

**SHADOW MOUNTAIN VILLAGE COMMUNITY ASSOCIATION
ENFORCEMENT PROCEDURES
Adopted: November 11, 2022
Effective Date: January 1, 2023**

Pursuant to Section 5.3 of Article 5 and Section 9.3 of Article 9 of the Declaration of Covenants, Conditions, Restrictions and Easements for Shadow Mountain Village (the "Declaration"), the following Enforcement Procedures shall be followed for the Shadow Mountain Village Community Association (the "Association") for violations of the Declaration, the Association Bylaws, the Association Rules and the other governing documents of Shadow Mountain Village Community Association and fines shall be imposed according to the procedures set forth as follows. Effective as of the Effective Date set forth above.

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 the name and unit number of the person who observed the violation, a description of the alleged violation, the identity of the alleged violator, if known, and the date the violation occurred or was observed. A Complaint from a member is considered filed when the written Complaint is received (i) by a member of the Board or an officer 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 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 it 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.

FINE NOTICE:

Notwithstanding the foregoing, the Board in its sole discretion may determine that due to the nature of the violation a Courtesy Notice will not be sent to the Owner and may commence the enforcement process with the mailing of a Fine Notice. If a Courtesy Notice has been sent and the violation has not been corrected by the date set forth in the Courtesy 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 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;
- The dates the Courtesy Notice, if any, was 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 14 (fourteen) 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 § 33-1248(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) calendar 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) calendar 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.

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 (i) a daily fine in the amount of \$50.00 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 shall apply:

1. if the Association has sent the Owner a Courtesy Notice as to such prior violation, the Association shall not be required to send the Owner a Courtesy Notice as to such repeat violation and shall start the notice process by sending a Violation Notice;
2. no cure period shall be included in any Fine 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 shall be effective as of the date of the Fine Notice; and
3. the amount of the fine 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 shall 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 shall 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 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 Shadow Mountain Village Community Association are adopted as set forth above.


tim campbell (Nov 22, 2022 12:48 MST)

President,
Shadow Mountain Village Community Association