

## **LA BANDERA PHASE III AT TEAM RANCH ADDITION ENFORCEMENT POLICY AND FINE SCHEDULE**

**19 December 2023**

*Downloaded copies may be out of date – find most recent update at [labanderaphase3.org](http://labanderaphase3.org)*

It is the policy of the La Bandera Phase 3 (LB3) Board to resolve violations through friendly persuasion to the maximum extent possible, and to resort to fines only when necessary to achieve compliance to the Covenants and Restrictions. The focus is to maintain a safe, attractive neighborhood where all property values are protected, and not be concerned with ‘letter of the law’ violations that do not adversely affect the neighborhood or other homeowners.

Experience has shown, however, that friendly persuasion does not always work to bring compliance, and that occasionally fines are a necessary and appropriate tool. This policy document outlines the LB3 fine schedule and the process which will be followed in the use of fines to bring about conformance with the Covenants.

### **Non-Payment of Assessments (Dues)**

1. An official Due Date shall be established for all Annual or Special Assessments. For the Annual Assessments (which cover a calendar year), the Due Date is 31 December of the year preceding the calendar year of the Assessment.
2. A date shall be established as to when fines for late payment begin (the Penalty Date). For Annual Assessments, that date shall be 1 February of the calendar year of the Assessment.
3. For each day after the Penalty Date, a fine shall be assessed on all past-due accounts (See schedule in paragraph 5.01). In an effort to avoid the necessity of imposing fines, during the weeks leading up to the Penalty Date the LB3 Treasurer shall send multiple emails to homeowners who have not paid the assessment.
4. The LB3 Treasurer shall maintain a list of all properties with past-due assessments. After the Penalty Date, any homeowner with a past due amount shall receive regular statements of amount owed, and be reminded of the fine schedule for such accounts.

### **Property Non-Conformance Issues**

1. When a new issue arises with a homeowner that has no significant history of non-compliance issues, the first step will be for an emissary of the LB3 Board to contact the homeowner to discuss the issue. The goal is to get the issue resolved with friendly discussion, pointing out how important it is for all homeowners to keep their property in compliance with the standards. If the homeowner indicates he/she intends to correct the issue soon, a reasonable time (typically 10 -14 days) will be allowed before proceeding to Step 2. If the homeowner is not cooperative, then the Board will proceed immediately to Step 2. If the homeowner is a ‘repeat offender’ (significant history of non-compliance issues) the Board has the option of skipping Step 1 and proceeding immediately to Step 2.

2. The Board will notify the homeowner that their property is non-compliant and will be subject to fines. The message will conform to the requirements of Texas code 209.006 (see addendum). If an email address is available, the notice will also be sent via email. In addition to the Texas code requirements, the notice shall:
  - a. Reference the specific paragraph of the Covenants & Restriction that applies.
  - b. Specify the amount and frequency of the fine(s), and the date the fines will commence (the 'Penalty Date'). The grace period before fines begin will be determined with consideration of the owner's previous compliance history and the difficulty in resolving the issue (e.g. hiring contractors vs. simple homeowner action).
  - c. Tell the homeowner to report when compliance is achieved to avoid or to stop accruing fines.
  - d. If the non-compliance is a maintenance issue, inform the homeowner that per the Covenants 7.16, the Association has the option of hiring a contractor to bring the property into compliance, and the cost will be passed on to the homeowner who is legally obligated to reimburse the Association.
  - e. Advise the homeowner that he/she may ask to meet with the LB3 HOA Board to appeal the decision to bring fines to bear. If the homeowner makes this request, the grace period will be extended as necessary to accommodate the hearing and to allow reasonable time to remedy the issue if the Board denies the appeal.
3. If the homeowner does not bring the property into compliance, fines will begin on the Penalty Date. Most fines will be on a 'per day' basis, that is, X dollars per day the violation exists. It will be made clear to the homeowner that they must notify the Board when the issue is resolved to 'stop the clock' on the fines. The Board shall spot check the property occasionally to monitor status.
4. The LB3 Board Treasurer shall maintain a ledger of fines for non-compliant properties. Any homeowner with a 'past due' amount shall receive regular statements of amount owed. If it becomes necessary for the Board to hire a contractor to resolve the problem (Covenants 7.16), that amount shall be added to the homeowner's account, and interest on that amount will begin to accrue.
5. All contacts and actions pertaining to the Property Non-Compliance process shall be documented in the LB3 records.

### **Collection Policy**

It is the policy of the LB3 Board to use fines as a means of bringing homeowners into compliance with their responsibilities under the Covenants rather than as a source of revenue. This is reflected in our Collection Policy.

Each situation will be considered on a case-by-case basis, but the preferred approach is to come to an agreement with the homeowner that the fines will be suspended if the problem is resolved and does

not recur. In cases such as these the ledger of amount owed will be maintained, but if there are no other significant violations, the fines will be forgiven when the homeowner sells the property (or is deceased). If another situation arises that warrants the imposition of fines, the previous fines will be re-instated.

#### Non-Payment of Assessments (Dues)

If a homeowner still owes the Annual Assessment when the notices go out for the subsequent calendar year, he/she shall be notified at that time that if their account is still past due after 1 January, collection actions will begin with a lien on their property. If their account is not paid by January, the board will follow through with the lien and begin planning for further legal measures to collect the debt.

#### Property Non-Conformance Issues

If a homeowner is accruing fines for a non-conformance issue, the Board will send the homeowner regular updates on the amount owed as reminders that the issue is still open. They will be reminded that the Board's primary interest is compliance with the Covenants & Restrictions, not on collecting fines, and that negotiations to that end are invited.

If the issue continues to persist, at some point in time the Board must set a deadline for further action. Factors affecting how long to go before setting a deadline include:

- The severity of the issue to the well-being of the neighborhood
- The length of time the homeowner has allowed the issue to persist
- Whether the Association had to hire a contractor to fix a maintenance issue
- The amount of money now owed in fines
- Any previous history of non-compliance issues with this homeowner

When a deadline for Resolution & Collection is set, this will be communicated to the homeowner in writing in accordance with the Addendum. If the homeowner does not resolve the issue or begin good faith negotiations by the deadline, the board will follow through with the lien and begin planning for further legal measures to collect the debt.

### **FINE SCHEDULE**

Following is a list of potential violations and typical fines. Fines can and will vary depending upon the magnitude of the non-conformance and the record any previous non-compliance issues of the homeowner. The following list is derived from the paragraphs of the Covenants & Restrictions document.

#### **5.01 Covenant for Assessments and Creation of Lien and Personal Obligation**

##### **5.1.1 Past Due on Annual Assessment**

- \$1.00 per day for February and March
- \$1.25 per day for April and May
- \$1.50 per day for June and July

- \$1.75 per day for August and September
  - \$2.00 per day for all days beyond September of the assessment calendar year
- 5.1.2 Past Due on Special Assessment
  - To be determined at time of Special Assessment
- 6.11 Architectural Control Committee Process
  - 6.11.1 Failure to seek ACC approval for significant change to property
    - \$100 for first occurrence; higher for repeat occurrences
  - 6.11.2 Defiance of ACC disapproval
    - Varies according to total value of work done
- 7.02 Restriction of Use
  - 7.2.1 Use of temporary structure
  - 7.2.2 Use of property for significant commercial activity
    - Varies according to type of commercial activity
  - 7.2.3 Use of property for Short Term Rental
    - Per day fine of \$200 or amount charged for rental, whichever is greater
  - 7.2.4 Other 7.02 violation
- 7.04 Erosion Control
  - 7.4.1 Unauthorized modification that creates erosion problem
    - Varies according to magnitude of the erosion problem
  - 7.4.2 Other 7.04 violation
- 7.05 Landscaping
  - 7.5.1 Unauthorized landscape modification
    - Varies according to scope of modification
  - 7.5.2 Other 7.05 violation
- 7.06 Existing Trees
  - 7.6.1 Unauthorized removal of established tree
    - Varies, depending on tree size, etc.
- 7.07 Temporary Buildings
  - 7.7.1 Use of temporary building
- 7.08 Outbuildings
  - 7.8.1 Installation of metal outbuilding
    - Typically, \$10 day
  - 7.8.2 Unauthorized installation of visible structure

- Typically, \$10 day
- 7.8.3 Installation of outbuilding over eight feet in height
  - Typically, \$10/day
- 7.8.4 Structure placed in area forbidden by Covenants
  - Varies, depending on structure and area
- 7.8.5 Other 7.08 violation
- 7.09 Prefabricated Structures
  - 7.9.1 Unauthorized prefabricated or factory-built structure
    - Varies, depending on type of structure and placement
  - 7.9.2 Other 7.09 violation
- 7.10 Signs
  - 7.10.1 Unauthorized signage, minor (e.g. 'stick in the ground' type signs)
    - Typically, \$5 / day
  - 7.10.2 Unauthorized signage, major (e.g. 'installed' signs)
    - Typically, \$25/day
- 7.11 Setbacks
  - 7.11.1 Building Setback violation
    - tbd
- 7.12 Retaining Walls and Fences
  - 7.12.1 Unauthorized fence or screen
    - Typically, \$10/day
  - 7.12.2 Other 7.12 violation
- 7.13 Roads and Driveway
  - 7.13.1 Unauthorized road or driveway
    - Varies, depending on type of modification and placement
- 7.14 Antennae, Etc.
  - 7.14.1 Antenna installation violation
    - Typically, \$10/day
- 7.15 Clotheslines, Garbage Cans, Etc.
  - 7.15.1 Prohibited items in view of neighboring residences or streets
    - Typically, \$10/day
- 7.16 Maintenance
  - 7.16.1 Inadequate maintenance of lawn, shrubbery, etc.

- Typically, \$10/day
- 7.16.2 Unauthorized decorative equipment on/in front lawn
  - Typically, \$10/day
- 7.16.3 Inadequate maintenance of fence, gate, etc.
  - Typically, \$10/day
- 7.16.4 Association-required maintenance
  - Typically, \$10/day
- 7.16.5 Other 7.16 violation
- 7.17 Commercial and Recreational Vehicles and Trailers
  - 7.17.1 Non-allowed vehicle or machinery visible on property
    - Typically, \$10/day
  - 7.17.2 Non-allowed vehicle or machinery on street in excess of limits
    - Typically, \$10/day
  - 7.17.3 Vehicle parked on front or side lawn
    - Typically, \$10/day
  - 7.17.4 Other 7.17 violation
- 7.18 Recreational Equipment
  - 7.18.1 Prohibited recreational equipment in front or side of property
    - Typically, \$10/day
  - 7.18.2 Prohibited above-ground pool
    - Typically, \$10/day
- 7.19 Non-Discrimination
  - 7.19.1 Discrimination against potential seller
    - tbd
- 7.20 Animals
  - 7.20.1 Prohibited animal on property
    - Varies depending upon animal
  - 7.20.2 More than three pets on property
    - Typically, \$10/day
  - 7.20.3 Allowing pet to roam freely
    - Typically, \$10 per occurrence; higher if animal is aggressive
  - 7.20.4 Nuisance animal on property
    - Typically, \$10/day, higher if animal is deemed dangerous
  - 7.20.5 Unapproved pet-related structure
    - Typically, \$10/day

- 7.20.6 Other 7.20 violation
- 7.21 Trash and Rubbish Removal
  - 7.21.1 Trash, rubbish, or debris on lot
    - Typically, \$10 / day
  - 7.21.2 Other 7.21 violation
- 7.22 Reasonable Enjoyment.
  - 7.22.1 Nuisance violation (minor)
    - Varies depending upon severity of violation
  - 7.22.2 Nuisance violation (major)
    - Varies depending upon severity of violation
- 7.23 Chimney Stacks
  - 7.23.1 Chimney Violation
    - Varies depending upon severity of violation
- 7.24 Exterior Surfaces
  - 7.24.1 Unauthorized Exterior surface violation
    - Varies, depending on type of violation
  - 7.24.2 Unauthorized Painted brick violation
    - tbd
  - 7.24.3 Other 7.24 violation
    - tbd
- 7.25 Roofing
  - 7.25.1 Unauthorized roofing material or color
    - tbd
  - 7.25.2 Other 7.25 violation
- 7.26 Driveways
  - 7.26.1 Unauthorized Driveway modification
    - Varies depending on type and placement
- 7.27 Pools and Spa Equipment
  - 7.27.1 Unauthorized pool or spa installation or modification
    - Typically, \$10/day
- 7.28 Mailboxes
  - 7.28.1 Unauthorized mailbox configuration
    - Typically, \$10/day

7.30 Commercial Use

7.30.1 Intrusive commercial use

- Varies, depending on type

7.30.2 Noxious / offensive / annoying / nuisance activity

- Varies, depending on type

7.34 Construction Work

7.34.1 Construction work outside allowed hours

- Typically, \$50 per occurrence

7.35 Electrical Telephone and other Utility Lines

7.35.1 Outdoor electrical or other wiring violation

- Varies, depending on safety and visibility

7.36 Window Coolers

7.36.1 Unauthorized window cooler

- Typically, \$10/day



## ADDENDUM

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the association, or report any delinquency of an owner to a credit reporting service, the association or its agent must give written notice to the owner by certified mail.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;

(B) may request a hearing under Section [209.007](#) on or before the 30th day after the date the notice was mailed to the owner; and

(C) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty;

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) For purposes of this section, a violation is considered uncurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative

action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) The following are examples of acts considered uncurable for purposes of this section:

- (1) shooting fireworks;
- (2) an act constituting a threat to health or safety;
- (3) a noise violation that is not ongoing;
- (4) property damage, including the removal or alteration of landscape; and
- (5) holding a garage sale or other event prohibited by a dedicatory instrument.

(i) The following are examples of acts considered curable for purposes of this section:

- (1) a parking violation;
- (2) a maintenance violation;
- (3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- (4) an ongoing noise violation such as a barking dog.