



## **CALIFORNIA ASSOCIATION OF COMMUNITY MANAGERS, INC.**

### **DISCIPLINARY AND APPEALS PROCEDURES**

1. **INTRODUCTION.** The principal purposes of the CACM discipline system are to provide a speedy and accessible means to address complaints by homeowners' associations, against CACM manager members, and to enhance the competence of these CACM members, through use of appropriate consequences, including education and training. These procedures apply to all CACM members.
2. **CONFIDENTIALITY.** All proceedings under these Disciplinary and Appeals Procedures shall be absolutely confidential except to the extent that the consequences imposed requires publication. Failure of confidentiality shall not invalidate any decision.
3. **EXTENSIONS.** Any deadline or date in these procedures may be extended by the PSC Chair for good cause.
4. **COMPLAINT.**
  - 4.1 An ethics proceeding is initiated by filing a Complaint on Form 1A or Form 1B with CACM. A Complaint shall be deemed filed on the date that it is received by CACM at its main office, along with the required filing fee established by CACM.
  - 4.2 A Complaint may be filed against a CACM manager member either by a CID owners' association (Form 1A) or by another manager member (Form 1B). A Complaint submitted by a CID owners' association shall be accompanied by a written resolution of the Complainant's Board of Directors, signed by a majority of the Board, authorizing its submission.
  - 4.3 Upon receipt of the Complaint, the President shall review the complaint to insure it is valid and, if so, assign it a matter number, and forward it to the PSC Chair. If not a valid complaint, the President will advise the complainant and the Chair of the PSC of the reason why it was not accepted as a valid complaint.
5. **LIMITATION PERIOD.** A Complaint shall be filed within (120) one hundred and twenty days after the Complainant discovers, or through the use of reasonable diligence should have discovered, the facts constituting the alleged Unethical Conduct.

6. ABSTENTION. CACM shall abstain from the following matters: (a) matters in which there is a pending civil action between the Parties involving the same or similar issues; (b) disputes between CACM business members; (c) disputes between CACM business members and members of CACM; (d) employer-employee disputes; (e) disputes in which the Respondent has been accused by a governmental entity of violation of a government law, statute or regulation. This shall not preclude CACM from taking appropriate disciplinary action against the Respondent after the matter brought by the government has been resolved.
7. PRELIMINARY DETERMINATION BY PSC. If the preliminary determination by the PSC is that the Complaint does not allege Unethical Conduct, lies outside the jurisdiction or authority of the PSC, or is unworthy of further consideration, the matter may be dismissed by the PSC by Majority Vote.
8. NOTICE TO RESPONDENT; RESPONDENT'S RESPONSE.
  - 8.1 If the PSC decides to proceed with the matter, the PSC shall notify the Respondent that a Complaint has been filed, send a copy of the Complaint to the Respondent, and ask Respondent to file a Response.
  - 8.2 The Respondent shall have (30) Thirty days from receipt of the notification that a Complaint has been filed to file a Response.
  - 8.3 The Response shall contain a statement of all facts which support Respondent's defenses to the Complaint and citation to all relevant portions of the Code of Professional Ethics and Standards of Practice. Copies of all relevant documents shall be attached. The Response shall be signed by Respondent.
  - 8.4 If a Response is not received from the Respondent, it may be assumed that the Respondent does not intend to contest the matter, and the PSC may immediately decide the case.
9. MEDIATION. After the PSC has decided that the matter should proceed, the matter shall be mediated before the Chair of the PSC or a member of the PSC appointed by the Chair of the PSC, unless a conflict exists.
10. APPOINTMENT OF PSC HEARING PANEL. If mediation is unsuccessful, the PSC shall appoint a Hearing Panel of PSC members, consisting of not less than (3) three and not more than (5) five PSC members facilitated by the Chair of the PSC, unless a conflict exists, to conduct the hearing.
11. PRE-HEARING PROCEDURES.
  - 11.1 At least thirty (30) Days before the hearing, the PSC shall Notify the Parties of the date, time and place of the hearing and the names of the PSC Hearing Panel members.

11.2 Any Party may challenge the PSC Hearing Panel members for cause by written request filed at least fifteen (15) days before the hearing, which states the grounds alleged as the basis for disqualification with supporting facts. The PSC, by Majority Vote, may disqualify a PSC Hearing Panel member for cause.

## 12. HEARING PROCEDURES.

12.1 The PSC Hearing Panel shall conduct a hearing to make a recommendation whether Unethical Conduct has occurred and, if so, to recommend appropriate consequences.

12.2 The PSC Hearing Panel Chair shall preside at the hearing, shall assure that these Disciplinary and Appeals Procedures are followed, and shall prescribe any additional procedures necessary for the hearing not inconsistent with the provisions herein.

12.3 The Parties shall have the right to appear and to present witnesses and evidence. The Complainant must appear at the hearing in person or, with PSC Hearing Panel permission, by telephone or video.

12.4 The hearing shall be closed to all except the PSC Hearing Panel, the Parties, their witnesses, and CACM staff. Witnesses shall be present only when testifying.

12.5 At each hearing, a majority of PSC Hearing Panel members must be present, either in person or by telephone.

12.6 At the hearing, each side shall be called upon to state his or her case, to examine any desired witnesses, and to introduce any desired documents. The Parties and any member of the PSC Hearing Panel may question any witness. At the hearing, both Parties may make an opening statement and a final argument or rebuttal.

12.7 Witnesses giving oral testimony shall be sworn in by the Hearing Panel Chair using the following oath:

“Do you solemnly swear [or affirm] that the testimony that you are about to give in this matter shall be the truth, the whole truth, and nothing but the truth?”

12.8 The Complainant shall have the burden of proving that the alleged violation(s) occurred.

12.9 If a party requests a Member to testify at a hearing, it shall be the Member’s duty to appear and to testify.

13. PSC HEARING PANEL DELIBERATIONS. After the hearing, the PSC Hearing Panel shall retire to discuss the case. Only PSC Hearing Panel members and designated CACM staff may be present. By Majority Vote, the PSC Hearing Panel shall decide whether the Respondent has engaged in Unethical Conduct and, if so, the consequences to be imposed. The decision shall contain recommended findings of fact, conclusions and, if appropriate, consequences to be imposed. The PSC Hearing Panel’s decision is a recommendation, which shall be conveyed to the PSC for further consideration.

14. CONSEQUENCES.

14.1 If the PSC Hearing Panel finds that the Respondent has engaged in Unethical Conduct, then, as it deems appropriate, the Hearing Panel may recommend one or more of the following consequences:

A. Successful completion of one or more courses offered by CACM within a specified time period.

B. A letter of censure, with or without publication and/or the Respondent's name.

C. Suspension of membership or status, with publication of the determination and the Respondent's name. The length of suspension shall not exceed five years. Suspension includes deprivation of all rights, benefits and incidents of membership or status during the period of suspension, except that the individual must keep current with dues and obligations to CACM. Suspension shall be imposed as a period of time, and not until a date certain.

D. Termination of membership or status, with publication of the determination and the Respondent's name. A decision to terminate membership for any reason other than nonpayment of dues or fees charged by CACM in accordance with the CACM Bylaws shall be published in CACM's Vision Magazine and on CACM's website, which is accessible to the public, and that membership may be reinstated only upon approval by two-thirds of the Board.

14.2 Any consequences may be conditional or unconditional. At the time that the PSC's decision is issued, the PSC must state the action(s) to be taken if the condition(s) are met or not met.

14.3 Any consequences imposed by the PSC may be suspended by it, and the Respondent may be placed on probation, or may be made subject to a lesser consequence, or to no consequence whatsoever, at the discretion of the PSC.

14.4 In recommending consequences, the PSC Hearing Panel may, in its discretion, consider all past records in the Respondent's CACM files, including any previous determination of violation and consequences imposed.

15. DECISION BY PSC. By Majority Vote, the PSC shall decide whether to adopt the PSC Hearing Panel's recommendation, with or without modification, to reject it, or to remand the matter to the PSC Hearing Panel for further proceedings. The PSC shall render a written decision within thirty (30) days after it receives the PSC Hearing Panel's report.

16. FINALITY OF DECISION. If no timely Notice of Appeal is filed by either Party after the written decision is issued, the decision shall become final, binding, and effective.

17. RESIGNATION WITH CHARGES PENDING. If a Respondent resigns his or her membership or other status at any time after a Complaint has been filed but before the PSC issues its decision, then the PSC shall conclude the matter as "Resignation with

Charges Pending,” and the PSC may, at its discretion, publish this outcome.

18. SUMMARY ACTION. The Board may summarily terminate the membership and status of a member convicted of a felony or misdemeanor involving moral turpitude or the specific intent to deceive, defraud, steal or make or suborn a false statement. A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction.
19. RESERVED.
20. APPEALS. Appeals shall be decided by an Ethics Appeals Committee of the CACM Board of Directors consisting of (3) three Directors, including the Board Chair, unless a conflict exists, and shall be appointed by the Chair of the CACM Board of Directors.
21. ELIGIBILITY TO APPEAL. Only a Respondent who has been found to have engaged in Unethical Conduct may file an appeal. An unsuccessful Complainant may not file an appeal.
22. BASIS FOR APPEAL. An appeal may be brought only on the following grounds:
  - A. Error by the PSC in interpretation or application of the Code of Ethics and Standards of Practice.
  - B. Total lack of evidentiary support for the PSC’s decision.
  - C. Undisclosed conflict of interest or wrongdoing by a PSC member who participated in the deliberation in the matter that had a material effect on the decision.
  - D. The consequences imposed are too severe.
23. NOTICE OF APPEAL. An appeal is initiated by filing a Notice of Appeal on Form 2A within thirty (30) days of the date of the mailing of the written decision of the PSC. A Notice of Appeal shall be deemed filed on the day that it is received by CACM at its main office.
24. NOTICE TO APPELLEE; APPELLEE’S RESPONSE.
  - 24.1 Upon receipt of the Notice of Appeal, the Board Chair shall Notify the Appellee that a Notice of Appeal has been filed, send a copy of the Notice of Appeal to the Appellee, and ask the Appellee to file a Response.
  - 24.2 The Appellee shall have thirty (30) days from receipt of the notification that a Notice of Appeal has been filed to file a Response.
  - 24.3 The Response shall contain a detailed statement of the reasons why the appeal should be denied with citation to the relevant rules. The Response shall be signed by Appellee.

Revised 05/2021.

25. NOTICE OF APPEALS HEARING. At least thirty (30) days before the hearing, the Board Chair shall Notify the Parties of the date, time and place of the hearing.
26. HEARING PROCEDURES.
- 26.1 The purpose of appeal is to review for PSC error. To prevail on appeal, the Appellant must show that the PSC made an error and that the error was prejudicial (i.e, changed the outcome). On appeal, no new witness testimony may be presented, and no new documents may be introduced. On appeal, the PSC's decision is presumed to be correct. Any ambiguity in the record shall be resolved in favor of affirming the PSC's decision.
- 26.2 The Board Chair shall preside at the Board Ethics Appeals Committee hearing, shall assure that these Disciplinary & Appeals Procedures are followed, and shall prescribe any additional procedures necessary for the hearing consistent with the provisions herein.
- 26.3 The Board Ethics Appeals Committee hearing shall be closed to all except the Board Ethics Appeals Committee members, the Parties and CACM staff.
- 26.4 The Parties shall have the right to appear to present their arguments.
- 26.5 The Appellant shall have the burden of showing that the PSC's decision should be reversed or modified.
27. REMEDIES ON APPEAL. On appeal, the Board Ethics Appeals Committee may: (a) Affirm the PSC's decision, in full or in part; (b) Reverse the PSC's decision, in full or in part; (c) Reverse the PSC's decision and remand it to the PSC with instructions for further proceedings; (d) Remand without decision to the PSC with instructions for further proceedings; or (e) Remand to the PSC with instructions to reconsider all or part of its decision.
28. DECISION ON APPEAL. The decision of the Board Ethics Appeals Committee shall be by Majority Vote. The Board Ethics Appeals Committee shall render its decision in writing promptly after the matter is submitted. The decision of the Board Ethics Appeals Committee shall be final and binding. The Board Ethics Appeals Committee shall send a copy of its decision to the President and CEO and to the Parties.
29. RESIGNATION WHILE APPEAL IS PENDING. If an Appellant resigns his or her membership or status at any time after a Notice of Appeal has been filed but before the EAC issues its decision, the PSC's decision shall stand as rendered.
30. CLEMENCY AND REINSTATEMENT. A former CACM manager member whose membership was terminated by CACM, as a result of a violation of the CACM Code of Ethics and Standards of Practice, may apply to be reconsidered for membership.

31. REQUIRED FORM. To apply for Clemency and reinstatement of membership, a Petitioner must use CACM Form 3A, which is the Petition for Clemency and Membership Reinstatement (“Petition”).
32. ELIGIBILITY. A Petition shall be considered no earlier than three (3) years from the date on which the membership termination became effective.
33. FILING OF PETITION. A Petition shall be deemed filed on the day that the Petition and required filing fee are received by CACM at its main office.
34. ARGUMENT. In the Form 3A, the Petitioner shall present all of the information which Petitioner wishes to be considered concerning his/her plea for Clemency and Reinstatement of membership. The Petitioner shall have the burden of proving why Clemency should be granted and membership should be reinstated. The Petitioner shall provide material evidence of how he/she has learned from his/her experience and has taken steps not to violate the *CACM Code of Ethics and Standards of Practice* now and in the future. The original case should not be reargued. No new documents, witnesses or testimony regarding the original case may be presented. New evidence may be presented to demonstrate the changes made by the Petitioner in support of his/her Petition.
35. INITIAL REVIEW. The Petition will be reviewed by the President & CEO of CACM for accuracy and completeness.
  - 35.1 If the President & CEO determines the Petition is accurate and complete, the Petition will be presented to the Board Chair, who will have discretion to reject or accept the Petition.
  - 35.2 If the President & CEO determines the Petition is inaccurate and/or incomplete, the Petition will be denied and returned to the Petitioner. If the Petition is inaccurate or incomplete, once corrected, the Petition may be resubmitted with no additional fee.
36. DECISION. Only the CACM Board of Directors may grant clemency and reinstate membership.
37. CONSIDERATION BY CACM BOARD OF DIRECTORS. The Petition shall be considered by the CACM Board of Directors at a duly noticed Board meeting.
  - 37.1 At least thirty (30) days before the meeting at which the Board will consider the Petition, the Board Chair shall notify the Petitioner, through CACM staff, of the date, time and place of that Board meeting.
  - 37.2 The Petitioner may be asked to attend a Board meeting either in person or telephonically to present his/her case and to answer questions.
  - 37.3 The Board meeting shall be closed to all except the Board, the Petitioner and CACM staff and counsel.

Revised 05/2021.

38. FACTORS TO BE CONSIDERED. Without limitation, the Board shall consider the following factors in deciding whether to grant a request for clemency and membership reinstatement:
- 38.1 The circumstances and seriousness of the offense.
  - 38.2 The Petitioner's activities since being disciplined, including employment.
  - 38.3 The Petitioner's relevant formal education and experience since being disciplined.
  - 38.4 Remorse demonstrated by Petitioner.
  - 38.5 The likelihood that the act or omission which led to discipline will be repeated.
39. REMEDIES. The Board may grant Clemency, reject the Petition, or conditionally accept the Petition. Accordingly, the Board may place conditions on its decision to find in favor of the Petitioner, including a probationary period, limits on eligibility for certification, audit controls, and other reasonable conditions as determined by the Board. The Board may assign a period of time to expire and conditions to be met before granting Clemency or making a decision on the Petition. Also, the Board may ask for additional information or witnesses.
40. DECISION BY BOARD. The decision of the Board shall be by a 2/3rds vote. The decision of the Board shall be final and binding. The Board shall send a copy of its decision to the President & CEO and to the Petitioner. Under all conditions, the determination of the Board is final.
41. DEFINITIONS.
- "Appellant" shall mean the Party filing a Notice of Appeal.
- "Appellee" shall mean the Party against whom a Notice of Appeal is filed.
- "Board" shall mean the Board of Directors of CACM.
- "Board Chair" shall mean the Chair of the Board of Directors of CACM.
- "Board Ethics Appeals Committee" shall mean a committee of the Board of Directors to review appeals of decisions of the PSC and who, at the time of appeal, were seated on the Board of Directors.
- "CACM" shall mean The California Association of Community Managers, Inc.
- "Clemency" shall mean an act of showing leniency or mercy.
- "Code of Professional Ethics and Standards of Practice" shall mean CACM's Code of Professional Ethics and Standards of Practice.

Revised 05/2021.



“Complainant(s)” shall mean the party(ies) who filed Complaint with the PSC.

“Complaint” shall mean the complaint submitted by the complainant on Form 1A or Form 1B, complete and with all exhibits and fees.

“Days” shall mean calendar days.

“Hearing Panel” shall mean the subcommittee of the PSC appointed to conduct a hearing and issue a recommendation.

“Hearing Panel Chair” shall mean the Chair of the Hearing Panel.

“Majority Vote” shall mean more than one-half of the votes cast.

“Member” shall mean a member of CACM in good standing.

“Notice of Appeal” shall mean the notice of appeal submitted by the Appellant on Form 2A, complete and with all exhibits.

“Notify” shall mean the forwarding of a document by e-mail or U.S. mail to a Party or Parties.

“Party” or “Parties” shall mean the Complainant(s) and/or the Respondent(s) in an ethics proceeding before the PSC or, on appeal, the Appellant and the Appellee.

“Petition” shall mean the Petition for Clemency and Membership Reinstatement - Form 3A submitted by the Petitioner.

“Petitioner” shall mean the Party filing the Petition for Clemency and Membership Reinstatement.

“President” shall mean the President and CEO of CACM.

“President and CEO” shall mean the President and CEO of CACM.

“PSC” shall mean the Professional Standards Committee.

“PSC Chair” shall mean the Chair of the PSC.

“Respondent(s)” shall mean the Member(s) against whom a Complaint is filed and who is alleged to have violated the Code of Professional Ethics and Standards of Practice.

“Response” shall mean the Respondent’s written response to the Complaint in an ethics proceeding before the PSC. On appeal, “Response” shall mean the Appellee’s written response to the Notice of Appeal.

“Unethical Conduct” shall mean conduct that violates the Code of Professional Ethics and Standards of Practice.