
OFFICIAL MANAGING AGENT FOR THE ELISENHEIM HOME OWNERS ASSOCIATION

ANNEXURE "D" -1- CIRCULAR NO X

THE 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.

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
PHILLIE VAN DER MERWE	ELISENHEIM OWNERS ASSOCIATION
HUGO VAN NIEKERK	ELISENHEIM OWNERS ASSOCIATION
ADRIAN MULLER	ELISENHEIM OWNERS ASSOCIATION
SCHALK KRUGER (Snr.)	MANAGING AGENT

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

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.

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 publicize 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.*

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.

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.

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.

ENVIRONMENTAL MANAGEMENT NON COMPLIANCE

SEPTEMBER 2015 // AMENDED AUGUST 2017 & FEBRUARY 2018

FINE NO: _____ ***DATE:*** _____

NAME OF HOMEOWNER: ERF NO: _____

NAME OF DEVELOPER: ERF NO: _____

NAME OF BUILDING CONTRACTOR: ERF NO: _____

NAME OF SUB CONTRACTOR: ERF NO: _____

NAME OF INDIVIDUAL: ERF NO: _____

You, your Building Contractor, Employee or Sub-Contractor are in contravention of one or more of the Environmental Compliance Rules marked below. You are hereby fined the sum of one or more of the rules marked below.

1. Vehicles parked or driven, persons and equipment related to Contractors operations within the "no-go", green areas, Public Open Spaces or outside demarcated boundaries;
 - a. N\$2 000.00: _____
2. Any vehicle parked in the driving lane, driving recklessly or more than 40km/h;

- a. N\$1 000.00: _____
3. Any material delivered, left and or stored outside the demarcated boundaries i.e. in the street or on another Erf or on a Public Open space without prior arrangement;
 - a. N\$2 000.00: _____
4. Workmen walking or repeatedly walking outside the Erf boundaries of the construction site or outside demarcated walking areas;
 - a. N\$1 000.00: _____
5. Non contained and or non cleaning of spilled hazardous materials causing pollution;
 - a. N\$3 000.00: _____
6. Littering on site as well as untidy "junk yard" look, type of operations;
 - a. N\$500.00: _____
7. Not removing soft and hard rubble at least once a week causing a pile up of same causing pollution of the environment:
 - a. N\$1 000.00: _____
8. Disposal of waste in a manner other than what was agreed upon on site or the prescribed method in the waste management plan **including** dumping of waste on neighboring Erven, Public Open Spaces or anywhere within the greater Elisenheim area;
 - a. N\$5 000.00: _____
9. Building operations without a functioning toilet on site **PRIOR TO COMMENCEMENT OF BUILDING OPERATIONS;**
 - a. Building operations will be stopped until a functioning toilet had been erected;
 - b. N\$2 000.00: _____
10. Contractors whose employees do not use the designated toilet facilities;
 - a. N\$1 000.00: _____
11. Individual employees who do not use the designated toilet facilities;
 - a. N\$200.00: _____
12. Deliberate lighting of illegal fires on site;
 - a. N\$2 000.00: _____
13. Felling of indigenous trees and or collection of wood;
 - a. N\$2 000.00: _____
14. Spilling and or wasting of water; Taps left open to run unattended. Water connections leaking water;
 - a. N\$2 000.00: _____
15. Selling of food on the estate;
 - a. N\$500.00: _____

Procedures and process correcting non-compliance

All Homeowners and their Contractors shall comply with the environmental specifications and requirements.

Any failure on his part to do so will entitle the ESTATE MANAGER to impose a penalty. Penalties are not only subject to and limited to the rules set out above. ***All Homeowners had been pre-warned of the rules when they signed for their purchase contracts and the Office of the Estate Manager do not have to issue a warning for a first transgression to comply before a fine is given.***

- The ESTATE MANAGER shall in its own discretion issue a fine.
- The Homeowner/Contractor shall have 24 hours or another specified time to correct the non-conformance.
- Homeowners/Contractors requested to comply shall provide the ESTATE MANAGER with a written statement describing the actions to correct the non-conformance as well the expected results of the actions. E.g. where building rubble was dumped on Public Open Spaces and the vegetation had been destroyed as a result or where protected trees had been damaged or removed.
- Failing to remedy the situation within the predetermined timeframe or in the case of permanent environmental damage the ESTATE MANAGER shall impose a monetary penalty based on the extent of the damage caused..
- The ESTATE MANAGER shall in the case of a Homeowner/Contractor not being able to remedy environmental damage or destruction, have the right to undertake such remedial works as may be required to make good the damage as well as to recover from the Homeowner/Contractor the full costs incurred in doing so.
- *All fines will be levied against the Homeowner's or Developer's levy account. It will be the responsibility of the Homeowner or Developer to subtract the penalties from their Contractors. Homeowners will be informed if and when Contractors are given warnings and or fines.*

- Any party denying the transgression of the rule that a fine was given for, will have to prove that. Any party shall have the right to refer any dispute to independent specialists for determination. ***Referring a matter for a specialist opinion will not automatically mean that the building operations can continue and this will be determined on merit.***
- ***The ESTATE MANAGEMENT shall at all times have the right to stop work and/or certain activities on site as well as entrance to the site in the case of EMP non-compliance or failure to implement remedial measures!***

You are hereby given () work days from receipt of this fine to remedy the marked rules.

ESTATE MANAGEMENT: _____
081 143 9966 // 081 127 8755

DATE: _____

HOMEOWNER: _____

DEVELOPER: _____

BUILDING CONTRACTOR: _____

SUB CONTRACTOR: _____

INDIVIDUAL: _____

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
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	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.