



DC Ranch Association Board Report 6-4-18 #4

Subject Matter: Proposed Policy Re: Fines and Penalties (Policy 302)

Background: The Policy Committee proposed this policy to the Board at its March 5, 2018 board meeting.

Fines and penalties are cited in the Community Standards documents. Legal counsel recommends that, in addition to the foregoing, a specific policy should be developed and approved by the Board. After a recent court case ruling related in part to fines levied by an Association against one of its members, legal counsel opined as follows: Based on the court's statements that an association "must promulgate the schedule of fines prior to imposing the fines, and the failure to prove promulgation is fatal" and "Without competent evidence of a fee schedule timely promulgated demonstrating the fine amounts and the appropriateness of such amounts, monetary penalties are per se unreasonable" we recommend setting forth the fines in a separate policy. Bottom line, the action that should be taken is to restate the fines described in the Standards into a separate policy adopted by the Board.

The Board approved the proposed policy for publication purposes and to comply with the 30-day member-comment period. The proposed policy was posted on the DC Ranch website in March 2018, satisfying the 30-day member-comment period. To date, one member provided written comments, which accompany this report. The Policy Committee's position is that the proposed policy language does not require further revisions.

This matter was listed on the May 7, 2018 board meeting agenda for formal consideration; however, with respect to the newly seated directors, it was tabled to the June 4, 2018 board meeting. It is now back before the Board for formal approval consideration.

The proposed policy accompanies this report.

Recommendation: Approve the policy and post to the DC Ranch website and update the Policy Book.

A handwritten signature in black ink, appearing to read 'Darren Shaw', is written over a horizontal line.

Darren Shaw, Executive Director



**DC Ranch Association
Policy 302**

Policy on Fines for Rule, Restriction and Community Standard for Conduct Violations

Policy 302

Date of Adoption:

Effective Date:

Last Revised: December 19, 2017

302.1 Purpose: The purpose of this policy is to declare and promulgate the notification process and the fines for violations of DC Ranch Association rules, restrictions and Community Standards for Conduct. It also outlines the appeal process for members that do not agree with a fine they have received.

302.2 Scope: This policy applies to all members of DC Ranch Association.

302.3 Responsibility/Authority: The Ranch Association Board of Directors.

302.4 Introduction: The Association's mission statement is as follows: To serve all DC Ranch Stakeholders through the professional management and protection of the community's fiscal and environmental assets. DC Ranch Association delivers high quality and consistent operations, landscape, maintenance and security services with an emphasis on customer care and open communication that result in sustained property values and an exceptional quality of life. This policy will provide guidance to the Board of Directors as it endeavors to fulfill the mission and effectively govern the community.

302.5 Noticing Process and Fine Schedule: The noticing processes and fines for the violation of DC Ranch Association rules, restrictions or Community Standards for Conduct are provided in the tables that follow.

302.6 Appeal Process: When a written notice of violation is sent to a member, the notice will include a statement notifying the member that they have a "RIGHT TO APPEAL" (ARS-33-1803). When a member desires to appeal the violation notice or the imposition of a fine or other penalty, the member must provide the Board of Directors via Ranch Association staff a WRITTEN notice (in the form of an email or letter) that they are requesting an appeal of the violation notice or penalty. Such notice of appeal must be received within 10 business days of the notice of violation or penalty.

302.6.a The request for appeal should:

- fully explain the circumstances that caused the deviation and/or violation of the governing documents.
- include any pertinent backup information to support the appeal.
- include what corrective action the member plans to take, if any.

302.6.b The member who provides the appeal request will be informed in writing of the appeal hearing date and time. The appeal process may be completed in writing and does not require the member be present unless requested by the member or the Board of Directors.

302.6.c Unless otherwise requested by the member, all appeals shall be heard in executive session. If a member desires that the appeal be held in open session, the member must state this preference in their appeal request and provide notice no less than 10 business days prior to a regularly scheduled open session board meeting.

302.6.d Only individuals who are listed as the legal owner (member) on the deed to the property, or any person designated by the member in writing as the member's representative are permitted to attend the appeal meeting (if held in executive session).

302.6.e All decisions of the Board are final. This Violation Appeal Policy is independent of the member's right to petition the State Real Estate Department for an administrative hearing concerning the enforcement of alleged violation(s) pursuant to A.R.S. 32-2199.01 and/or A.R.S 41-212198.01.

302.7 The Board's Discretion: At any time, as determined in the sole and absolute discretion of the Board, the Association may choose to forego any courtesy or violation letters in favor of other enforcement tools available, including, but not limited to, deactivation of transponders, loss of privileges or immediate action by its legal counsel. Due to their serious nature, for violations involving the health, safety or welfare of the community, the Board is likely to make use of these other enforcement tools. The Board reserves all remedies, including the right to bring an action for injunctive relief, the cost of which shall be billed to the member. Nothing in this appeal policy shall limit this right in any way.

Schedule of Fines

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-00	Basketball Hoops	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-01	Bulk Trash	Courtesy written notice of non-compliance precedes fine	\$50 per occurrence, per week	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-02	Business, Hobby, or Other Uses including Garage and Yard Sales	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-03	Civil Dialogue	Courtesy written notice of non-compliance	\$0	Escalated as determined by the Board in its sole discretion
DCR-04	Construction and Community Work Hours	Verbal notice of non-compliance with instruction to stop work; Courtesy written notice to the Member and contractor and second verbal warning by the Association Manager, including Final Reminder for fine and/or deactivation of construction tag precede fine	\$500	Repeated non-compliance, Notice of Fine, minimum of \$500, escalated as determined by the Board in its sole discretion

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-05	Disposal and Dumping	Courtesy written notice of non-compliance	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-06	Flags	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-07	Laws: Local, State, or Federal	Courtesy written notice of non-compliance	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-08	Livestock, Poultry and Domestic Pets	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-09	Motorized Vehicles & Drones	Courtesy written notice of non-compliance precedes fine	\$50 per occurrence, per week	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-10	Nuisance	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-11	Organized Sports and Parks Usage	Verbal warning, usually by security personnel, and courtesy written notice of non-compliance and Verbal warning by the Association Manager and Final Reminder precede fine	\$250	Repeated non-compliance, Notice of Fine, minimum of \$250, escalated as determined by the Board in its sole discretion
DCR-12	Parking	Courtesy written notice of non-compliance and final reminder precede fine	\$50 per occurrence, per vehicle	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-13	Pets Off Leash	Courtesy written notice of non-compliance precedes fine	\$100	Repeated non-compliance, Notice of Fine, minimum of \$100, escalated as determined by the Board in its sole discretion
DCR-14	Pet Waste	Courtesy written notice of non-compliance precedes fine	\$100	Repeated non-compliance, Notice of Fine, minimum of \$100, escalated as determined by the Board in its sole discretion
DCR-15	Pool or Water Feature Backwashing or Draining	Courtesy written notice of non-compliance precedes fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-16	Property Modifications, Including Exterior Remodeling and Repairs	Verbal notice of non-compliance by the Association, including notice of potential fines; submit Modification form and fees for review precede fine	\$100 and notice to stop work	Repeated non-compliance, Notice of Fine, minimum of \$500, escalated as determined by the Board in its sole discretion
DCR-17	Recreational Vehicles, Campers, Boats, Trailers	Courtesy written notice of non-compliance and final reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-18	Rental of Property in the Association	Courtesy written notice of non-compliance precedes fine	\$1,000	Repeated non-compliance, Notice of Fine, minimum of \$1,000, escalated as determined by the Board in its sole discretion
DCR-19	Seasonal, Holiday, and Celebratory Decorations	Courtesy written notice of non-compliance precedes fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-21	Signs-Other	Verbal notice of non-compliance and courtesy letter and Final Reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-22	Signs-Political	Verbal notice of non-compliance and courtesy letter and Final Reminder precede fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-23	Signs-Real Estate	Courtesy written notice of non-compliance allowing 10 business days to remove or correct precede fine	\$100	Repeated non-compliance, removal of sign
DCR-24	Speeding	For non-excessive speed violations 10 to 20 MPH over the posted speed limit, written courtesy notice for first violation. On second violation an email notification and Final Reminder. On third violation written notice of fine in the amount of \$300	\$300	Excessive speed, defined as over 20 MPH over the posted speed limit, will be issued a Notice of Fine of a minimum of \$300 upon the first offense. Each subsequent offense of speed in excess of 20 MPH over the posted speed limit, will be issued a Notice of Fine of a minimum of \$300, escalated as determined by the Board in its sole discretion.
DCR-25	Storage of Personal Items	Courtesy written notice of non-compliance precedes fine	\$50 per occurrence, per week	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion
DCR-26	Trash and Recycling	Courtesy written notice of non-compliance precedes fine	\$50 per occurrence, per week	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion

DCR	Standard	Enforcement Notes	Fine	Continuing Violation
DCR-27	Trespassing and Solicitation	Verbal warning, usually by security personnel, and courtesy written notice of non-compliance, photographed and escorted off property	\$0	Repeated occurrence could lead to legal action
DCR-28	Use Restrictions	Courtesy written notice of non-compliance precedes fine	\$50	Repeated non-compliance, Notice of Fine, minimum of \$50, escalated as determined by the Board in its sole discretion

Approved By: _____ Date _____
 Board President or Secretary

Effective Date: _____

From: MJ Hall [<mailto:mjhall1954@gmail.com>]

Sent: Tuesday, March 20, 2018 12:31 PM

To: Policies <Policies@dcranchinc.com>

Subject: Comments | DC Ranch Association - Proposed Board Policies 105, 201, 202, 302

Policy 302

Policy on Fines for Rule Restriction and Community Standard for Conduct Violations

- **302.1 Purpose** - *No objections as proposed*
- **302.2 Scope** - *No objections as proposed*
- **302.3 Responsibility/Authority** - *No objections as proposed*
- **302.4 Introduction** - *No objections as proposed*
- **302.5 Noticing Process and Fine Schedule** - *No objections as proposed*
- **302.6 Appeal Process:**
 - 302.6a The request for appeal should: - *No objections as proposed*
 - 302.6b Informing the member requesting appeal - *No objections as proposed*
 - 302.6c Executive session to hear all member appeals - *Objection; Suggested addition: "...a regularly scheduled open session board meeting. The Board of Directors shall report the results, but not the details of the arbitration, of such appeals adjudicated in Executive Session"*
 - 302.6d Legal owner (member) - *No objections as proposed*
 - 302.6e Board decision finality - *No objections as proposed*
- **302.7e Board Discretion** - *Objection for omissions.*

302.7e might be better stated with some more specific parameters, both for precipitating causative actions, and for delineating the enforcement, tools of the Board referenced in the Draft Proposal 302.7e.

The policy is imprecisely vague about what causative actions would precipitate the Board to forego the notification and appellate process comprising Policy 302. Equally, it empowers the Board for potentially capricious, vindictive action. As it stands with limitations, the policy, which is intended to permit expediency, grants the Board conceivably abusive authority.