

03.24.2010

THE BASICS

A. Under the Tree Tops Declaration of Covenants there are five different types of violations for which fines may be imposed. They are:

- 1) Under Article XII, section 12.48 the Architectural Committee may impose a fine for delay in construction and repairs.
- 2) Under Article VIII the Board may fine for a failure to maintain a Lot.
- 3) Under Article XII, Section 12.7.2 the Board may impose a fine for a nuisance pet.
- 4) Under Article XIX the Board has general authority to fine for any violation of any rule, regulation, or violation of the Declaration.
- 5) Under Article VII, Section 7.6 the Board may impose a fine for failure of a lot to abide by architectural standards; for not conforming to approvals given by the Architectural Committee; or for lots not being maintained.

Moreover, the *procedures* for imposing fines vary depending on the violation. Thus, I have devised separate procedures to be used depending on the offense. (I have tried to simplify it as much as possible)

B. **With regard to all fines**, regardless of the type of violation or the procedure used, the following **must always be part of the procedure**:

- 1) No fine may be imposed unless the fine is approved by a Fining Committee of at least three members who are appointed by the Board and who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.
- 2) If the Fining Committee votes to impose a fine, the Fining Committee will set the fine.
- 3) Fines may not exceed \$100.00 per violation, or \$1,000.00 in the aggregate for a continuing violation.
- 4) A fine may not be imposed without notice of at least 14 days to the person sought to be fined and an opportunity for a hearing before the Fining Committee.

FINES FOR MAINTENANCE VIOLATIONS
AND OTHER VIOLATIONS NOT OTHERWISE DEALT WITH HEREIN

C. For fines under Article VIII (Failure to maintain a lot); for fines under Article XIX (for any violation of any rule, regulation, or violation of the Declaration not otherwise dealt with) I would recommend the following procedure.

1) The Board at a meeting votes to impose a fine (and the amount) on an alleged violator. Fines may not exceed \$100.00 per violation, or \$1,000.00 in the aggregate for a continuing violation.

2) After the Board vote the person or persons to be fined are given a 14 day notice of a hearing before the Fining Committee to give the person or persons to be fined an opportunity to present their position on the alleged violation. They may present witnesses, documents, and other evidence.

3) After the person to be fined has been given an opportunity to be heard, then the Fining Committee shall vote on whether to levy a fine.

4) If the Fining Committee does not vote for a fine, the fine shall not be imposed.

5) If the Fining Committee votes to impose a fine, it can be *equal to or less than* that imposed by the Board.

FINES FOR FAILURE TO ABIDE BY ARCH. STANDARDS; NOT CONFORMING TO APPROVALS GIVEN BY ARCH COMM.; AND FOR FAILURE TO MAINTAIN REPORTED BY THE ARCH. COM.

D. For fines under Article VII, Section 7.6 (failure to abide by architectural standards; for not conforming to approvals given by the Architectural Committee; or for lots not being maintained reported by the Arch. Com.) I would recommend the following procedures be used.

1) The Architectural Committee reports the violation to the Board.

2) The Board gives the Lot owner thirty (30) days notice to bring the lot into compliance.

3) The Board then follows steps C 1 through 5 above.

FINES FOR DELAY IN CONSTRUCTION OR REPAIR

E. For fines under Article XII, section 12.48 (for delay in construction and repairs) I would recommend the following procedure:

1) The Architectural Committee imposes a fine on an alleged violator. Fines may not exceed \$100.00 per violation, or \$1,000.00 in the aggregate for a continuing violation.

2) After the Architectural Committee imposes a fine the person or persons to be fined are given a 14 day notice of a hearing before the Fining Committee to give the person or persons to be fined an opportunity to present their position on the alleged violation. They may present witnesses, documents, and other evidence.

3) Follow steps C 3 through 5 above.

FINES FOR NUISANCE PET

F. For fines under Article XII, Section 12.7.2 (for a nuisance pet) I would recommend the following procedures be used (This procedure, materially different from the others, is required by the Declaration).

- 1) A Board member investigates the alleged infraction.
- 2) If violation is found to be valid, then the Board sends a first violation warning letter to the pet owner.
- 3) If there is a further pet violation, the Board sends a second violation notice to the pet owner and the Board shall refer the matter to the Fining Committee.
- 4) Seven days later the Fining Committee meets and makes a fine recommendation to the Board.
- 5) If the Fining Committee does not vote for a fine, the fine shall not be imposed. Using this procedure, the Committee's vote not to impose any fine is final.
- 6) If the Fining Committee votes to impose a fine, the Fining Committee will make a fine recommendation to the Board. Fines may not exceed \$100.00 per violation, or \$1,000.00 in the aggregate for a continuing violation.
- 7) If the Fining Committee has imposed a fine, the Board will then issue a written notice to the offending pet owner, and to the Owner of the Lot on which the pet resides or resided, and advise them of the levying of the fine. The written notice must also give the offending party the opportunity to request a hearing before the Fining Committee, at a time and date which shall not be more than 30 days after the date of such notice. If the offending pet owner and the Lot Owner elect not to seek such a hearing, the recommendation of a fine made by the Fining Committee shall become binding. If such a hearing is held, the decision of the Fining Committee as to whether to rescind, modify or ratify the proposed fine shall be binding.