

THE ENCLAVE IN FLAGSTAFF HOMEOWNERS ASSOCIATION
Enforcement Procedures
Adopted: October 7, 2022
Effective Date: January 1, 2023

Pursuant to Section 1.1(a) and Section 2.1 of Article VI of the Restated Bylaws (the “Bylaws”) of The Enclave in Flagstaff Homeowners Association, Inc., and Section 4.8 and 10.1 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded February 3, 2016 (the “Declaration”) and A.R.S. § 33-1803 of the Arizona Planned Community Act, the following Enforcement Procedures will be followed for The Enclave in Flagstaff Homeowners Association (the “Association”) for violations of the Declaration, the Bylaws, and the other governing documents of the Association and fines will be imposed according to the procedures set forth as follows. Effective as of the Effective Date set forth above, these Enforcement Procedures supersede the Enforcement Policy adopted June 8, 2018.

COMPLAINT/VIOLATION PROCESS:

Any Association member, Board member or agent of the Association may file a Complaint against another member for violation of any provision of the Association governing documents by such other member, his family, tenants or guests. A Complaint must be in writing, must be signed (unless submitted via e-mail) and dated and must include a description of the alleged violation and the identity of the alleged violator, if known. A Complaint from a member is considered filed when the written Complaint is received (i) by a member of the Board or an Association officer or (ii) by the Association’s management company. A copy or record of all Complaints will be provided to the Board.

Any Complaint received by the Association will be forwarded to the Association’s Enforcement Person. As used herein the term “Enforcement Person” means the Association’s management company, if any, or if none, the Board. In all cases where an Enforcement Person other than the Board receives the Complaint, the recipient thereof will forward a copy of the Complaint to the Board. Upon its receipt of a Complaint, the Enforcement Person will conduct an investigation of the Complaint to confirm that there is reason to believe that the conditions complained about actually exist. Such action will be taken immediately if it determines that the complained of situation constitutes an emergency requiring immediate action, or within ten (10) business days of its receipt of a Complaint if it determines that the complained of situation does not constitute an emergency requiring immediate action.

COURTESY AND FINE NOTICE:

In the event the Enforcement Person or its agent determines that a violation of the Association’s governing documents occurred or is occurring, a written Courtesy and Fine Notice may be sent by first class mail to the Owner at the mailing address as it appears on the records of the Association at the time of notice. Consistent with Arizona law as it may be amended, the Courtesy and Fine Notice will include at a minimum the following information:

- The provision of the governing documents that has allegedly been violated;
- The date of the violation or the date the violation was observed;
- The first and last name of the person or persons who observed the violation;
- The date by which the violation must be corrected (typically fourteen (14) days from the date of the Courtesy and Fine Notice) or in the case of a violation that is not a continuing one, that any future violation of the same provision of the governing documents will result in a fine being imposed pursuant to these Enforcement Procedures;
- A description of the process the Owner must follow to contest the violation notice;
- Notice that a fine in an amount set forth in the Notice will be imposed for failure to correct the violation by the required deadline or, in the case of a violation that is not a continuing one, that any future violation of the same provision of the governing documents will result in the imposition of a fine in the amount set forth in the Notice; and
- Notice of the Owner’s right to petition for an administrative hearing with the Arizona Department of Real Estate pursuant to A.R.S. § 32-2199.01.

FINE ASSESSMENT NOTICE:

Notwithstanding the foregoing, the Board in its sole discretion may determine that due to the nature of the violation a Courtesy and Fine Notice will not be sent to the Owner and may commence the enforcement process with the mailing of a Fine Assessment Notice. If a Courtesy and Fine Notice has been sent and the violation has not been corrected by the date set forth in the Courtesy and Fine Notice or if the Board decides not to send such notice, or in the event of a subsequent violation of the same provision of the governing documents, the Board may send the Owner a Fine Assessment Notice which will include the following information:

- The provision of the governing documents that has been violated;
- The date of the violation or the date the violation was observed;
- The first and last name of the person or persons who observed the violation;
- A statement notifying the Owner of the Owner's right to appeal the Board's decision that a violation has occurred and the manner in which such appeal must be requested or it will be deemed waived;
- The Board of Directors has imposed a fine for such violation and, for continuing violations, that the fines will continue to accrue until the violation is cured;
- If applicable, any requirements or special instructions for compliance;
- A statement informing the owner of the Association's right to seek legal and/or equitable action to collect the fine and/or to remedy the noticed violation of the Association governing documents; and
- The right of the lot owner to petition for an administrative hearing on the violation in the Arizona Department of Real Estate pursuant to Arizona Revised Statutes § 32-2199.01.

The Fine Notice will be mailed first class mail.

APPEAL PROCESS:

Any Owner who has received a Fine Assessment Notice will have the opportunity to appear before the Board to appeal the Board's decision that a violation exists. Such appeal right will be deemed waived if not timely exercised by the Owner. The appeal process will be as follows:

- Within ten (10) calendar days following the date of the Fine Notice, the Owner may appeal the violation decision in writing to the Board and request a hearing on the matter. If the written hearing request is not received within such ten (10) day period, the Owner's right of appeal will terminate as of the end of the tenth day.
- The Owner will have the right to appear at the hearing in person or by a representative and to present pertinent information supporting the existence of extenuating circumstances which require deviation from enforcement of the provisions of the governing documents.
- A lot owner who timely exercises his or her appeal right will be provided a written notice of the time, date and place of scheduled appeal hearing which will be conducted in an Executive Session meeting of the Board. In the event the lot owner fails to appear in person or by representative at such scheduled hearing, his or her appeal right will be deemed waived.
- After completion of the appeal hearing, the Board will excuse the Owner and, subject to the provisions of Arizona Revised Statutes § 33-1804(A)(5), will make its decision in Executive Session. The Owner will be informed in writing of such decision within ten (10) calendar days from the date of the appeal hearing.
- In the event the appeal is denied, the fines set forth in the Fine Assessment Notice will be imposed as set forth therein retroactively to the date of the Courtesy and Fine Notice and will continue until the violation is corrected.
- All decisions of the Board as to an appeal hearing are final and may not be appealed.

FINES:

- A fine may be assessed in accordance with the then effective Fine Schedule for an uncorrected violation of the governing documents of the Association.
- The Board of Directors will determine the period for corrective action of a continuing violation on a case-by-case basis.
- Fines are cumulative and will continue in accordance with the Fine Schedule without further written notice until the violation is corrected. The violation will be deemed corrected as of the date the Owner notifies the Board of the correction thereof unless the Board subsequently determines that the violation has not been corrected or that such date is not correct.

- At any time, the Board may exercise the option to pursue corrective action through legal means. All costs of legal action will be billed to the Owner and collected in the same manner as the assessments.

FINE SCHEDULE:

General Fine Schedule Provisions:

- *Notwithstanding the provisions of this Fine Schedule, the Board at its sole discretion, may at any time, assess a fine in an amount up to \$2,000 for any incident the Board deems to be egregious, dangerous, that may threaten the life, health, safety, or welfare of any person, resident or Owner, or that causes detriment or damage to any Association or other Owner's property. The Board may levy this fine despite any past violation history or lack thereof.*
- *The Board of Directors will consider the fines set forth in this Fine Policy and schedule to constitute damages sustained by the Association which are intended to compensate the Association for the administrative burden of addressing the violation and the adverse impact of the violation on the community.*
- *The Board of Directors reserves the right to deviate from the fine amounts set forth herein if, after a hearing on the matter, the Board finds good cause to modify the amount of the fine levied in a particular case. The Board also reserves the right to pursue any and all other remedies set forth in the Declaration at the same time or in lieu of levying the fines set forth in this Fine Policy.*

Fine Schedule:

- The initial fine amount will be \$50.00.
- If the violation has not been corrected within fifteen (15) calendar days after the effective date of the imposition of the initial fine, the Owner will be assessed an additional fine of \$100.00.
- If the violation has not been corrected within thirty (30) calendar days after the effective date of the imposition of the initial fine, the Owner may be sent a certified letter and will be assessed an additional fine of \$100.00 and will be assessed an additional fine of \$100.00 every fifteen (15) calendar days thereafter until the violation is corrected.
- At any time, in lieu of such stepped fine schedule, the Board may in its sole discretion impose (i) a daily fine in the amount of \$25.00 for each day a violation continues where the Board determines that due to the nature of the violation such a daily fine is more appropriate, or (ii) a reasonable lump sum fine that the Board determines is appropriate due to the nature of the violation.

SUBSEQUENT VIOLATIONS OF THE SAME GOVERNING DOCUMENT PROVISION:

Notwithstanding the foregoing provisions of these Enforcement Procedures, in the event of a subsequent violation by an Owner of the same provision of the Association governing documents within the same calendar year as a previous violation of such provision, the following will apply:

1. if the Association has sent the Owner a Courtesy or a Fine Notice as to such prior violation, the Association will not send the Owner a Courtesy and Fine Notice as to such repeat violation and will start the notice process by sending a Fine Assessment Notice;
2. no cure period will be included in any Fine Assessment Notice sent to an Owner for a subsequent violation by of the same provision of the Association governing documents within the same calendar year as a previous violation of such provision, and the noticed fine will be effective as of the date of the Fine Assessment Notice (subject to the Owner's appeal rights under these Enforcement Procedures); and
3. the amount of each fine (including the stepped fines amounts) for a subsequent violation by an Owner of the same provision of the Association governing documents within the same calendar year as a previous violation of such provision will be two times the amount of the fine for the initial violation or such other amount as determined appropriate by the Board.

Uncured violations that carry over from one calendar year to the next calendar year will be counted as a violation in each of such years.

GENERAL:

These Enforcement Procedures are intended as a guideline for the Association. Excepting only the amounts set forth in the Fine Schedule as to any particular violation by an Owner, the Board retains the right to vary the enforcement process when it in its sole discretion determines that any such variance is appropriate. The Board further retains the right to amend or replace all or any portion of these Enforcement Procedures. The assessment of fines by the Association does not relieve the Owner from the obligation to correct the violations or comply with Association governing documents. These Enforcement Procedures and the remedies set forth herein do not constitute an election of remedies by the Association which reserves all such remedies available at law and in equity. The Association has the right to enforce the Association governing documents through any other remedies available to the Association concurrently with the Enforcement Procedures set forth herein.

IN WITNESS WHEREOF, these Enforcement Procedures of The Enclave in Flagstaff Homeowners Association, Inc. are adopted as set forth above.



Paul Helford (Dec 13/2022 07:49 MST)

President,
The Enclave in Flagstaff Homeowners Association

SECRETARY'S CERTIFICATE

The undersigned does hereby certify that:

He/She is the duly appointed or elected Secretary of the The Enclave in Flagstaff Homeowners Association, an Arizona nonprofit corporation; and

The foregoing Enforcement Procedures constitute the Enforcement Procedures of The Enclave in Flagstaff Homeowners Association as adopted by the Board of Directors of The Enclave in Flagstaff Homeowners Association at a duly called and held Board meeting on October 7, 2022.

The foregoing Enforcement Procedures were sent to all of the owners of record by mail and/or e-mail blast on December 14, 2022.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand as of Dec 13, 2022



Tammy R Gladwill (Dec 13, 2022 16:57 MST)

Secretary

The Enclave in Flagstaff Homeowners Association