

**ENFORCEMENT AND FINE POLICY FOR
MALLARD CROSSING COMMUNITY ASSOCIATION, INC.**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

I, Bridget Nilsson, Director of Mallard Crossing Community Association, Inc., a Texas nonprofit corporation (the “**Association**”), certify that at a meeting of the Board of Directors of the Association (the “**Board**”) duly called and held on February 15, 2024, with at least a quorum of the Board members being present and remaining throughout, and being duly authorized to transact business, the following Enforcement and Fine Policy (“**Policy**”) was approved by not less than a majority of the Board members in attendance.

RECITALS:

1. The Declaration (Declaration of Covenants, Conditions and Restrictions of Mallard Crossing, recorded in County Clerk’s File No. Z269493 of the Official Public Records of Harris County, Texas) authorizes the Association to enforce all covenants, conditions and restrictions set forth in the Declaration.

2. The Declaration authorizes the Association to levy fines against an Owner for violations of the Governing Documents, subject to compliance with notice requirements imposed by law.

3. Section 209.006 of the Texas Property Code sets forth notice requirements prior to the commencement of enforcement action, including the imposition of fines.

4. The Board of Directors desires to adopt a policy relating to the enforcement of the Declaration and the other Governing Documents of the Association consistent with Section 209.006 of the Texas Property Code.

5. This Policy supersedes and replaces any previously recorded fine policy, if any, adopted by the Association.

WITNESSETH:

It is the policy of the Association to enforce its Governing Documents (as defined herein) as provided below.

Section 1. Definitions.

Capitalized terms used in this Policy have the following meanings:

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- 1.1. **Bylaws** - The Amended and Restated Bylaws of Mallard Crossing Community Association, Inc., as amended and supplemented.
- 1.2. **Declaration** - Declaration of Covenants, Conditions and Restrictions of Mallard Crossing, recorded in County Clerk's File No. Z269493 of the Official Public Records of Harris County, Texas, as amended and supplemented.
- 1.3. **Governing Documents** - Each document governing the establishment, maintenance or operation of the properties within the Community, as more particularly defined in Section 202.001(1) of the Texas Property Code.

Other capitalized terms used in this Policy, but not defined herein, have the same meanings as that ascribed to them in the Declaration.

Section 2. Types of Violations. Section 209.006 of the Texas Property Code refers to curable violations, uncurable violations, and violations which are considered a threat to public health or safety. The types of violations are addressed below.

2.1. **Curable Violations** - By way of example and not in limitation, the Texas Property Code lists the following as examples of curable violations:

- a. a parking violation;
- b. a maintenance violation;
- c. the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- d. an ongoing noise violation such as a barking dog.

2.2. **Uncurable Violation** - A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. By way of example and not in limitation, the Texas Property Code lists the following as examples of uncurable violations:

- a. an act constituting a threat to health or safety; and
- b. a noise violation that is not ongoing.
- c. .

2.3. **Violation that is a Threat to Public Health or Safety-** Per the Texas Property Code, a violation that could materially affect the physical health or safety of an ordinary resident.

As provided in this Policy, there are two (2) enforcement procedures to be followed depending upon whether the violation is curable *and* does not pose a threat to public health or safety or whether the violation is uncurable *and/or* poses a threat to public health or safety. If there is reasonable uncertainty as to whether a violation is curable or uncurable or a threat to public health or safety, the Board has the authority to make the determination and, therefore, to decide which enforcement procedure will be followed. Provided that, this Policy

will not be construed to impose an obligation on the Board to pursue enforcement action with respect to a violation or alleged violation if the Board, in its reasonable good faith judgment, decides that enforcement action is not warranted or necessary.

Section 3. Enforcement - Curable Violations That Do Not Pose a Threat to Public Health or Safety. If a violation is curable and does not pose a threat to public health or safety, the Owner will be given a reasonable period to cure the violation, as provided below. The time period given to an Owner may vary depending upon the violation and the difficulty involved or the effort required to cure the violation. The Board of Directors may, but is not obligated to, consider any special circumstance relating to the violation and the cost to cure the violation. If a violation cannot be cured within the time period specified, the Owner must request an extension to the Association for review and approval. The enforcement procedure for this type of violation is as follows:

3.1. **Courtesy Letter (Optional)** - Upon verification of a violation, a courtesy letter may be sent to the Owner describing the violation, the action required to correct the violation and requesting that the Owner cure the violation within a stated time period. The Association is not required to send a courtesy letter.

3.2. **Courtesy Letter (Optional)** - After the expiration of the time set forth in the courtesy letter, if a courtesy letter is sent, or as the initial notice, a violation letter may be sent to the Owner. Depending on the severity of the violation and/ or the history of prior violations on the Owner's Lot, the violation letter may be the first letter sent to the Owner. The Association is not required to send a courtesy letter. If sent, the courtesy letter will include:

- a. a description of the violation;
- b. the action required to correct the violation;
- c. the time by which the violation must be corrected;
- d. a request that the Owner correct the violation; and
- e. notice that if the violation is not corrected within the time provided or if there is a subsequent violation of the same restriction, a fine may be imposed or other enforcement action may be initiated.

3.3. **Demand Letter (209 Notice)** - Either upon initial verification of a violation, or after the expiration of the time period stated in the courtesy letter and/ or violation letter, if sent, a demand letter may be sent to the Owner. The demand letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier. The demand letter must be sent to the Owner's last known address as shown in the records of the Association, as well as by any other method that the Board determines will cause the demand letter to be received by the Owner. Depending on the severity of the violation and/ or the history of prior violations on the Owner's Lot, the demand letter may be the first letter sent (rather than a courtesy letter and/ or a violation letter),

as determined by the Board in its sole discretion.

3.4. **Content of the Demand Letter (209 Notice)** - The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;
- b. notice that the Owner is entitled to a reasonable period to cure the violation and avoid the enforcement action, suspension, charge or fine;
- c. a specific date, which must be a reasonable period given the nature of the violation, by which the Owner must cure the violation. If the Owner cures the violation before the date specified, a fine may not be assessed for the violation;
- d. a notice that the Owner may request a hearing before the Board of Directors, such request to be made in writing on or before the 30th day after the date the notice was mailed to the Owner; and
- e. notice that the Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 *et seq.*), if the Owner is serving on active military duty.

3.5. **Hearing Requested** - If a hearing is properly requested by the Owner, the hearing will be held not later than the 30th day after the date the Association receives the Owner's written request for a hearing. Notification of the date, time and place of the hearing will be sent not later than the 10th day before the hearing. If a postponement of the hearing is requested by either the Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties. The hearing may be held by virtual or telephonic means, in which case the access information for the virtual or telephonic hearing shall be the "place" of the hearing for purposes of the notice.

3.6 **Hearing Packet** - The Board shall include with the hearing notice, a hearing packet containing all documents, photographs, and communications relating to the matter which the Board intends to introduce at the hearing. If the Board fails to provide the hearing packet to the Owner at least ten (10) days before the hearing, the Owner is entitled to an automatic fifteen (15) day postponement of the hearing.

3.7 **Conducting the Hearing-** During the hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the Owner. An Owner, or an Owner's designated representative is then entitled to present the Owner's information and issues relevant to the dispute. The Board may ask questions of the Owner or designated representative. Additional information regarding the hearing process may be found in the Association's 209

Hearing Policy.

3.8. **Hearing Not Requested** - If a hearing is not properly requested by the Owner, the violation must be cured within the time frame set forth in the demand letter. Fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after the expiration of the thirty (30) day time frame provided to the Owner to request a hearing.

3.9. **Remedies** - The Owner is liable for, and the Association may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the Association after the conclusion of a hearing, or, if a hearing is not requested, after the date by which the Owner must request a hearing. Additionally, the Association may, but is not obligated to, exercise any self-help remedies set forth in the Declaration. Further, the right to use the Common Area may be suspended.

In addition to charging fines, as provided in Section 6, the Association reserves the right under the Governing Documents and under Texas law to file a suit for the recovery of damages and/or injunctive relief.

A notice of violation may also be recorded in the real property records if the violation is not cured within the specified time frame.

Section 4. Enforcement - Uncurable Violations and/or Violations that Pose a Threat to Public Health or Safety. Upon initial verification of an uncurable violation and/or threat to public health or safety, a demand letter may be sent to the Owner. The demand letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier. The demand letter must be sent to the Owner's last known address as shown in the Association's records, as well as by any other method that the Board determines will cause the demand letter to be received by the Owner.

In lieu of enforcement the Association may elect to turn health and safety issues over to the County Health Department for enforcement.

- 4.1. **Content of the Demand Letter** - The demand letter will include the following:
- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;
 - b. notice that the Owner may request a hearing before the Board of Directors, such request to be made in writing on or before the 30th day after the date the notice was mailed to the Owner; and
 - c. notice that Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner is serving on active military duty.

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4.2. **Hearing Requested-** If a hearing is properly requested by the Owner, the hearing must be held not later than the 30th day after the date the Association receives the Owner's written request for a hearing. Notification of the date, time and place of the hearing will be sent not later than the 10th day before the hearing. If a postponement of the hearing is requested by either the Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties. The hearing may be held by virtual or telephonic means, in which case the access information for the virtual or telephonic hearing shall be the "place" of the hearing for purposes of the notice.

4.3. **Hearing Packet** - The Board shall include with the hearing notice, a hearing packet containing all documents, photographs, and communications relating to the matter which the Board intends to introduce at the hearing. If the Board fails to provide the hearing packet to the Owner at least ten (10) days before the hearing, the Owner is entitled to an automatic fifteen (15) day postponement of the hearing.

4.4. **Conducting the Hearing** - During the hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the Owner. An Owner, or an Owner's designated representative is then entitled to present the Owner's information and issues relevant to the dispute. The Board may ask questions of the Owner or designated representative. Additional information regarding the hearing process may be found in the Association's 209 Hearing Policy.

4.5. **Remedies** - Regardless of whether the Owner requests a hearing, fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after mailing the demand letter. The Owner is liable for, and the Association may collect reimbursement of, reasonable attorneys' fees and other reasonable costs incurred by the Association. Additionally, the Association may, but is not obligated to, exercise any self-help remedies set forth in the Declaration. Further, the right to use the Common Area may be suspended.

In addition to charging fines, the Association reserves the right under the Governing Documents and under Texas law, to file a suit for the recovery of damages and/or injunctive relief.

A notice of violation may also be recorded in the real property records should the violation not be cured within the specified time frame.

Section 5. Subsequent Violation. If an Owner has been given notice in accordance with Section 3 or Section 4 of this Policy in the preceding six (6) month period, notice is not required for the recurrence of the same or a similar violation. The Association may impose fines or suspend the Owner's right to use the Common Area without first sending another demand for

compliance.

Section 6. Fines. Subject to the notice provisions set forth in Section 3 or Section 4 of this Policy, as applicable, the Association may impose reasonable monetary fines against an Owner in accordance with the below schedule until the violation is cured if of a curable nature. Fines may be assessed for any violation of the Governing Documents, including but not limited to architectural violations, violations for using a lot in a prohibited manner, failure to take required action, and failure to maintain a lot or the structures/improvements thereon.

Pursuant to Section 209.0061 of the Texas Property Code, below is a schedule of fines for each general category of violation for which the Association may assess fines (See Exhibit "A" attached).

Notwithstanding the foregoing or Exhibit "A" and pursuant to Section 209.0061(c) of the Texas Property Code, the Board reserves the right to levy a fine from the schedule of fines that varies on a case-by-case basis. Specifically, the Board has sole and absolute discretion to set the amount of the fine (if any) as it reasonably relates to the violation of the Governing Documents, taking into account factors including, but not limited to, the severity of the violation and the number of Owners affected by the violation. Any adjustment to this fine schedule by the Board shall not be construed as a waiver of the fine schedule or the Governing Documents. Any fine levied by the Association is the personal obligation of the Owner.

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Exhibit "A"
Schedule of Fines Curable Violations

Notice	Time to Cure (estimate)	Fine Amount if not Cured
Courtesy Notice (if sent)		No Charge
Courtesy 2nd Notice (if sent)		No Charge
1st Notice (Chapter 209- Demand Letter)	30 days	\$50.00
2nd Notice of Fine Letter	30 days	\$100.00
3rd Notice of Fine Letter	30 days	\$150.00
Subsequent Notice of Fine Letters for the same or substantially similar violation	30 days	\$200.00
Failure to maintain lawn/turf/landscaping (e.g., Overgrown or dead landscaping)	14 days	\$50.00 per month until cured
Failure to make necessary major home and/or outbuilding repairs including, but not limited to, rotting wood, exterior paint, roof replacement or damage, broken windows, damaged front doors	30 days	\$50.00 per month until cured
Failure to make necessary minor home and/or outbuilding repairs including, but not limited to, sagging gutters, damaged garage door, fence and gate repair, repair or repaint yard light	14 days	\$50.00 per month until cured
Mildew/ mold/ discoloration on structures, outbuildings, home, fence	14 days	\$50.00 per month until cured
Presence of stored or inoperable vehicles, trailers, boats and RV's, or campers	7 days	\$50.00 per month until cured
Driveways, doorways/porch areas and side yards in front of the fence being used for storage of items like grills, fire pits, kids toys and/or other random items	14 days	\$50.00 per month until cured
Operating a commercial business out of the home	30 days	\$50.00 per month until cured
Livestock, poultry, or breed of animal/bird outside of those specified in the Governing Documents without an approved 4-H or FFA project application, as applicable. Animals/birds that may be a hazard to others or that impair property owners' ability to enjoy their property	30 days	\$50.00 per month until cured
Signage (contractor, garage sale, estate sales, multiple "For Sale", political signs and "Open House").	7 days	\$50.00 per month until cured

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New dwelling construction improvements, whether in public view or not, lasting longer than twelve (12) months from commencement of construction.	May vary	\$100.00 per month until cured
Constructing or modifying an improvement that is not in accordance with approved plans as submitted for review and approved by the Architectural Review Committee, including but not limited to, clearing substantially trees, or building a pond.	May vary	\$100.00 per month until cured
Construction and/ or modification of Major Improvements on the Lot without approval by the Architectural Review Committee (e.g., pools, room additions, sunrooms, outdoor recreational/ storage shed, unapproved paint colors, roof replacements or ponds)	30 days	\$100.00 per month until cured
Any and all other violations of the Governing Documents that is curable	May vary	\$50 per month until cured

Uncurable Violations and Violations Posing a Threat to Public Health or Safety

Notice	Time to Cure (estimate)	Fine Amount
Fine Letter for Uncurable Violations or Violations that are a Threat to Public Health or Safety (including, but not limited to, burning items outside in a manner that poses a threat to public health or safety to others and other properties)	N/A	\$100.00 per occurrence

IMPORTANT: ALL EXTERIOR CHANGES AND ADDITIONS TO THE PROPERTY REQUIRE REVIEW AND PRIOR WRITTEN ACC APPROVAL

I hereby certify that I am the duly elected and acting Bridget Nilsson, Director of Mallard Crossing Community Association, Inc., a Texas nonprofit corporation, and that this Policy was approved by not less than a majority vote of the Board of Directors as set forth above and now appears in the books and records of the Association, to be effective upon recording in the Official Public Records of Real Property of Harris County, Texas.

TO CERTIFY which witness my hand on February 25 2024.

MALLARD CROSSING COMMUNITY ASSOCIATION, INC.

By: Bridget Nilsson
Bridget Nilsson, Director

THE STATE OF TEXAS §
COUNTY OF Harris §

BEFORE ME, the undersigned notary public, on February 25, 2024 personally appeared Bridget Nilsson, Director of Mallard Crossing Community Association, Inc., a Texas nonprofit corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed.



Sarah J
Notary Public in and for the State of Texas

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Pages 11
03/05/2024 08:09 AM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$61.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

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