

# **FLAGSTAFF MEADOWS PROPERTY OWNERS' ASSOCIATION**

## **Enforcement Procedures**

**Adopted: May 2, 2019**

**Effective Date: June 15, 2019**

Pursuant to Article VII of the Bylaws (the "Bylaws") of Flagstaff Meadows Property Owners' Association, Section 6.2 of Article VI of the Declaration of Covenants, Conditions and Restrictions dated January 22, 2002 (as amended, the "Declaration") and A.R.S. § 33-1803 of the Planned Community Act, the following Enforcement Procedures shall be followed for the Flagstaff Meadows Property Owners' Association (the "Association") for violations of the Declaration, the Bylaws, and the other governing documents of Flagstaff Meadows Property Owners' Association and fines shall be imposed according to the procedures set forth as follows. Effective as of the Effective Date set forth above, these Enforcement Procedures supersede the Violation Fine Schedule adopted October 10, 2012.

### **COMPLAINT/VIOLATION PROCESS:**

Any 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 a Board member or (ii) by the Association's management company. A copy or record of all Complaints shall be provided to the Board.

Any Complaint received by the Association shall 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 shall forward a copy of the Complaint to the Board. Upon its receipt of a Complaint, the Enforcement Person shall take the following action (i) immediately if it determines that the complained of situation constitutes an emergency requiring immediate action, or (ii) 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:

1. Conduct an investigation of the Complaint to confirm that there is reason to believe that the conditions complained about actually exist, and
2. If the Enforcement Person determines that there is reason to believe that the conditions complained about actually exist it shall attempt to contact the lot owner and try to resolve the Complaint informally.

If the violation is informally resolved, the Enforcement Person shall document in writing for the related lot file what the alleged violation was and how the issue was resolved. If the Enforcement Person is unable to resolve the violation informally, the following enforcement process shall be begun.

### **COURTESY NOTICE:**

In the event the Enforcement Person or its agent determines that a violation of the Association's governing documents exists and such violation is not informally resolved, a written Courtesy 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. No fine will be imposed with this notice. Consistent with Arizona law as may be amended, the Courtesy Notice shall 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 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 sanctions being imposed pursuant to these Enforcement Procedures;
- A description of the process the Owner must follow to contest the violation 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.

### **VIOLATION NOTICE:**

If the violation is not corrected within the period set forth in the Courtesy Notice, a Violation Notice may be sent to the Owner via first class mail. The Violation Notice shall include at a minimum 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 date of any Courtesy Notice;
- The date by which the violation must be corrected (typically ten (10) days from the date of the Courtesy Notice);
- The right of the 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; and
- Notice that a fine in an amount to be determined in accordance with the Fine Schedule may be imposed for failure to correct the violation by the required deadline.

#### **FINE NOTICE:**

Depending on the violation, the Board in its sole discretion may determine that a Courtesy Notice and/or a Violation Notice will not be sent to the Owner and may commence the enforcement process with the mailing of a Fine Notice. If the violation has not been corrected by the date set forth in any Violation Notice, or the Board decides not to send either or both of such notices, the Board may impose a fine pursuant to the then effective Fine Schedule and send the Owner a Fine Notice which shall 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;
- The dates the Courtesy Notice and the Violation Notice, if any, were sent to the Owner;
- A statement notifying the Owner of the Owner's "RIGHT OF APPEAL" 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;
- A statement that in the event the violation is not cured by the date seven (7) calendar days after the date of the Fine Notice (or by such other date as the Board determines appropriate), the Board of Directors will impose a specified fine effective as of such date and additional fines as set forth in the Fine Schedule if the violation is not cured as set forth in the Fine Notice;
- A copy of the Fine Schedule;
- 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 certified mail, return receipt requested, and first class mail.

#### **APPEAL PROCESS:**

Any Owner who has received a Fine Notice shall have the opportunity to appear before the Board to appeal the Board's decision that a violation exists. Such appeal right shall be deemed waived if not timely exercised by the Owner. The appeal process shall 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 shall terminate as of the end of the tenth day.
- The Owner shall 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 shall be provided a written notice of the time, date and place of scheduled appeal hearing which shall 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 shall 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, unless otherwise stated in the Board's written decision, the Owner must bring the violation into compliance within ten (10) days of the date of the Board's notice to the Owner of the Board's denial of the appeal. If the violation is not corrected within ten (10) days after the date of the Board's notice to the Owner of the Board's denial of the appeal, the fines set forth in the Fine Notice shall be imposed as set forth therein 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 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.
- Notwithstanding the foregoing, in the event of a subsequent violation by an Owner of the same provision of the governing documents within the same calendar year as a previous violation of such provision, if the Association has sent the Owner a Fine Notice as to such prior violation, the Association shall not be required to send the Owner a Courtesy Notice, a Violation Notice or a Fine Notice as to such subsequent violation and shall be entitled to impose a fine for such subsequent violation pursuant to the Fine Schedule by a mailed notice to the Owner. Uncured violations that carry over from one calendar year to the next calendar year shall be counted as a violation in each of such years.

## **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 shall 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.*

### **General Violations Fine Schedule:**

- The initial fine amount shall 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 shall 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 shall be assessed an additional fine of \$150.00 and shall be assessed an additional fine of \$150.00 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 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.

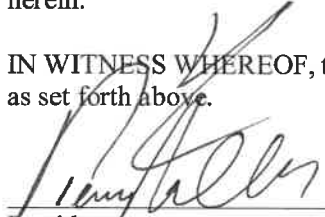
### **Architectural Fines Schedule:**

- The fine for commencing any new construction on a vacant lot without prior review and written approval from either the Board of Directors or the Architectural Control Committee shall be \$1,000.00.
- The fine for commencing or completing exterior alterations or improvements to a lot or to any improvements located thereon without the prior review and written approval from either the Board of Directors or the Architectural Control Committee shall be no less than \$100.00 and no greater than \$500.00. Such alterations or improvements include, without limitation, fencing, landscaping, sheds, and driveway extensions.
- The fine for new construction work not completed in a timely manner (within one (1) year) shall be \$500.00 per month.

**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 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 shall have 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 Flagstaff Meadows Property Owners' Association are adopted as set forth above.

  
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President,  
Flagstaff Meadows Property Owners' Association

**SECRETARY'S CERTIFICATE**

The undersigned does hereby certify that:

He/She is the duly appointed or elected Secretary of the Flagstaff Meadows Property Owners' Association, an Arizona nonprofit corporation; and

The foregoing Enforcement Procedures constitute the Enforcement Procedures of Flagstaff Meadows Property Owners' Association as adopted by the Board of Directors of Flagstaff Meadows Property Owners' Association at a duly called and held Board meeting on May 2, 2019.

The foregoing Enforcement Procedures were sent to all of the owners of record by mail and/or e-mail blast on May 10, 2019.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand as of this 8 day of May, 2019.

  
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Secretary  
Flagstaff Meadows Property Owners' Association