

THE MOUNTAIN OAKS HOMEOWNERS ASSOCIATION
ENFORCEMENT AND FINES POLICY

Effective Date: September 18, 2016
Revised October 17, 2021 (See highlighted revisions)

The following Enforcement and Fines Policy applies to all owners of lots located at Mountain Oaks Subdivision Filing Nos. 1,2,3, & 4 (“Owners”), and is hereby adopted by the Board of Directors of Mountain Oaks Homeowners Association (“MOHA”):

1. **Purpose and Intent.** The MOHA Board has broad authority to enforce the Covenants at all times to ensure compliance with Covenants by all property owners. Repeated violations of the Covenants may result in fines as designated by the MOHA Board. It is the intent of the Covenants and the MOHA Board to enforce such Covenants to preserve the appearance, aesthetics and value of all properties in the Association. The MOHA Board of Directors will, as policy, enforce all MOHA Covenants. The Covenants require that property owners maintain their property at all times. The Covenants and this *Enforcement and Fines Policy* apply to all property owners and to tenants. Responsibility for Covenant compliance and resolution of any violations rests primarily with the property owner. The Architectural Control Committee (ACC), is appointed by and reports to the MOHA Board of Directors. The purpose of this ACC is to ensure compliance with the governing documents (Articles of Incorporation, Bylaws, Covenants, Rules) is complied with. All alterations and modifications to the exterior structures and lots require review and approval by the ACC. Examples of this are painting, re-roofing, new gutters, windows, stucco, adding a new or replacement deck, adding new or replacement concrete, landscaping or any item that requires a noticeable or significant change to the exterior of the home. The purpose of the architectural guidelines is to promote and retain the high-quality appearance of the homes in the Mountain Oaks Homeowner’s Association. Failure to submit and receive approval of plans for alterations and modifications violates the Covenants and is subject to this *Enforcement and Fines Policy*.

2. **Enforcement Procedure Compliance:** The MOHA Board of Directors (“Board”) shall not impose fines, special assessments, commence legal or other enforcement action unless and until the Board has sent or delivered written notice to the Owner, or the Owner’s representative, and provided an opportunity for a hearing before an impartial decision-maker as provided below.

3. **Enforcement Procedure:**

A. **Complaint:** Any Owner within the community may send the MOHA a formal, written complaint via either electronic mail or regular mail notifying of a covenant or rule violation. Complaints may also be initiated by any member of the Board or the Architectural Control Committee. The Board shall have no obligation to consider oral complaints or anonymous complaints that cannot be independently verified. The Board shall have the authority to determine whether a written complaint is justified before continuing with the Notice and Hearing Procedure. If a complaint involves an alleged violation of a particular member of the Board, then that particular board member shall recuse him or herself during the deliberation of the remaining members

of the Board in determining whether to continue with the Notice and Hearing Procedure.

- B. Notice of Alleged Violation:** A Notice of Alleged Violation of any provisions of the Declaration, Bylaws, Rules, Regulations, Policies or Resolutions shall be sent by US Mail First Class and electronic mail, if available, to the Homeowner as soon as reasonably practicable following the receipt of a complaint or the identification by the Board of a potential violation. The Board may also, at its discretion, provide a copy of such notice to any non-Homeowner violator. The Notice shall describe the nature of the alleged violation and the possible fine that may be imposed or legal action that may be taken, the right to request a hearing before the Board to present the Homeowner's defense to the alleged violation or possible fine, and may further state that the Board may seek to protect its rights as they are specified in the Governing Legal Documents. This Notice of Alleged Violation shall instruct the Owner to discontinue the violation upon receipt of the Notice of Alleged Violation. If the alleged violation involves a failure to submit plans for approval by Mountain Oaks Homeowners Association as required by Article XI of the Declaration of Covenants, within said time the homeowners shall cease all work and shall submit the required plans within seven (7) days of the date of receipt of the Notice of Alleged Violation.
- C. Request for Hearing:** If an Owner desires a hearing to present evidence concerning whether the alleged violation actually occurred, whether the Owner is the one who should be held responsible for the alleged violation, to address the imposition of fine or other enforcement actions or to discuss any mitigating circumstances, the Owner must request such hearing, in writing, within 14 (fourteen) days of the date of the notice of Alleged Violation. The requested hearing shall be held at the next regularly scheduled Board meeting. If a hearing is not requested within the 14-day period, and the Owner has not ceased, or corrected, the violation, then the Board shall conduct an informal fact-finding hearing at the next regularly scheduled Board meeting as described below.
- D. Conduct of Hearing:** The Board shall hear and decide cases set for hearing pursuant to the procedures set forth in this *Enforcement and Fines Policy*. The hearing itself shall be presided over by the members of the Board present at the regularly scheduled Board meeting unless any Board member has a conflict of interest, in which case such Board member(s) shall not participate in the process, shall not participate in the fact findings and shall not participate in decisions concerning imposition of fines or other enforcement actions.
- E. Hearings and Determinations by Impartial Decision Makers:** Only impartial decision makers will participate in the hearing process. Decisions concerning the alleged violations and enforcement actions will be made by impartial decision makers. To be an impartial decision maker, the person cannot have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a

result of the outcome, receive any greater benefit or detriment than will the general membership of the association. Consideration of whether a decision maker has a conflict of interest and disqualification shall be made in accordance with the MOHA *Conflicts of Interest Policy*.

F. **Hearing:** The Board shall inform the Owner of the scheduled time, place and date of the hearing by First Class US Mail and electronic mail, if available. This Hearing is open to all members of MOHA and Notice shall be posted and sent as outlined in these Governing Documents, *Conduct of Meeting Policy*. The President or other Board member may reschedule the hearing to a later date for good cause. At the beginning of each hearing, the President or other Board member shall establish a quorum, explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board. The complaining parties and the owner shall have the right, but not the obligation, to be in attendance at the hearing and present evidence, testimony and witnesses. During the hearing, the Board shall consider any written information, oral or written statements of owners or witnesses regarding the alleged violation, photographs or any other evidence available to the Board including Board member's observations. Based upon the information received, the Board shall weigh the evidence and determine by majority vote of the Board whether the alleged violation actually occurred and whether the Owner is the one who should be held responsible for the alleged violation. In the event that the Board finds a violation and that the Owner should be held responsible, the Board shall then determine whether to assess a fine as set forth in the fine schedule or take other action to enforce compliance with the Declaration, Bylaws, Rules, Regulations or Resolutions, including imposition of a special assessment. The alleged violations considered by the Board at each hearing shall be limited to the alleged violations set forth in the Notice of Alleged Violation. Unless otherwise determined by the board of Directors in accordance with the terms of the Colorado Common Interest Ownership Act, all hearings shall be open to attendance by all members of the MOHA. If a complaining party is unable to attend the hearing, he or she may instead submit a letter to the Board explaining the basis of the complaint.

G. **Notice of Decision:** After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its written findings and decision, and impose a reasonable fine, or other enforcement action within a reasonable time after the hearing. A decision, either a finding for or against the Owner, shall be a majority vote of the Board members present. The Board of Directors shall provide written Notice of Findings, Decision and Imposition of Fines, by US Mail First Class, to the Owner. Collection of any fine imposed shall be in accordance with the *MOHA Collection Policy*.

4. Schedule of Fines, Special Assessments and Payment Plans. The Schedule of Fines that may be levied for violation of the provisions of the Declaration, Bylaws, Rules and Regulations, Policies and Resolutions of the MOHA are as follows:

SCHEDULE OF FINES (Revised Oct 17, 2021)

1st offense/notice of violation – no fine

2nd offense or notice of non-compliance (for each infraction) \$100

3rd offense or notice of non-compliance (for each infraction) \$200

4th offense or notices of non-compliance (for each infraction) \$300

5th offense or subsequent notices of non-compliance (for each infraction) \$100.00 daily

The Schedule of Fines will be imposed as follows when a Notice of Decision in accordance with Section 3 G above is not favorable to the Homeowner:

- a. A letter will be sent by U.S. first class mail to the Homeowner stating the following:
 - i. That on the date indicated, the Board conducted a hearing concerning the alleged violation;
 - ii. That at the hearing the Board found that that a violation of the provisions of the Declarations, Bylaws, Rules and/or Regulations of the MOHA had occurred including the specific section(s) violated;
 - iii. That the Board found that the owner should be held responsible for the covenant violation. No fine is being levied for the violation as a first offense.
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 - iv. That the violation may be cured as described;
 - v. That if the violation remains uncured, the enclosed Schedule of Fines is applicable to additional or continued violations;
 - vi. That the Homeowner communicates a deadline of fourteen (14) days from the date of the letter to cure the violation or present a plan for curing the violation (subject to Board approval);
- b. If the violation is not cured by the deadline set forth in the letter sent in accordance with (a.) above, the Board will hold a further hearing to consider whether the violation has been cured. If the Board finds that the violation has not been cured, the Board shall send a 2nd letter by U.S. first class mail to the Homeowner stating that the Board has considered whether the violation has been cured and has found that the violation has not been cured and that a fine of \$100.00 is being levied as a second offense. The letter will state how the violation may be cured and provide a Schedule of Fines to be levied if the violation remains uncured. The letter will set a new deadline fourteen days from the date of the letter for cure of the violation and payment of the fine. The homeowner will have fourteen days to pay the fine and cure the violation, or present a plan for curing the violation (subject to Board approval).
- c. If the violation in (b.) above is not cured in seven (7) days from receipt of letter, a 3rd letter will be sent by U.S. first class mail to the Homeowner stating that a 3rd offense fine of \$200.00 (for each infraction) is being levied. The letter will state how the violation may be cured and provide a Schedule of Fines to be levied if infraction(s) remains uncured. The Homeowner will have seven (7) days from date of receipt of letter to pay the fine and cure the violation, or present a plan for curing the violation (subject to Board approval).

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- d. If the violation in (c.) above is not cured in seven (7) days from receipt of letter, a 4th letter will be sent by U.S. first class mail to the Homeowner stating that a 4th offense fine of \$300.00 (for each infraction) is being levied. The letter will state how the violation may be cured and provide a Schedule of Fines to be levied if infraction(s) remain uncured. The Homeowner will have seven (7) days from date of receipt of letter to pay the fine and cure the violation, or present a plan for curing the violation (subject to Board approval).
- e. If the violation in (d.) above is not cured in seven (7) days from receipt of letter, a 5th letter will be sent by U.S. first class mail to the Homeowner stating that a 5th offense fine of \$100.00 daily (for each infraction) is being levied.
- f. The Homeowner will be responsible for payment of fines as stated in the Enforcement and Fines Policy. A late fee of one hundred dollars (\$100.00) will be assessed to the Owner's account if payment is not received within 30 (thirty) days of the date specified on an invoice. (Any late fees that remain unpaid as of the Past Due Date shall bear interest from and after the Due Date at the rate specified in Section 608 of the MOHA Covenants.)
Special assessments may be imposed in actions where abatement of a nuisance or other expense is incurred by the MOHA to address the covenant violation.

The Board may waive all, or any portion, of the fines if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the violator coming into compliance with the Declaration, Bylaws, Policies or Rules.

5. Further Enforcement Action. The MOHA may pursue legal action against an Owner to enforce the provisions of the Declaration, Bylaws, Policies, rules or resolutions as necessary in its sole discretion for continuing violations that do not cease after notice, hearing and enforcement actions consistent with this Policy. For a description of further actions that may be used, refer to the MOHA Policy on Collections.

6. Exercise of Discretion in Enforcement. The decision of the Board in the exercise of its discretion to decline initiation of an enforcement process will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any of the above referenced governing documents for the MOHA.

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IN WITNESS WHEREOF, the undersigned certify that this Enforcement and Fines Policy was adopted by resolution of the Board of Directors of Mountain Oaks Homeowners Association.

MOUNTAIN OAKS HOMEOWNERS ASSOCIATION
A Colorado nonprofit corporation,

By: Steve Carmichall
President

By: Beverly Collins
Secretary