

# **COMPLIANCE AND ENFORCEMENT OF COVENANTS AND RULES**

## **Adopted by Transitional Board**

### **April 11, 2007**

**Policy:** The Laurel Lakes/Barton Farms Association will have clear and reasonable deed restrictions and rules to ensure a well maintained community and to protect property values for individual homeowners. The Association will have the minimal number of restrictions/rules necessary to allow for individuality while having a community standard that must be met. Violations of rules or restrictions will be addressed in a timely and consistent fashion.

#### **Definitions:**

- Citation: The document that specifies a violation of a deed restriction or community rule where the Covenants Enforcement Committee has determined that there is probable cause there is a violation.
- Covenant: The deed restrictions that are contained in the Master Declaration of the Barton Farms Association. All members must agree to abide by the restrictions when purchasing a home in Laurel Lakes.
- Covenants Designee: A member of the Transitional Board who coordinates the Board's compliance activities with the community manager and the Covenants Committees.
- Covenants Enforcement Committee: A group of homeowners appointed by the Transitional Board of the Association to review possible violations of deed restrictions and rules and to determine if there is probable cause that a homeowner is violating a deed restriction or community rule.
- Covenants Review Committee: A group of homeowners appointed by the Transitional Board of the Association to conduct violation hearings and render a recommendation with regard to levying fines. The individuals shall not include members of the Board, officers or employees of the Association, or the spouse, parent, child, brother, or sister of a Board member, director or employee.
- Rule: Requirements that are issued by the Transitional Board of the Association to supplement the deed restrictions as authorized in the Master Declaration, Section 3.07 and by the Developer/President.
- Transitional Board: The homeowners appointed by the Developer/President of the Association to conduct limited Association business, including authorization to enforce deed restrictions.

## **Procedure:**

**A. Identification of Possible Violations:** Any homeowner, resident, or community manager may observe a possible violation of the covenants or rules and request that the Association contact the homeowner reminding him/her of his/her obligation to comply with those covenants and rules.

**B. Notification of Violation:** All suspected violations of deed restrictions or rules and regulations should initially be referred to the Community Manager. Upon receiving the notification, the Community Manager will contact the Chair of the Covenants Enforcement Committee to discuss the next step that should be taken, or if the contact is initiated by the Transitional Board, take whatever step the Board has requested.

1. If there is no verification that there is a violation, the Community Manager and the Chair of the Covenants Enforcement Committee may choose to have two members of the Committee verify the violation as soon as possible as outlined in Section C. 1-3 of this procedure.
2. If the Community Manager and the Enforcement Committee Chair have verified the violation and suspect that a homeowner's failure to comply with a covenant or community rule is unintentional, they may choose to have the Manager informally call, send a letter of inquiry, or visit the homeowner to discuss the violation. If the violation is not addressed within the timeframe agreed to with the homeowner or placed in the letter of inquiry, the Manager will send a citation to the Transitional Board recommending that a letter be sent to the resident.
3. If the Community Manager and the Enforcement Committee Chair have verified the violation and feel that a letter should be sent to the resident, the Manager will send a citation to the Transitional Board recommending that a letter be sent to the resident.

## **C. Compliance Process**

1. Referral to Covenants Enforcement Committee: When a homeowner appears to be violating a covenant or community rule, the Community Manager may refer the situation to the Covenants Enforcement Committee to determine if there is probable cause that a violation is occurring or has occurred.
2. Finding of Probable Cause: The Covenants Enforcement Committee will assign two or more members of the Committee to view the situation to determine if there is reasonable evidence to support a possible violation. If probable cause is not found, the Committee sends their written finding to the Community Manager.
3. Informal Contact: The Covenants Enforcement Committee Chair and the Community Manager may determine that it is likely that the resident will correct the violation without initiating the enforcement process. In those cases, they will determine whether the manager will call, send a written inquiry, or visit the resident to discuss the violation and a remedy.
  - a. If the contact with the resident is by telephone or in person, the community manager will send a letter to the resident verifying the agreement as to how the situation

will be rectified and within what timeframe with a copy to the Chair of the Covenants Enforcement Committee (see Appendix A1).

b. The Chair will check the violation at the conclusion of the agreed-to timeframe to verify that it has been corrected and advise the community manager accordingly.

c. If the violation has not been corrected, the Chair will request that the manager complete the Citation Form and forward it to the Board for the Board's consideration.

4. Creating a Citation: Upon determining that there is probable cause that there is a violation, the Community Manager, the Chair of the Covenants Enforcement Committee or his/her designee shall complete the Association citation form (see Appendix B) and forward it to the Board via the Community Manager for the Board's consideration.

5. Board Review: The Board shall review citations forwarded by the Community Manager at the next scheduled Board meeting or at a special meeting (BL 5.04) at the discretion of the Board's Covenants designee. The Board's review may include:

a. A visual inspection by persons selected by the Board provided that such individuals are not neighbors of the subject of the violation, are members of the Association, but are not members of the Board and, or

b. Research by Board members to determine if there are any known exceptions that have been granted previously, any special conditions that may exist, or any relevant State or county laws.

6. Board Decision: If the Board determines that there is no violation, they shall return the citation to the Community Manager indicating their finding. If the Board determines that there is a violation, they shall request the Community Manager send a written notice to the respective homeowner.

7. Violation Notice: The written notice shall contain the nature of the violation, the specific covenant or rule that has been violated and request that the homeowner take necessary action to correct the situation within seven calendar days of receipt of the letter (M.D. 8.01) (see Appendix A2).

8. Compliance Check: If the Board does not hear from the homeowner in the seven-day time period, one or more Board members will check to see if the violation has been corrected. If compliance is achieved, the citation will be returned to the Community Manager indicating it. If compliance is not achieved, but the homeowner is making diligent efforts to comply, the Board may choose to extend the seven-day period to enable compliance. If there has been no reasonable effort to comply, the Board shall request the Community Manager send a second notice to the homeowner.

9. Second Notice: If a second notice is sent to a homeowner, the notice must be a registered letter with a return receipt. The notice shall contain the nature of the violation, the specific covenant or rule that has been violated, and the Board's intention to impose one of the sanctions listed in Section D. of this procedure. The homeowner must be informed of the right to have a hearing before the Covenants Review Committee, if the sanction is a fine, or a hearing before the Transitional Board for other sanctions, upon sending a written request within 14 days of receiving the second notice (see Appendix A3).

- a. If the homeowner acknowledges the notice and promises to correct the violation within 14 calendar days of receipt of the notice, then the Board shall suspend further enforcement action for those 14 days.
- b. If the homeowner acknowledges the notice and requests a hearing before the either the Covenants Review Committee or the Transitional Board, then the Board shall schedule a hearing in accordance with Section E. of this procedure.
- c. If the homeowner does not acknowledge the notice and/or does not correct the violation within 14 calendar days of receipt of the notice, then the Board shall proceed to impose the specific sanction/remedy specified in the second notice.

**D. Association Sanctions for Violations:** If homeowners do not correct violations of covenants or rules within the seven calendar days allowed in the first violation notice, the Board may consider taking one of the following actions:

1. Levy a fine (maximum of \$100 per violation with a total maximum fine of \$2,500) with each day of the violation, or each reoccurrence being a separate offense, subject to a separate fine (M.D. 9.01.05);
2. Suspend the homeowner's voting rights and/or right to use recreational facilities (M.D. 8.01.04);
3. Take action to correct the problem, e.g., cutting the grass, and assess the homeowner the cost of the action (M.D.8.01.03);
4. Take action to enforce compliance, e.g., seeking injunctive relief (M.D.8.01.01); and/or
5. Take action to recover damages (M.D.8.01.02).

**E. Violation Hearings:** If the homeowner requests a hearing regarding the violation of a covenant or rule before either the Covenants Review Committee for a fine or the Board for other sanctions, the Committee or the Board shall schedule the hearing within a reasonable interval, but in no event shall the hearing be more than 30 days from receipt of the homeowner's request.

1. The Review Committee or Board shall send a written notice of the date and time of the hearing to the homeowner and enclose the procedures that will be followed for the hearing (see Appendix C.)
2. The Committee, the Board and/or homeowner may record the violation hearing.
3. The homeowner will be allowed to present written and oral arguments and provide witnesses within reason.
4. The Committee or Board may also have written or oral testimony from a member of the Covenants Enforcement Committee, other affected homeowners, individuals appointed by the Board to review the situation (see Section C., 4.a. of this procedure), and any other persons that the Committee or Board feels has relevant information regarding the violation.
5. The homeowner, the Board or other individuals involved in the hearing may be represented by counsel if so desired.

**F. Granting Waivers:** If at any time during the compliance/enforcement process, the Board determines that there are unusual circumstances pertaining to the homeowner's ability to comply with the covenant or rule at issue, the Board may consider granting a waiver to the homeowner (M.D.7.16).

1. To grant a waiver, the Board should consider whether or not the homeowner is satisfying the original intent of the covenant or rule; if strict compliance creates an unreasonable hardship on the homeowner; or if there are other acceptable means of satisfying compliance.
2. If the Board determines that a waiver should be granted, the Board shall notify the homeowner accordingly in written correspondence specifying the requirements of the waiver.
3. If at any time, the homeowner ceases to meet the requirements of the waiver, the Board may notify the homeowner that the waiver is no longer in effect.

**G. Levying Fines:** Following the Covenants Review Committee's hearing, the Committee may request that the Board levy a fine.

1. The Committee will submit a written finding to the Board noting the alleged violation, the Committee's finding, the reasons for their decision and the specific fine(s) they are recommending, if any.
2. The Board, at a duly called meeting, shall then by a vote of the majority either approve the fine, reduce the fine, or waive the fine, but may not increase the fine.
3. The Board, at its sole discretion, may or may not receive additional statements or arguments regarding whether the fine should be levied.
4. Any fine levied in accordance with this procedure shall be assessed against the parcel/property, which the violator occupied at the time of the violation. The owner of the property shall have thirty (30) days from the notice of the levy to pay the fine.
5. The owner of the property may, at their own expense, obtain reimbursement for the fine(s) from the property occupant, if other than the owner.

**H. Enforcing Fines:** The Board may take whatever action is legally available to the Association to collect the levied fine.

**I. Enforcing Other Sanctions:** The Board may consult with legal counsel to identify actions legally available to the Association to correct the violation of the deed restrictions, rules or regulations.

**J. Documentation:** All contacts received by the Community Manager, the Chairs of the Covenants Committees and the Board's Covenants designee shall be documented. These three individuals shall maintain an on-going record for each compliance violation discussion.