



MODITLO
W I L D L I F E
E S T A T E

Moditlo Estate Home Owners Association NPC

Registration Nr: 2002/013524/08

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SCHEDULE OF PENALTIES AND FINES

In a perfect world we wouldn't need rules.

Unfortunately, however, we don't live in a perfect world.

- 1 The Moditlo Estate Home Owners Association is registered as a Non-Profit Company and as such is governed by the provisions of the Companies Act 71 of 2008. No other legislation is in place that governs the operation of Home Owners Associations.
- 2 The governance documentation of a Home Owners Association, its Memorandum of Incorporation and Rules and Regulations, is considered a binding contract on all its members. The Rules and Regulations must be reasonably necessary and apply equally to all of its members.
- 3 In the enforcement of the Rules and Regulations of a Home Owners Association, the Board of Directors may impose a Penalty/Fine rule as long as the Schedule of Penalties and Fines has been approved by the Annual General Meeting of the Home Owners Association. Although the penalty/fining provision gives the Board of Directors the discretionary power to institute a penalty/fine, the rule does not give the Board of Directors the power to deviate from the prescribed process.
- 4 A Penalty/Fine is defined in the Conventional Penalty Act 15 of 1962 as the liability to pay a sum of money or to deliver/perform anything for the benefit of a creditor, which for the purposes of this Schedule is the HOA, in respect of an act or omission in conflict with the contractual obligation, prescribed by the HOA's governing documentation being the MOI and Rules and Regulations.
- 5 A Penalty/Fine rule must be substantively and procedurally reasonable and fair. It must refer to the Promotion of Administrative Justice Act 3 of 2000 that stipulates that an administrative action is any decision (the imposing of a penalty or fine) taken by a legal entity (the HOA) when performing a public function (managing the Estate) in

terms of its governance documentation (MOI and Rules and Regulations) which adversely affects the right of any person and has a direct external legal effect.

6 The imposing of a penalty/fine must be, according to the Act, procedurally fair. This can only be achieved if:

- 6.1 An official Written Complaint/Incident Report was received by the BoD;
- 6.2 Adequate Written Notice (Letter of Demand) was given to the transgressor detailing the alleged offence with all the necessary information regarding the alleged offence, the rule transgressed and a clear statement of the action that need to be taken. As part of the notice the amount of the penalty/fine also need to be included if the member does not give effect to the action requested.
- 6.3 Reference must be made of the Promotion of Administrative Justice Act 3 of 2000 in the Written Notice;
- 6.4 An opportunity for the member to make a representation;
- 6.5 The right to request reasons for the administrative action;
- 6.6 A second notice if the member does not give effect to the first notice;
- 6.7 The appointment of a committee by the Chairperson of the BoD to investigate the transgression and to make recommendations to the BoD if so requested by the transgressor;
- 6.8 An appeals process as prescribed by the MOI.

7 The Penalty/Fine rule is only valid once entrenched in governance documentation, has been approved by the HOA during a General Meeting and has been filed in the Deed's Office. Any changes in the amount of Penalties/Fines must be approved by a General Meeting.

8 The amount of the penalty/fine should be different for each category of transgression, it should be reasonable but may be substantial, proportionate to the purpose of the penalty and may not be added to the levy. A schedule of penalties/fines can be very detailed alluding to each and every offence, or offences can be categorised in order to make the management of offences more simplified and unambiguous for the BoD.

9 Offences will be categorised in the following main groupings:

- 9.1 Behavioural Offences. Once-off offences by a member due to his/her conduct such as speeding, travelling in the wilderness area, loud music, security breaches and interference with animals;
- 9.2 Protracted Offences. Offences of a more premature nature but that can be easily corrected by a member such as maintenance of dwellings, neatness of properties, keeping of pets and exotic plants; and

9.3 Material Offences. Offences such as buildings not being constructed according to approved plans and buildings not completed.

SCHEDULE OF PENALTIES/FINES OF THE MEHOA

Category of Offence	Purpose of Penalty/Fine	Amount
<p>Behavioural Offences such as:</p> <ul style="list-style-type: none"> • Speeding • Disturbance • Security Breaches • Interferences with Animals • Other Behavioural Offences 	To attempt to change the behaviour/conduct of the transgressor to be a "Good Neighbour"	<p>First Offence – 50% of the Monthly levy</p> <p>Subsequent Similar Offences – Increments of 50% of the Monthly Levy</p>
<p>Behavioural Offences such as:</p> <ul style="list-style-type: none"> • Driving in the Wilderness Area • Conduct unauthorised commercial activities such as operating a lodge/B&B/Restaurant/Game Drives against payment 	To attempt to change the behaviour/conduct of the transgressor to be a "Good Neighbour"	<p>First Offence – R 25 000.00</p> <p>Subsequent Offences – R 25 000.00 times the number of the same offence</p>
<p>Protracted Offences such as:</p> <ul style="list-style-type: none"> • Keeping of pets • Maintenance of dwellings • Neatness of properties • Exotic plants • Declared weeds 	To motivate the owner to correct the transgression	100% of the Monthly Levy per month until such time that the transgression has been corrected
<p>Material Offences such as:</p> <ul style="list-style-type: none"> • Not building according to approved plans • Changing the outside envelope of building without approval • Buildings not completed 	To correct the oversight	An amount equal to the cost of corrective actions to be taken

10 If a member, after due process, stays in breach to correct any **Material Offence** the MEHOA reserves the right to correct it on his/her behalf from the proceeds of the Fine.