows or which a reasonable person in a similar position should know is primarily for the purpose of influencing public action.

(d) Members shall not assist any person for a fee or other compensation in obtaining any contract, claim, license, permit, permission, approval or other economic benefit from the HOA.

(e) Members shall not hold a substantial financial interest in any business or enterprise which is a party to an HOA contract made by the Board or Committee upon which the member has been appointed or elected.

(f) Members shall not accept a fee, contingent fee or any other compensation for promoting or opposing passage of legislation, except the member's official compensation as provided by the HOA By-Laws and Declarations.

(g) Members shall not appear on behalf of any private person, business or entity before the Board upon which the member has been appointed or elected.

### **3. Appearances by members.**

(a) Members shall not appear on their own behalf before the Board or Committee upon which they are a member. If the member is affiliated with a person or organization appearing before the Board or Committee, it is conclusively presumed that there is a conflict of interest, and the member must comply with Section 6.

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(b) No member shall appear on behalf of another person concerning any matter before the Municipal Court, unless ordered to do so by subpoena of the Court.

(c) Nothing in this Section shall be construed as prohibiting members from addressing a Board or Committee of which they are not a member.

#### **4. Misuse of confidential information.**

A member shall not knowingly disclose confidential or privileged information to any third party, unless the Board authorizes the disclosure of the information. This Section is not intended to impair or limit public access to information that is otherwise publicly available.

#### **5. Participation in civil lawsuits.**

Members who are attorneys shall not represent or affiliate with law firms that represent persons in their transactions with the HOA, unless the Board permits otherwise.

#### **6. Disclosure of conflict of interest.**

(a) Members who have any personal or property interest, or any other kind of interest which may conflict or interfere with, influence or be perceived by the public as influencing the member's conduct shall prior to acting or voting disclose the nature of the conflict.

(b) The remaining members of the Board or Committee shall establish by a majority vote whether the interest does in fact constitute a conflict of interest. In deciding whether there is a conflict of interest, it shall consider, among other criteria, the following:

(1) Whether the conflict of interest impedes independence of judgment;

(2) The effect of the member's participation on the public confidence in the integrity of the governing body;

(3) Whether the member's participation is likely to have any significant effect on the ultimate disposition of the matter; and

(4) The member's fiduciary obligations to the HOA.

(c) If the majority concludes that there is no conflict, then the member may perform the official act involved. However, the member shall state for the record the nature of the interest at the time of performing the act. Such disclosure shall constitute an affirmative defense to a violation of this Policy.

#### **7. Disqualification from voting and influencing.**

(a) If a majority of the Board or Committee concludes there is a conflict, the member shall be disqualified from acting or voting on the matter or any related business. In addition, the disqualified member shall refrain from attempting to influence the decisions of other members of the Board or Committee in voting on the matter, and refrain from participating in any manner in the deliberations of the Board or Committee.

(b) The disqualification of the member shall not preclude the existence of a quorum, nor result in the loss of a quorum, of the Board or Committee. However, the disqualification of a member from voting on

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an issue that requires the affirmative vote of a specific number of votes shall automatically be reduced by the number of members disqualified, except for matters before the Board.

### **8. Enforcement.**

(a) The Board shall have primary responsibility for enforcement of this Policy. The Board shall have the power to investigate any complaint and to initiate any suit. Any person who believes a violation of this Policy has occurred may file a complaint with the Board, which shall promptly investigate such complaint. The Board may thereafter take such action as it shall deem to be appropriate.

(b) The Board may retain a special prosecutor to investigate or prosecute any violation of this Policy. In all cases the determination of the Board as to whether there has been a violation shall be final.

(c) The various provisions of this Policy are cumulative, and not exclusive, and shall not be construed to limit any administrative, civil or criminal action or proceeding which may be instituted by the HOA pursuant to Colorado statutes.

### **9. Hearing.**

Upon the sworn complaint of any Board member alleging facts which, if true, would constitute improper conduct under the provisions of this Policy, the Board shall conduct a public hearing in accordance with all of the requirements of due process of law, and, in written findings of fact and conclusions based thereon, make a determination concerning the propriety of the conduct alleged and shall take whatever action necessary to address the improper conduct.

### **10. Violations and penalties.**

Members who violate any of the provisions of this Policy shall be subject to the following penalties: In the case of a Board member, the Board may officially reprimand the Board or Committee member if a violation is established to a majority of the Board by clear and convincing evidence; or expel or remove the Board or Committee member if good cause is shown by clear and convincing evidence and two-thirds ( $\frac{2}{3}$ ) of the Board vote to expel or remove the member. The Board shall have good cause to expel or remove if a member knowingly violates this Policy.