

**RESOLUTION NO. 172**

RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE PALOS VERDES HOMES ASSOCIATION  
ADOPTING GUIDELINES AND ESTABLISHING PROCEDURES  
FOR IMPLEMENTING THE ASSOCIATION'S  
AUTHORITY TO MAINTAIN VIEWS, AND A POLICY THAT ENFORCEMENT OF THE  
ASSOCIATION'S AUTHORITY SHALL BE DONE BY INDIVIDUAL MEMBERS NOT PVHA

WHEREAS, ARTICLE V, SECTION 7 OF THE DECLARATION OF ESTABLISHMENT OF BASIC PROTECTIVE Restrictions, Conditions, Covenants, Reservations, Liens and Charges and Certain Local Restrictions (Hereinafter referred to as "Restrictions") of Palos Verdes Estates and portions of Miraleste provided in part:

"Representatives of the Homes Association... shall have the right at any time to enter on or upon any property for the purpose of cutting back trees or other plantings which may grow up to a greater height than in the opinion of the Homes Association is warranted to maintain the view and protect adjoining property."

WHEREAS, The Board of Directors (the "Board") of the Palos Verdes Homes Association (the "Association" or "PVHA") adopted Resolution No. 146 in November 2000, Resolution 150 in November 2002, Resolution 156 in May 2005, Resolution 159 in July 2006 Resolution 165 in March 2010, and Resolution 169 in March 2013 to establish procedures for its members to utilize the authority of the Association to correct view impairments created by trees or other plantings;

WHEREAS, the Association has had experience with Resolution No. 146, No. 150, No. 156 No. 159, No. 165; and No. 169;

WHEREAS, PVHA interprets "view" to mean the view that existed when the Restrictions were filed;

WHEREAS, it is the Association's policy to encourage resolution of view impairment issues between parties who are directly involved, whenever possible;

WHEREAS, in the course of resolution the parties frequently agree to the removal of trees or other plantings; removal requires the agreement of parties. The Association does not compel removal of trees or plantings without such agreement;

WHEREAS, the Association wishes to adopt written procedures regarding its view impairment authority so that members may better understand the procedures and remedies available pursuant to Article V, Section 7; and with the hope that this understanding will further promote settlement by the parties;

WHEREAS, the Association wishes to establish procedures for its members to utilize the authority of the Association to correct view impairments, which cannot be resolved between the parties;

WHEREAS, the Association has retained the services of a professional arbitrator;

WHEREAS, *California Civil Code section 5975, entitled Enforcement of Covenants and Restrictions in Declaration* states at Section (a) "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association or both."

WHEREAS, the Declaration of Establishment of the Basic Protective Restrictions does not state that the Association has the exclusive enforcement rights;

WHEREAS, enforcement of a PVHA decision to remove a view obstruction generally benefits only one member;

WHEREAS, PVHA has been advised by its attorney that there is a legal question as to whether PVHA can obtain absolute indemnification from a member seeking to have PVHA enforce a decision to remove a view obstruction;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following procedure for the processing of all view impairment applications submitted to the Association, and a policy that enforcement of view restoration decisions of PVHA shall be done by individual members not PVHA.

The following are general policies of the Association:

1. The applicant shall submit information on an application form provided by the Association.
2. The applicant shall document efforts to resolve the obstruction issue with his neighbor including copies of all correspondence between the parties.
3. The applicant shall pay an administrative fee to the Association at the time an application is submitted.
4. The applicant shall execute a financial responsibility agreement with the Association at the time an application is submitted. The applicant must agree to pay the entire cost of the initial trimming or removal of trees or shrubs; and agree to reimburse the Association for its fees and expenses if expert advice is needed to make a decision or if Alternative Dispute Resolution or litigation is necessary to enforce a decision.
5. The Association will send a Notice to the owner of the property where the vegetation is located, ("affected property").
6. The Notice will inform the owner of the affected property of the action requested in the application; and an arbitrator will be appointed.
7. The Association will appoint an arbitrator to make a decision. The arbitrator may make reasonable efforts to mediate and reach an agreement between the applicant and the owner of the affected property; however, if the parties cannot agree, his primary responsibility is to make a decision.
8. The arbitration is part of the PVHA process, and is not conducted pursuant to the agreement of the parties, and therefore the provisions of *California Code of Civil Procedure* Sec. 1281-1288 do not apply.
9. The arbitrator shall make a decision and provide a written report to the Board.
10. A copy of the decision shall be mailed to the applicant and owner of the affected property.
11. The decision shall constitute the decision of the PVHA unless either party appeals the decision to the Board and pays the appeal fee within thirty (30) calendar days of the mailing of the decision.
12. It is the policy of PVHA to implement decisions without undue delay. If a decision is appealed to the board, PVHA will put the appeal on a Board agenda, and both parties will be notified of the date of the Board hearing of the appeal. The appealing party must appear or give PVHA 10 days notice of a request that the appeal be continued until the next Board meeting.

No more than one continuance will be granted. If the appealing member fails to appear at the continued hearing, the appeal will be denied.

13. The owner of the affected property shall obtain two bids for the work necessary to implement any decision within thirty (30) calendar days from the date the decision becomes final. If the owner fails to obtain bids within thirty (30) calendar days from the date the decision becomes final, the Applicant shall have the right to contract to have the trimming done. The Applicant shall give the owner at least 14 days notice of the date the trimming work is scheduled to be performed. All bids must be from responsible, state licensed bidders who carry a comprehensive general liability insurance policy with a combined single limit of not less than \$500,000.00 per occurrence. No bidder may disclaim liability for the work set forth in its bid.
14. The applicant shall choose the trimmer and arrange payment with the tree trimmers prior to any work. If there is a difference of opinion concerning the bids, the Arbitrator shall make a reasonable effort to reach an agreement. If agreement cannot be reached, the Arbitrator will select the bidder to perform the work.
15. PVHA will notify the applicant and the affected property owner of the date and time the necessary work

will be performed. The Association shall make a reasonable effort to have the work completed within thirty (30) calendar days.

16. Following completion of removal/replacement or trimming of view impairments at the applicant's expense, the cost of work to maintain the trees and plantings below the maximum height established by the Arbitrator's decision shall be at the cost and expense of the owner of the affected property. Trimming shall occur at least annually.
17. If Alternate Dispute Resolution or legal action is necessary to enforce the PVHA decision, the applicant or the owner shall have the right and responsibility to pursue whatever means they deem appropriate.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_.

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Gabriella Holt  
President  
Palos Verdes Homes Association

Attest:

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Susan M. Van Every  
Executive Secretary  
Palos Verdes Homes Association