
OFFICIAL MANAGING AGENT FOR THE ELISENHEIM HOME OWNERS ASSOCIATION

COMPLAINTS AND DISCIPLINARY CODE

1. ARTICLES AND RULES

The sections relevant to the lodging of complaints and the protocol surrounding disciplinary protocol etc. are referred to in the Articles of Association and the Rules. An extract from the Articles (**Appendix 1**) and the Rules (**Appendix 2**) follows at the end of this document.

2. DISCIPLINARY COMMITTEE

The disciplinary committee will consist of

1. A representative from Managing Agent
2. An EOA Trustee member that will be an elected member from the home owners
3. An independent volunteer from the home owners on the Estate that offered his/her services

The current disciplinary committee:

Name	Representative
Hennie Bruyns	EOA Trustee home owners
Andre Human	Managing Agent
To Be elected	Home owner

3. PROTOCOL FOR COMPLAINTS AND PROCEDURES

Complaints can only be lodged where residents transgress the Rules or the Articles of Association. Any matter that is a criminal offence or is a matter that is in the normal course of business dealt with by the Municipality or by the City Police should be reported to them.

In terms of the Articles and the Rules the Trustees have formulated a protocol for:

a. Lodging a Complaint

When an individual wish to lodge a complaint of any manner the following procedures should be followed:

- i. The complaint must be lodged with the Managing Agent
- ii. The complaint must be lodged in writing
- iii. The complaint must record the following:

1. Full details of the complainant:
2. Name & Surname
3. Erf Number that you represent
4. The cause of your complaint
5. The Date it occurred
6. The time that it occurred
7. Any special information, such as
 - a. Discussion with the culprit and the result of the discussion
 - b. Photos
 - c. Other Information

b. Address Details to Lodge Complaint

EON Property Services
 Fax No. (+264 61) 220085
 E-Mail: elisenheim@eonproperty.com

c. Managing Agent (MA) Action

- i. Once the MA receives a complaint:
 1. MA will prepare a warning letter in writing whereby the owner of the erf where the offence occurred will be informed
 2. Details of the complaint received
 3. The fine that is imposed
 4. The right to appeal the complaint (**Appendix 3**)
- ii. Procedures will be as follows:
 1. Complaints will be recorded in writing as:
 - a. 1st Warning
 - b. 2nd Warning
 - c. FINAL WARNING

d. Owners Action

- i. Owners will be responsible to ensure that the warnings are handed down to the offenders if the offender **is not** the owner.
 1. Each warning will be accompanied with a fine in terms of the fines determined by the Trustees from time to time
 2. Where the owner is not the resident on the erf where a Final Warning has been issued:
 - a. The managing agent, on behalf of the Trustees, will issue a letter to the owner to request that the lease agreement be terminated with the resident and that the resident vacate the Estate
- ii. Where the owner **is** the resident on the erf where a Final Warning has been issued and more complaints are received:
 1. The matter will be handed over for mediation
 2. The member will be informed in writing that the matter has been handed over for mediation.

3. The mediation process is fully described in Article 11.7.4 that deals with the appeal process against a complaint
4. In the event that the matter is referred to an arbitrator – the decision of the arbitrator will be final and binding on the parties

4. FINES / FEES IMPOSED

Fines / fees imposed are done in accordance with the FINES / FEES policy as determined by the Trustees from time to time.

The latest FINES /FEES charges are attached as **Appendix 4**

5. ISSUE OF FINES / FEES

Once a complaint is received and a complaint letter is issued:

- The MA issues an invoice to the Erf that a complaint was lodged against
- The Invoice is charged against the levy account of the Erf against whom the complaint was lodged

6. LIABILITY FOR FINES / FEES

- a. The owner is responsible for the actions of their tenants and/or building contractor
- b. The owner is responsible to recover the fines / fees from the tenants and/or building contractor where necessary and neither the MA or the EOA has a responsibility to recover the fines / fees from the tenant and/or building contractor

7. PAYMENTS OF FINES

- a. The invoice for a fine / fee is dated for the 1st of the following month to coincide with the next levy payment
- b. The fine / fee becomes payable with the levy payment due on the 1st of the month

8. INTEREST

Fines / fees that remain outstanding will attract interest as per the Articles of Association Article 6.14

6.14 Members shall be liable for and shall pay interest on any debt due to the ASSOCIATION (including but not limited to any arrear levies of whatsoever nature), such interest to be calculated monthly in advance at the Prime Rate plus 2 (two percent) per month from the due date, to the date of actual payment, both days included.

9. APPENDIX 1
Articles of Association

ARTICLES OF ASSOCIATION

Article 5.28

“any complaints shall be addressed in writing to management”

Article 11.7 deals with the “Disciplinary Code” for Elisenheim.

11.7 *The Disciplinary Code:*

11.7.1 *the Trustees shall be responsible for the enforcement of all Rules including the Disciplinary Code;*

11.7.2 *the Trustees shall be entitled to impose upon Members fines in respect of non-compliance with or a breach of the Rules and/or with respect to a breach of the obligations imposed upon Members in terms of these Articles.*

11.7.3 *the Disciplinary Code shall contain:*

11.7.3.1 *a protocol relating to warnings providing for the delivery of a written notice (demand) requiring offenders to remedy any stipulated breach of these Articles and/or Rules to be remedied within a reasonable period and failing which, a prescribed process of enforcement of sanctions (including the imposition of a fine/s shall be implemented);*

11.7.3.2 *a schedule indicating the sanctions and specifying the fines or other penalties which shall be imposed or levied in the event of an unremedied breach, as specified, or otherwise to be imposed in the discretion of the Disciplinary Committee;*

11.7.4 *a process shall be prescribed whereby a Member who disputes that he has committed a breach of any obligation in terms of these Articles and/or the Rules, shall be entitled:*

11.7.4.1 *to deliver a submission, in writing, to the Disciplinary Committee within a period of not more than 7 (seven) days from the date of expiry of the period of demand contained in the notice delivered to the affected Member;*

11.7.4.2 *providing for the convening of a sitting of the Disciplinary Committee (which shall comprise of not less than 3 (three) Members, one of whom shall be a Trustee (who shall function as the Chairperson of such Disciplinary Committee);*

11.7.4.3 *the Disciplinary Committee proceedings shall comply with the principles of natural justice;*

11.7.4.4 *the decision of the Disciplinary Committee shall be binding upon the ASSOCIATION and the affected Member, who shall, if he is aggrieved by the decision of the Disciplinary Committee (and/or the sanction or fine*

- imposed) be entitled, within 10 (ten) days of receipt of delivery of written notification of the Disciplinary Committee's decision, to require same to be reviewed by an arbitrator (who shall be an independent attorney or advocate of not less than 10 years standing, whose identity shall mutually be agreed between the Disciplinary Committee and the affected Member, and failing agreement appointed by the President for the time-being of the Law Society of Namibia;*
- 11.7.4.5 *such arbitration shall be dealt with in an informal manner in accordance with the format prescribed by the arbitrator;*
- 11.7.4.6 *the arbitrator shall be entitled to make an award with respect to the costs of the arbitration;*
- 11.7.4.7 *the arbitrator shall act as an expert and his decision shall be final and binding upon the parties;*
- 11.7.4.8 *either party to the dispute (the ASSOCIATION) or the affected Member) shall be entitled to make the arbitrator's award an order of a competent Court;*
- 11.7.4.9 *notwithstanding the convening of a meeting of the Disciplinary Committee, in circumstances where the affected Member has delivered a written submission and/or the submission to arbitration (as hereinabove provided), neither the ASSOCIATION nor the affected Member shall be prevented from seeking any urgent or interim relief from a competent Court.*
- 11.8 *The provisions of this Article 11 shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of the written notice referred to in Article 11.7.3.*
- 11.9 *Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of these Articles and/or Rules despite written notice, it shall be competent for the ASSOCIATION to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member (and which amounts shall comprise of a debt).*
- 11.10 *The Member remains responsible and liable for any breaches committed by or any damages caused by a family member, employee, agent, contractor, sub-contractor, visitor or guest (including any customer, client or patient) whilst in or about the Township.*
- 11.11 *The Trustees shall ensure that management delivers or otherwise publicises the Rules in a manner which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of all Rules.*
- 11.12 *Any fines levied against the Members shall be payable together with the levies due at the commencement of the month following upon the month during which such fine was imposed.*

APPENDIX 2

Rules

RULES

Rule 3.1

3.1.2 The Trustees have the right to fine transgressors where any of the Rules have been broken or infringed upon. Such fines shall form part of the levy and shall become due and payable on the due date of payment of the levy.

3.1.3 In the event of a continuing offence, any person subject to these Rules who contravenes or fails to comply with any of their provisions, or any condition or direction given in terms thereof, shall be deemed to be guilty of a separate offence for every 24 hours or part thereof during which such offence continues and shall be liable in respect of each such separate offence.

3.1.4 The OA reserves the right to publish the name and erf or unit number of Members who have defaulted on their levies.

APPENDIX 3
Appeal procedure against complaint

APPEAL PROCEDURE AGAINST COMPLAINT

The appeal process against a complaint is dealt with in the Articles of Association, Article 11.7.4 onwards. For ease of reference we refer you to the following:

11.7.4 a process shall be prescribed whereby a Member who disputes that he has committed a breach of any obligation in terms of these Articles and/or the Rules, shall be entitled:

- 11.7.4.1 to deliver a submission, in writing, to the Disciplinary Committee within a period of not more than 7 (seven) days from the date of expiry of the period of demand contained in the notice delivered to the affected Member;
- 11.7.4.2 providing for the convening of a sitting of the Disciplinary Committee (which shall comprise of not less than 3 (three) Members, one of whom shall be a Trustee (who shall function as the Chairperson of such Disciplinary Committee);
- 11.7.4.3 the Disciplinary Committee proceedings shall comply with the principles of natural justice;
- 11.7.4.4 the decision of the Disciplinary Committee shall be binding upon the ASSOCIATION and the affected Member, who shall, if he is aggrieved by the decision of the Disciplinary Committee (and/or the sanction or fine imposed) be entitled, within 10 (ten) days of receipt of delivery of written notification of the Disciplinary Committee's decision, to require same to be reviewed by an arbitrator (who shall be an independent attorney or advocate of not less than 10 years standing, whose identity shall mutually be agreed between the Disciplinary Committee and the affected Member, and failing agreement appointed by the President for the time-being of the Law Society of Namibia;
- 11.7.4.5 such arbitration shall be dealt with in an informal manner in accordance with the format prescribed by the arbitrator;
- 11.7.4.6 the arbitrator shall be entitled to make an award with respect to the costs of the arbitration;
- 11.7.4.7 the arbitrator shall act as an expert and his decision shall be final and binding upon the parties;

- 11.7.4.8 either party to the dispute (the ASSOCIATION) or the affected Member) shall be entitled to make the arbitrator's award an order of a competent Court;
- 11.7.4.9 notwithstanding the convening of a meeting of the Disciplinary Committee, in circumstances where the affected Member has delivered a written submission and/or the submission to arbitration (as hereinabove provided), neither the ASSOCIATION nor the affected Member shall be prevented from seeking any urgent or interim relief from a competent Court.
- 11.8 The provisions of this Article 11 shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of the written notice referred to in Article 11.7.3.
- 11.9 Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of these Articles and/or Rules despite written notice, it shall be competent for the ASSOCIATION to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member (and which amounts shall comprise of a debt).
- 11.10 The Member remains responsible and liable for any breaches committed by or any damages caused by a family member, employee, agent, contractor, sub-contractor, visitor or guest (including any customer, client or patient) whilst in or about the Township.
- 11.11 The Trustees shall ensure that management delivers or otherwise publicises the Rules in a manner which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of all Rules.
- 11.12 Any fines levied against the Members shall be payable together with the levies due at the commencement of the month following upon the month during which such fine was imposed.

APPENDIX 4
Fines / Fees charges

FINES / FEES POLICY

DESCRIPTION	FINE / FEE = N\$
Disciplinary Letters	
1 st Warning	200-00
2 nd Warning	250-00
FINAL WARNING	300-00
Creating a public nuisance – Noise generated by music, electronic instruments, partying and the activities of residents and their employees	500-00
Treating the security and other personnel in an abusive manner	500-00
Driving in parks and on pavements with any type of engine powered vehicle	1,000-00
Noisy vehicles – Use of vehicle and motor cycles with noisy exhaust systems	500-00
Pets roaming the streets (dogs not on a leash).	500-00
Illegal dumping by residents and contractor's – No rubble, refuse or building material shall be dumped or discarded in any public area.	2,000-00
Littering (by any person on the Estate).	500-00
Parking and/or storing trailers, boats, caravans, equipment, vehicle parts etc. in view from the street and/or golf course.	
Burning of rubbish on the Estate.	1,000-00
Illegal parking – Parking on sidewalks and in the street opposite traffic islands	500-00
Driving on the estate outside designated areas with a vehicle weighing in excess of 10 tons without the permission of the Home Owners Association All vehicles must be single axle. (Plus paying for any damages)	5,000-00
Other transgressions in terms of the Estate rules by Contractors not stated in the above penalty schedule. This is per incident.	500-00
Not Complying to Architectural Guidelines, per item plus the remedial process	1,000-00

ENVIRONMENT MANAGEMENT

5.5. PROCEDURES CORRECTING NON-COMPLIANCE

The Contractor shall comply with the environmental specifications and requirements as described in the ESMP on an ongoing basis and any failure on his part to do so will entitle the ESM to impose a penalty.

In the event of non-compliance the following recommended process shall be followed:

- The ESM shall issue a notice of non-compliance to the Contractor, stating the nature and magnitude of the contravention. A copy shall be provided to the ECO.
- The Contractor shall act to correct the non-conformance within 24 hours of receipt of the notice, or within a period that may be specified within the notice.
- The Contractor shall provide the ESM with a written statement describing the actions to be taken to discontinue the non-conformance, the actions taken to mitigate its effects and the expected results of the actions. A copy shall be provided to the ECO.
- In the case of the Contractor failing to remedy the situation within the predetermined timeframe, the ESM shall impose a monetary penalty based on the conditions of contract.

In the case of the Contractor being unable to remedy the situation due to permanent environmental damage already incurred, the ESM shall impose a monetary penalty based on the conditions of contract.

- In the case of non-compliance giving rise to physical environmental damage or destruction, the RE shall be entitled to undertake or to cause to be undertaken such remedial works as may be required to make good such damage and to recover from the Contractor the full costs incurred in doing so.
- In the event of a dispute, difference of opinion etc., between any parties in regard to or arising out of interpretation of the conditions of the ESMP, disagreement regarding the implementation or method of implementation of conditions of the ESMP etc., any party shall be entitled to require that the issue be referred to independent specialists for determination.
- The ESM shall at all times have the right to stop work and/or certain activities on site in the case of ESMP non-compliance or failure to implement remediation measures.

5.6. FINES AND PENALTIES

The following fines and penalties are in place for transgressions listed below. It will be issued after the procedure in **Section 5.5** has been duly followed and only in severe cases and after repeated non-compliance. The ESM shall be the judge as to what constitutes a transgression in terms of this document.

5.6.1. FINES

Fines may be issued per incident at the discretion of the ESM. Such fines will be issued in addition to any remedial costs incurred as a result of non-compliance with the ESMP. The ESM will inform the Contractor of the contravention and the amount of the fine, and will deduct the amount from monies due under the Contract.

Fines for the activities detailed below, will be imposed by the ESM on the Contractor and/or his Subcontractors.

DESCRIPTION	FINE / FEE = N\$
Any persons, vehicles, equipment, etc. related to the Contractors operations within the designated boundaries of a “no-go” area.	2,000-00
Any vehicle guilty of reckless driving on and in the vicinity of the site, including excessive speeds.	1,000-00
Any vehicle being driven and items or materials being parked or stored outside the demarcated boundaries of the site.	2,000-00
Persons repeatedly walking outside the demarcated walking area on the site.	1,000-00
Persistent and un-repaired spilling of hazardous materials and materials causing pollution.	3,000-00
Persistent littering on site	500-00
Individuals repeatedly not making use of the designated toilet facilities.	200-00
Contractors that do not provide toilet facilities for workers	2000-00
Disposal of waste in a manner other than what was agreed upon on site or the prescribed method in the waste management plan section.	5,000-00
Deliberate lighting of illegal fires on site	2,000-00
Felling of trees or collection of live wood	2,000-00
Spilling and or wasting of water; Taps left open to run unattended. Water connections leaking water.	2000-00

For each subsequent similar offence the fine may, at the discretion of the ESM, be doubled in value to a maximum value of N\$10,000.

5.6.2. PENALTIES

Where the Contractor inflicts non-repairable damage upon the environment or fails to comply with any of the environmental specifications, he/she shall be liable to pay a penalty fine over and above any other contractual consequence.

The Contractor is deemed NOT to have complied with this Specification if:

- within the boundaries of the site, site extensions and haul/ access roads there is evidence of contravention of the Specification;
- environmental damage due to negligence;
- Safety of contractor personnel and public being compromised due to negligence;
- the Contractor fails to comply with corrective or other instructions issued by the Engineer within a specific time; the Contractor fails to respond adequately to complaints from the public; and
- Payment of any fines in terms of the contract shall not absolve the offender from being liable from prosecution in terms of any law.

The ESM will be responsible for a Report on the non-repairable damage and / or non-compliance with visual and other evidence as well as issuing the penalty to the contractor with the report attached. A copy must be handed to the ECO.

The following penalties are suggested for transgressions:

<i>Oil spills:</i>	A penalty equivalent in value to the cost of clean-up operation plus N\$1,000.
<i>Damage to sensitive environment:</i>	A penalty equivalent in value to the cost of restoration operation plus 20%.
<i>Impact on birds and wildlife:</i>	A penalty to a maximum of N\$2,000 for damages to any natural occurring birds and/or wildlife.
<i>Damage to indigenous trees:</i>	A penalty to a maximum of N\$2, 000 for unnecessary damage to any indigenous trees.
<i>Felling of indigenous trees:</i>	A penalty to a maximum of N\$5, 000 for felling of any indigenous trees with a diameter of 100 mm or more
<i>Accident due to safety negligence:</i>	A penalty to a maximum of N\$50,000 for injuries to personnel or public.