



Sudden Valley Community Association

Policy: Appeals Procedure Policy

Date: October 12, 2023

Number: 2023.02

This Appeals policy was adopted via resolution on October 12, 2023.

History: Rescinded Policy: _____

Superseded/Replaced by Policy: _____

RESOLUTION

RULES OF PROCEDURE FOR APPEALS

WHEREAS, Article V, Section 6 Bylaws for the Sudden Valley Community Association (SVCA) provides for appeals by any individual who has received a notice of violation of the Restrictive Covenants, Bylaws or Rules and Regulations;

WHEREAS, appeals are heard by the Appeals Committee after which time the member may, if they so choose, appeal to the remaining Board members;

WHEREAS, Article V, Section 6(c) of the Bylaws provides that the Appeals Committee is responsible to prepare, update, publish and operate written guidelines and procedures for appeals;

WHEREAS, Article V, Section 1 (a) of the Bylaws requires the Board to approve any rules or procedures;

WHEREAS, the Board is ultimately responsible for the oversight of all committees and the approval of rules and procedures;

WHEREAS, the Appeals Committee has not previously adopted written rules of procedures for appeals;

WHEREAS, the Board finds that appeals procedures have been handled differently depending upon who serves as Chair of the Appeals Committee;

WHEREAS, the Board desires to strike a balance between the importance of providing a fair forum for appellants to dispute notices of violation while addressing practical and financial limitations;

WHEREAS, the Association is not a court of law and does not possess the expertise nor the resources to treat an appeal as a mini-trial; and

WHEREAS, the Board determines that for consistency, transparency and fairness, rules should be adopted for appeals heard by the Appeals Committee and for second-level appeals to the full Board.

NOW THEREFORE, be it resolved by the Board of Directors that the following Rules of Procedure for the Appeals Committee attached as Exhibit A and the Rules of Procedure for Appeals to the Remaining Board members attached as Exhibit B are hereby adopted.

ADOPTED this 12th day of October, 2023, at a regularly scheduled meeting of the Board of Directors at which a quorum was present.

Director

Director

Director

Director

Director

Director

Director

Director

Director

Director

EXHIBIT A

RULES OF PROCEDURE FOR

APPEALS HEARD BY THE APPEALS COMMITTEE

1. **Definitions.**

- a. Appellant. An individual who was issued a Notice of Violation and who requests an appeal hearing pursuant to Article V, Section 6 of the Bylaws.
- b. Chair. The Chair of the Appeals Committee. Pursuant to Article V, Section 6(a), the Vice President of the Board shall serve as Chair.
- c. Notice of Violation. A notice issued by SVCA which charges an individual with a violation of SVCA's governing documents and assesses a fine to such individual.

2. **Requests for Appeal Hearing.** Any Appellant who desires to appeal a Notice of Violation must submit via email and deliver a physical hardcopy of a request for an appeal to the General Manager within ten (10) business days after being issued a Notice of Violation. The request for an appeal must include the Appellant's e-mail address. If the Appellant does not timely file a request for a hearing with the General Manager, the violation and associated fine shall be final and binding.

3. **Legal Counsel.** Upon request of either the Appeals Chair, the President, or the General Manager, the Association's legal counsel will attend the Appeals Committee and will represent the Appeals Committee. The Appellant may also be represented by Legal Counsel provided that the Appellant provides at least five (5) business days advance written notice to the Chair, the President, and the General Manager that they will be represented at the Hearing by Legal Counsel.

4. **Preliminary Matters.**

- a. Notices and E-Mail Communication. To facilitate timely and efficient communication regarding the appeal, communications shall occur solely via electronic mail following the submission and delivery of the request for an appeal. If Appellant fails to include an email in the notice, SVCA will use Appellant's e-mail address that is on file with SVCA Administration. If Appellant has no e-mail address, SVCA will send all notices and materials set forth herein to the Appellant's mailing address; however, Appellant shall not be entitled to any extensions of timeframes set forth herein due to the time for mail to be delivered to Appellant. E-mails sent to SVCA shall be sent to the following e-mail address: Appeals@SuddenValley.com

- b. Recusal of Appeals Committee Members. Following the submission of a request for appeal, the General Manager shall promptly notify the Appeals Committee members. Any member of the Appeals Committee who believes that it is not possible for them to discharge their duties in a fair or impartial manner, shall then promptly notify the Chair that they intend to recuse themselves from the Hearing. The Chair shall then appoint another Board member to serve on the Appeals Committee for the duration of the appeal.
- c. Pre-Hearing Submissions. All pre-hearing submissions and communications to the Appeals Committee as specified below in subsections 3(d), 3(e) and 3(f) shall be provided simultaneously to all parties; this can be accomplished by sending the materials via email to appeals@suddenvalley.com AND to the email address provided by the appellant.
- d. Establishment of a Hearing Date. When an Appellant timely files an appeal, the General Manager will issue a Notice of Hearing to the Appellant. In most cases, SVCA will endeavor to schedule the Hearing within sixty (60) days of the date that the Appellant filed the appeal. The Notice of Hearing shall include the location, date, and time of the hearing. Within five (5) business days of receiving a Notice of Hearing, the Appellant may request the Hearing to be rescheduled for good cause shown; however, the decision to reschedule shall rest in the sole discretion of the Chair and shall be final.
- e. Submission of Evidence in Advance of Hearing. Not later than five (5) business days in advance of the Hearing, each Party may submit to the Appeals Committee any evidence and Affidavits or Declarations (i.e. sworn statements) in the form required by RCW 5.50.050 that they wish the Appeals Committee to consider. An affidavit template is attached hereto. Affidavits and Declarations shall contain sufficient facts to demonstrate that the person signing the Affidavit or Declaration (the "Affiant") has personal knowledge of the facts to which the Affiant is testifying. Any Affidavit or Declaration which is not timely submitted may, in the discretion of the Chair, be ignored or given reduced weight (i.e., have less influence on the Appeals Committee's decision compared to if the Affidavit or Declaration was timely submitted).
- f. Pre-Hearing Brief. Either Party may file a pre-hearing brief with the Appeals Committee provided that it is submitted to the Chair not less than five (5) business days in advance of the Hearing. A pre-hearing brief is not for the purpose of submitting evidence but, rather, for outlining the party's position.
- g. Request for Closed Hearing. As permitted by Article V, Section 6(b) of the Bylaws Appellant may request the hearing to be closed. Appellant should submit such requests to the General Manager no later than two days prior to the Hearing. Such requests shall be automatically granted.

5. Recording. The Hearing shall be audio recorded.
6. **Hearing Procedures**. At the Hearing, the following procedures shall be followed:
 - a. The Chair shall preside at the Hearing and shall rule on all evidentiary matters.
 - b. Before the Association commences its opening statement, the Chair will:
 - i. If the Appellant has requested the Hearing to be held in closed session, the Appeals Committee shall enter into closed session for the remainder of the Hearing.
 - ii. Allot a reasonable, and equal, amount of time to each side for the presentation its statements (refer to Section 5.f. for the order of presentation). The amount of time shall be in the Chair's discretion; provided, however, that the Chair may extend any of the time frames for good cause.
 - c. Default. In the event the Appellant fails to appear at the Hearing, the Appellant will be deemed to be in default, and the Appeals Committee shall immediately render a decision.
 - d. Spokesperson. Each party shall designate one spokesperson who shall present the party's case.
 - e. Witnesses. Witnesses will not be allowed to testify at the Hearing. Any statements by witnesses must be submitted by affidavit or declaration in accordance with Section 4e.
 - f. Order of Presentation.
 - i. The Association's spokesperson shall make an opening statement in support of its position.
 - ii. Following the Association's opening statement, the Appellant's spokesperson shall make a statement in support of their position.
 - iii. The Association will be allowed a rebuttal statement.
 - g. Evidentiary Rulings.
 - i. At the start of the hearing, either party may object to evidence submitted by the opposing party on the grounds of relevance, hearsay, opinion, cumulative, or other grounds as generally provided in the Washington State Court Rules of Evidence and which may be viewed by visiting

<https://www.courts.wa.gov/> . However, it is recognized that the Appeals Committee is not a court of law, and strict adherence to the Rules of Evidence is not expected or required. The Chair shall decide in the interest of justice whether evidence will be excluded (i.e., not be considered or influence the Appeals Committee's decision).

- ii. Any evidence which consists of personal attacks on an opposing party, is not factual in nature, and/or is not relevant to deciding whether the Appellant committed the alleged violation shall be rejected by the Chair and not considered.

7. **Decision.** The Appeals Committee may deliberate in closed session and shall issue its decision ("Decision") at the close of the Hearing unless there is good cause to show that additional time is needed. The Decision shall be in writing and signed by the Chair but need not contain detailed findings of fact or conclusions of law. If the Decision upholds the violation in whole or in part, the Appellant shall be notified of the right to appeal the decision of the Appeals Committee to the remaining Board members by 5:00 pm on the tenth (10) business day following the issuance of the decision; failure to file an appeal by such time period shall be deemed a waiver of the right to appeal.
8. **Transmission of Decision.** The General Manager will e-mail the Decision to each Party within forty-eight (48) hours after signing the Decision. The original copy of the Decision shall be dated and signed by the Chair and filed among the Minutes of the Board of Directors.

SUDDEN VALLEY COMMUNITY ASSOCIATION

APPEALS COMMITTEE

_____, Appellant

v.

SUDDEN VALLEY COMMUNITY ASSOCIATION,
Appellee

VIOLATION NO. _____

AFFIDAVIT IN SUPPORT OF

I, _____, declare, under penalty of perjury under the laws of the State of Washington, that the following is true and correct.

1.

DATED this _____ day of _____, 20____ at [CITY], [STATE].

EXHIBIT B

RULES OF PROCEDURE FOR

APPEALS HEARD BY THE REMAINING BOARD MEMBERS

1. Definitions.

- a. Appellant. An individual who was issued a notice of violation.
- b. Remaining Board Members. The members of the Board who did not serve on the Appeals Committee which heard the appeal from the Appellant.

2. Notices and E-Mail Communication. To facilitate timely and efficient communication regarding any appeal, all communications shall occur solely via electronic mail. Unless the Appellant provides written notice to the President of the Board of a different e-mail address where communications may be sent, e-mails will be sent to the e-mail address used by the Appeals Committee. All submissions made to the Remaining Board Members shall be made directly to the President of the Board.

3. Timeliness of Appeal. Any appeal to the Remaining Board Members shall be filed with the President of the Board no later than 5:00 p.m. on the tenth (10th) business day following issuance of the Decision by the Appeals Committee. If an appeal is untimely, it shall be deemed denied without further proceeding.

4. Manner of Review. Any timely appeal to the Remaining Board Members shall be based on the Record established at the Appeals Committee. No new evidence will be permitted except as provided hereinafter. As used herein, the Record established at the Appeals Committee shall consist of the following:

- a. The recording of the Appeals Committee Hearing.
- b. Any written submissions submitted by either party to the Appeals Committee.
- c. Any evidence and declarations or affidavits submitted by either party.
- d. Any evidence excluded by the Chair of the Appeals Committee.
- e. The Decision.

5. Appeal Process.

- a. Establishment of Date for Deliberations. When an Appellant timely files an appeal, the General Manager will issue a Notice to the Appellant setting forth the date that the appeal will be considered by the Remaining Board Members in closed session (the "Deliberations"). The Remaining Board Members may continue or reschedule the Deliberations as deemed necessary.

- b. Pre-Hearing Brief. Either Party may file a brief with the Remaining Board Members provided that it is submitted to the President not less than two (2) business days in advance of the Deliberations. A pre-hearing brief is not for the purpose of submitting evidence but, rather, for outlining the party's position.
 - c. Additional Evidence. Except as provided herein, evidence which was not introduced at the Appeals Committee will not be considered by the Remaining Board Members. If Appellant wants the Remaining Board Members to consider any evidence excluded by the Appeals Committee, the Appellant shall set forth a section in the pre-hearing brief explaining (i) the evidence that was excluded and (ii) why the Appeals Committee wrongly failed to consider the evidence. If the Remaining Board Members determine that the Appeals Committee wrongly excluded evidence and that such exclusion works an injustice on Appellant if not considered, the Remaining Board Members shall consider the evidence.
- 6. Deliberations and Decision.** Any Remaining Board Member who believes they cannot be impartial should recuse themselves from the Deliberations. The Remaining Board Members will review the Record, deliberate in closed session and issue a decision ("Final Decision") by majority vote of the Remaining Board Members at the conclusion of the Deliberations. The Final Decision shall be reduced to writing and signed by the President but need not contain detailed findings of fact or conclusions of law.
- 7. Transmission of Decision.** The President will e-mail the Final Decision to each Party within forty-eight (48) hours after signing the Final Decision. The original copy of the Final Decision shall be dated and signed by the President and filed among the Minutes of the Board of Directors.