

New Fine Schedule Q&A

1. What is the current fee schedule?

See the last page

2. What is the rational for the change?

The current fine schedule is out of date and does not follow Davis Sterling. After a courtesy notice is sent the second step is an invitation to a hearing. This step is omitted from the current Fine Schedule. See Davis Sterling.com at

<http://www.davis-stirling.com/MainIndex/NoticeofHearing/tabid/1738/Default.aspx>

3. Why is the Fine Schedule the first item of business for the revision committee?

The Fine Schedule is not part of our CCR or Bylaws. So the revision committee is not involved in it. Our bylaws and CCR's include a vehicle to allow the board to levy fines but not the actual amount of the fines. Our bylaws and CCR's are 30 years old. A fine schedule that's 30 years old would not be relevant today.

4. Why is the Fine Schedule being mailed out to all members?

Before a Board can approve a new Fine Schedule, it must first be sent to all homeowners. They have 30 days to review and make comments. After that period the board will vote on the Schedule at an open board meeting. See Davis Sterling.com:

<https://www.davis-stirling.com/MainMenu/MainIndex/FineSchedule/tabid/1749/Default.aspx>

5. Has there been consideration as to the current financial issues facing our society? Based on the number of homes for sale, and indication of a number of foreclosures does it make sense to try to get "blood from a stone"?

There are steps that are taken before a homeowner is fined. The first step is a written warning; we in BP have always called this a courtesy letter. If the homeowner does not respond to the first letter then a minimum of 15 days later, a second letter is sent. This letter contains an invitation to a hearing. Hearings are in executive sessions, which is usually after an open meeting. A meeting could be as much as 30 days away giving the homeowner still more time. If the homeowner still doesn't fix the problem or contact the board for an extension of time to fix the problem and fails to attend the hearing then the board makes a motion to fine the homeowner. Even after all these steps are taken the board can still "rescind a monetary penalty" if they feel it's warranted. In 2009, 83 letters were sent out and only 7 fines were levied. So far this year 42 letters have been sent out and only two fines have been levied. Of the 42 letters that were sent out approximately

10-15 homeowners have requested extra time or have given additional information about why they can't comply. All requests have been granted.

6. In the current fine schedule, the first fine is \$25.00 and second fine is \$50.00 and for ongoing violations it's \$10.00 a day. Raising the first fine from \$25.00 to \$100.00 is a little extreme.

Unfortunately, in the past there have been a few homeowners who feel \$25.00 fine is much less costly than fixing the problem. A \$100.00 is much more effective.

7. What is this hearing thing all about and why do homeowners need to appear before the board?

The Hearing Notice is merely due process required under Davis Stirling in order to assess monetary penalties. Homeowners do not have to appear before the board if they don't choose to. If they have questions about a violation or need additional time to fix a problem they can ask the board in writing or by email. Most homeowners who need extra time to fix a problem simply ask for it by email. Any homeowner who has asked for more time this year has been granted it. If a homeowner chooses to ignore a courtesy letter or refuses to fix a problem the next step is an invitation to a hearing. If the homeowner ignores the hearing then the board would make a motion to fine that homeowner.

8. You said no one has been fined yet, so are you waiting for the new fine schedule to be approved so you can fine at the higher rate?

Actually no, all the courtesy letters that have been sent out so far this year fall under the old Fine Schedule. Also, any new letters mailed out between now and day the New Fine Schedule is approved fall under the old Fine Schedule. The earliest the new Fine Schedule can be approved is in early November.

9. Are the current Internal Dispute Resolution (IDR) and Alternative Dispute Resolution (ADR) processes as distributed to the homeowners this past January inadequate? Is the process as distributed with the October newsletter the complete process? The process appears to be incomplete as it does not address ADR.

The Internal Dispute Resolution (IDR) and Alternative Dispute Resolution (ADR) that you are referring to was distributed by GM in January as part of the budget mailing and are part of the Collection, Lien & Foreclosure procedures and are still in place. The Fine Schedule does not replace it because it is a completely separate process. As I said above, the Hearing Notice is merely due process required under Davis Sterling in order to assess monetary penalties. It does NOT replace ADR or IDR. ADR and IDR are additional avenues open to homeowners (and to the HOA for that matter) to resolve disputes with the HOA without

costly litigation. These disputes might relate to architectural, maintenance or monetary issues. The fundamental point is that no HOA can take away homeowner rights that the law requires nor would it benefit the HOA to do so. The New Fine Schedule makes no reference to the elimination or replacement of ADR or IDR. See Davis Sterling.com:

<http://www.davis-stirling.com/DisputeResolution/ADRMENU/tabid/572/Default.aspx>

Current BPHOA Fine Schedule

Fines

All fines are in addition to cleanup or repair costs that result from the violation.

First Violation

Courtesy Letter

Second Violation of same rule within 6 months

\$25.00 fine

Third Violations of same rule within 6 months

\$50.00 fine

Ongoing Repetitive violations – notice will be given when daily fine will start to be enforced. \$10.00 per day

For chronic violations of the same rule, the Board reserves the right to notify the homeowner that they will not be sending out further notices, but the fines will continue to be assessed for all recurrences of that violation until the violation is resolved.

Architectural approval:

Failure to obtain prior Architectural approval of construction projects

\$200.00*

***This fine applies on the first violation (7 days to submit upon receiving each violation), and every subsequent violation, for failure to obtain Architectural committee approval for any landscape or architectural change that requires such permission, even if the change is ultimately approved. The homeowner will continue to be fined every 7 days that a submission is not received. Payment of the fine is due upon submission of plans to the Architectural committee and will be paid before approval obtained.**