

## **POLICY No. 15**

OLD TITLE: NA - NEW POLICY

### **NEW TITLE: VIOLATION OF LANDSCAPE POLICIES - NOTICE AND HEARING**

**PURPOSE:** To provide a process for notice and hearing for Unit Owners and Residents who are alleged to have violated provisions of the Lake Barrington Shores Landscape Policies.

#### **A. Notice**

A Unit Owner who violates any provision of the Landscape Policies will be notified of the alleged violation by LBCCHA or its duly authorized agents. If the complaint is based on the conduct of the Unit Owner's tenant, the tenant shall also be notified of the alleged violation. The notification shall be in a manner prescribed by the LBCCHA. If any Unit Owner and/or Resident charged with a violation either believes that no violation has occurred or that he/she has been wrongfully or unjustly charged hereunder, the Unit Owner and/or Resident must proceed as follows:

#### **B. Hearings**

1. Within twenty-one days after the Notice of Violation has been served on the Unit Owner and/or Resident pursuant to the provisions herein, the Unit Owner and/or Resident must submit, in writing, a request for a hearing concerning the violation. A hearing may be requested by completing the Request for a Hearing form.
2. If the request for a hearing is timely filed, a hearing on the complaint shall be held before the LBCCHA Master Board, or such body as the Master Board appoints, meeting as a panel of inquiry at the next regularly scheduled board meeting.
3. The Panel of Inquiry shall not include any persons presenting evidence in the hearing. A Unit Owner and/or Resident may request an expedited hearing.
4. At any such hearing, the LBCCHA Master Board Panel of Inquiry shall hear and consider arguments, evidence or statements regarding the alleged violation, first from any person or persons having direct knowledge of the alleged violation and then from the alleged violator and any witnesses on his/her behalf. Following a hearing and due consideration, the Panel of Inquiry shall issue its determination regarding the alleged violation. The decision of the Panel of Inquiry shall be final and binding on the Unit Owner and/or Resident and the Condominium Association. The Condominium Association's and Unit Owner's and/or Resident's attorneys may be present and participate in the hearing. The hearing need not be conducted in conformity with judicial rules of procedure or evidence. A record shall be kept which identifies all persons participating in the hearing. Upon request of the Unit Owner and/or Resident, one continuance will be granted for a period of not longer than another 7 days for good cause shown. The Panel of Inquiry may also reschedule the hearing to accommodate the scheduling needs of its members.
5. Payment of any assessments, charges, costs or expenses made pursuant to the provisions contained herein shall not become due and owed until the Panel of Inquiry has completed its determination, but under appropriate circumstances can include retroactive provisions. Notification of the Panel of Inquiry's determination shall be made in writing.

#### **C. No Hearing Requested**

If no request for hearing is filed within twenty-one days, a hearing will be considered waived, the allegations in the Notice of Violation shall be deemed admitted by default, and appropriate sanctions shall be imposed. The Unit Owner and/or Resident shall be notified

by the LBCHA of any such determination using the same form and in the same manner as if a hearing had actually been conducted by a Panel of Inquiry.

#### D. Actions to be Taken

If a Unit Owner and/or Resident is found to have violated personally or is otherwise liable for a violation of any of the provisions of the LBCHA instruments and/or Rules and Regulations, the following shall occur:

1. If found to be guilty of a first violation of a given provision of the LBCHA instruments and/or Rules and Regulations, the Unit Owner and/or Resident shall be notified of the finding by the LBCHA or its duly authorized agents that a first violation has occurred. The first violation, at the discretion of the Board, may be considered a warning that, if any further violations occur, a fine for the violation will be imposed. In the alternative, the Board may elect to assess a fine after considering other factors such as the length of time the regulation has been in effect, the length of time the violator has owned a unit or resided on the Property, whether the violation was committed by the Unit Owner and/or Resident and if not, the extent of control the Unit Owner and/or Resident had or should have had over the violator's conduct, the severity of the violation and other appropriate factors. In addition, any legal expenses incurred by LBCHA may be imposed.
2. If found to be guilty of a second or continuing violation of the same provision of the LBCHA Instruments and/or Rules and Regulations, the Unit Owner and/or Resident shall be notified of the finding by the LBCHA or its duly authorized agents. The Unit Owner, at the discretion of the Board, may be assessed a fine.
3. Where a fine is imposed, unless expressly provided in another Section of these Rules and Regulations, it shall be in an amount prescribed in the applicable Landscape policy.
4. If found to be guilty of any violation, including a first violation, the notice of determination may also require the Unit Owner and/or Resident to pay for any damage or any unauthorized condition on the Property for which the Unit Owner and/or Resident has been found responsible, to pay the costs of any repairs which have been previously made or will be made by LBCHA, or to pay any legal expenses and costs incurred by LBCHA as a result of the violation or its enforcement. Any damage to the Common Property or Common Elements which has been repaired by the Unit Owner and/or Resident must be inspected by the Board's representative to verify that the repair has been properly done. The cost of such inspection and any necessary repairs shall be assessed to the Unit Owner and/or Resident including their share of the Common Expenses.

#### E. Collection of Charges

Any Unit Owner and/or Resident assessed hereunder shall pay any charges imposed within thirty days of notification that such charges are due. Failure to make the payment on time shall subject the Unit Owner and/or Resident to fines and all of the legal or equitable remedies necessary for the collection thereof. All charges imposed hereunder shall be added to the Unit Owner's and/or Resident's account and shall be collectible as a Common Expense in the same manner as any regular or special assessment against the Unit.

#### F. Delivery of Notices

Time is of the essence for this policy. Notices are deemed served either:

1. At the time of delivery if a personal delivery; or
2. On the second business day after deposit in the United States Mail, provided that the notice has been sent both by regular first class and by certified mail - return receipt requested, postage prepaid, to the Unit Owner and/or Resident at the unit address (or to such other address if applicable) and further provided that either the return receipt has been signed and returned or that the notice sent by regular mail has not been returned to the LBCHA undelivered. For units held in trust, the notices may be sent either to the

address of the trustee or to such address as has been provided to the LBCHA by the trustee or the beneficial owner of the trust.

G. Other Actions

The remedies hereunder are not exclusive, and the LBCHA may take any action provided at law, in equity, or in the LBCHA Instruments to prevent or eliminate violations thereof of these Rules and Regulations.