

# BANNING LEWIS RANCH metro district

## Governance Policy

(Created December 22, 2009)

### Scope:

Lots within the Banning Lewis Ranch community are encumbered by governing documents, including the Master Declaration of Covenants Conditions and Restrictions for Banning Lewis Ranch recorded on March 5, 2007 (Declaration) and the Homeowner Design Guidelines (Design Guidelines). These “Lots” are included in the definition of the Annexed Property in Article 1, Section 1.1 of the Declaration.

The Board of Directors (Board) for the Banning Lewis Ranch Metropolitan District No. 1 (The Operating District, Declaration, Section 1.36) and the appointed Design Review Committee (if applicable) are “responsible for the ministerial administration and application of the Design Guidelines to facilitate the purposes and intent of [the] Declaration” (Declaration, Section 3.1 and Section 5.1).

The Declaration established a Design Review Committee (DRC) that governs changes and additions to exterior improvements, including landscaping (Article 5) and a Covenant Enforcement Committee (CEC) that administers and enforces the rules, regulations and restrictions of the Banning Lewis Ranch community (the “Restrictions”) imposed under the Declaration (Article 6). In accordance with Section 3.1 of the Declaration, the Board has engaged the services of The Warren Management Group (Management) to facilitate the enforcement of the Declaration and Design Guidelines and carry out the duties of the DRC and CEC associated therein.

The following is intended to clarify the process by which non compliance matters are reported and followed up on and the role of Management in resolving these matters.

### Procedure:

Most violations occur as a result of misinformation or the Owner being uninformed about the Restriction. Therefore, the following procedure is established as a standard process to be used by Management in managing the resolution of violations under the Declaration within the Banning Lewis Ranch community:

1. An alleged violation of the governing documents may be identified by:
  - a. A written complaint/report by another Owner (Declaration, Section 5.13 and Section 6.5(c))
  - b. Observed by Management during on-site community inspection (Declaration, Section 5.11 and Section 6.5(a)).
2. If the nature of the allegation is a circumstance that Management cannot tangibly observe by visiting the site at a given time, the complainant must give ample information about the violation observed (in writing) providing the District with details, which it can rely upon for further action. If insufficient information is provided or if the complainant is unwilling to give written testimony to the circumstances, the District reserves the right to not pursue further action.
3. Once verification has been made that a violation exists (or reasonable determination that such circumstances occurred), and the matter is not a violation of the DRC Restrictions or a health, safety or significant violation requiring immediate compliance, then Management shall send a postcard to the Owner. This postcard shall serve as a COURTESY NOTICE and simply state the nature of the violation, kindly ask for assistance in gaining compliance and provide the date after which reinspection will occur. This date shall not be less than 14 days from the date of the COURTESY NOTICE.

4. Following the reinspection date mentioned in the Courtesy Notice, Management shall inspect the Lot to verify compliance. If the requested remedy has been met, no further action shall be taken. If remedy has not been met, a SECOND COURTESY NOTICE shall be sent to the Owner stating the following information:
  - a. Nature of the violation
  - b. Action required for remedy
  - c. Date by which remedy must be completed, not less than 14 days from the date of the COURTESY NOTICE.

(If the violation involves a matter such as an un-stored trash toter, the COURTESY NOTICE, intended to be a friendly reminder, shall be sent requesting storage upon receipt of the notice. If Management deems the violation to be a violation of the DRC Restrictions or to be a health, safety or significant violation requiring immediate compliance, then the NOTICE OF VIOLATION discussed below shall be sent requesting compliance upon receipt of notice.) Management shall be given the latitude to make a judgment call regarding appropriate action depending on the nature of the issue, reasonably applying fairness and equality to all Owners for similar circumstances.

5. Following the given compliance date, Management shall re-inspect the Lot to verify compliance. If the requested remedy has been met, no further action shall be taken. If remedy has not been met after the SECOND COURTESY NOTICE or if the matter involves a violation of the DRC Restrictions or is a health, safety or significant violation requiring immediate compliance, then a NOTICE OF VIOLATION shall be sent to the Owner by certified mail, return receipt requested specifying the conditions of the violation and the required actions for remedy. This notice shall also contain the date, time and place of a hearing to be held on their behalf if they have not remedied the violation within 15 days after the date of the NOTICE OF VIOLATION (Declaration, Sections 5.13 and 6.5).
6. Following the given compliance date, Management shall re-inspect the Lot to verify compliance. If the requested remedy has been met, no further action shall be taken. If remedy has not been met, Management will conduct the hearing in accordance with the Declaration (Declaration, Section 5.13(c) and Section 6.5(d)).
7. If required, the hearing shall be held with the Board no less than 15 days after the date of the NOTICE OF VIOLATION. The purpose of the hearing is to obtain all facts regarding the circumstances, giving the Owner the opportunity to present information and evidence. Within 5 business days after the hearing, the Board shall make a determination based on the information received. This decision may include, but is not limited to, recording the NOTICE OF VIOLATION against the applicable Lot (Declaration, Section 5.12 (b)(i) and Section 6.5(e)(i)); entering the Lot to remove, remedy or otherwise correct the violation (Declaration, Section 5.12(b)(ii) and Section 6.5(e)(ii)); or levy reasonable fines and late charges against the Owner of the Lot (Declaration, Section 5.12(b)(iii) and (iv) and Section 6.5(e)(iii) and (iv)). The Owner shall be advised of the Board's decision in writing and such decision shall be final.
8. In the event of a violation of the Restrictions specified in Article 7 of the Declaration described as "Use Restrictions", then in addition to the remedies described above under Section 6.5 of the Declaration, Management shall have the right to (a) levy fines against the Owner, (b) cause the violation to be cured and charge the cost thereof to the Owner, and (c) obtain injunctive relief against the continuance of such violation; provided the Owner has received prior written notice of the violation including a specific description of the violation and a time period in which to remedy the violation, not to exceed 45 days (Declaration, Section 7.27).

9. This Governance Policy has been established to clarify the process related to violations of the Restrictions under the Declaration, and provides for COURTESY NOTICES to attempt to resolve certain, less significant non-compliance matters in a less formal manner than specified in the Declaration, and in addition the process for other more significant violations. However, in the event of any conflict between this Governance Policy and the terms of the Declaration, the terms of the Declaration shall govern and control.

#### **Miscellaneous Provisions**

1. If, at any time the Board makes the decision to pursue legal action against an Owner for non-compliance matters, they may request Management to be involved in assisting them by working as a liaison with the Board's legal counsel to carry out the Board's direction(s) and decision(s). As necessary, Management shall keep the Board informed of the matter, ensuring that they are updated with any changes or developments.
2. If, during the governance process, Management becomes aware that a Lot is for sale, and compliance has not been reached, Management shall have the authority to record a copy of the NOTICE OF VIOLATION with the El Paso County Clerk and Recorder's Office (Declaration, Section 5.12(b)(i) and Section 6.5(e)(i)). Notice to the Owner regarding the recorded document shall not be required.
3. All NOTICES OF VIOLATION (with the exception of the preprinted postcard used for the Courtesy Notices) shall be printed on Banning Lewis Ranch letterhead (provided by the Board) and shall be sent to the current Owner of record based on the information available to Management addressed to "Occupant". In the event that there is an alternate mailing address registered with the District, Management will send a carbon copy of the notice to the alternative address. All NOTICES OF VIOLATION will be sent certified mail, return receipt requested. In the event that the Postal Service returns a piece of mail and communicates a forwarding address for the Owner, Management will update their records with this information and attempt to resend the NOTICE OF VIOLATION using this newly obtained address information.

#### **Communication**

1. After each inspection, Management shall provide a report to the designated representative (which shall originally be District Manager David Peak) to include the outstanding violations, their current status (which notices have been sent and the dates thereof), as well as a copy of NOTICES OF VIOLATION sent as a result of that inspection.
2. Further, a summary of governance activities shall be provided in a period Management's Report which will be included in the packet sent to the Board before each of their regularly scheduled meetings.

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