

## **Mystic Shores Property Owners Association Builder Deposit and Fines Proposal**

Mystic Shores Property Owners Association ("MSPOA") has been experiencing an increasing number of violations on new home projects in Mystic Shores. These violations take MSPOA Architectural Control Committee ("ACC") project manager ("PM"), MSPOA Board of Directors ("Board") and management company time and resources. They also are a nuisance to the neighbors around the new home site. The ACC and Board are proposing to implement a builder deposit ("Builder Deposit") and fines process for new homes to address these violations. Key provisions of the process, which has been reviewed by the MSPOA attorney, would be:

1. Effective Date: Thirty days after filing in Comal County real property records, following approval by the ACC and Board.
2. Governing Document: Amend the Mystic Shores Architectural and Site Design Guidelines ("Design Guidelines") to add an Appendix K for a builder deposits and fines process, with corresponding changes as needed in Design Guidelines sections (e.g., Sections 2.04, 3.06, 3.07 and 4.09) and Appendix C (new home application form).
3. Communication: Promptly after approval, announce new process in eblast to Mystic Shores property owners and email to builders which have recently built, or currently are building, a new home in Mystic Shores. Revised Design Guidelines will be filed in the public real property records in Comal County.
4. Builder Violations:
  - a. The following are "Potential Deposit Violations" with respect to properties in Mystic Shores:
    - i. Starting new home construction activities before ACC approval of the new home application.
    - ii. Starting modifications to new home before ACC approval.
    - iii. Failure to have a commercial dumpster, port-a-john, builder's sign or construction drive, as required by the Design Guidelines.
    - iv. Failure to keep a clean site, to empty a full dumpster or to clean paved road adjacent to construction site, as required by Design Guidelines.
    - v. Builder subcontractor signs on construction site.
    - vi. Failure to complete home by the approved deadline (including any approved extensions).
    - vii. Allowing exterior construction activities by builder or builder subcontractor workers at any time in violation of hours permitted for such activities in the Design Guidelines.
  - b. The following are "Immediate Deposit Violations" with respect to properties in Mystic Shores:
    - i. Failure to stop prohibited activities immediately upon receipt of a cease and desist notice from MSPOA representative.
    - ii. Failure to submit a form survey prior to pouring foundation, when form survey is required by the ACC (due to home location being close to setback lines).
    - iii. Foundation poured in location not approved by the ACC.
    - iv. Temporary restraining order to stop construction on a new home obtained due to builder violation of Mystic Shores Declaration of Covenants, Conditions and Restrictions or Design Guidelines.

- v. Failure to complete new home within 18 months from date of ACC approval, regardless of approved extensions.
  - vi. Driving across or otherwise accessing an adjacent lot without written permission of that lot owner.
  - vii. Allowing workers to start a fire at the site.
  - viii. Having more than one Potential Deposit Violation on any new home project in Mystic Shores within two consecutive years.
- c. Potential Deposit Violations and Immediate Deposit Violations are collectively referred to as “Builder Violations.”

5. Builder Deposit Required:

- a. Builders receiving a violation notice from the MSPOA management company for a Builder Violation after the Effective Date will be required to deposit with MSPOA a Builder Deposit with any subsequent application for which they are named as the builder, until that builder has not had a Builder Violation for at least two consecutive years.
- b. The Builder Deposit amount will be \$5,000.00 the first time a Builder Deposit is required and will increase by \$5,000.00 each time there is another Builder Violation on any new home project in Mystic Shores by the builder until at least two consecutive years have passed without a Builder Violation.

6. Builder Violation and Deposit Requirement Notices:

a. *Potential Deposit Violations:*

- i. For an approved project with a Potential Deposit Violation, the PM will send one courtesy email to the owner and builder stating the Potential Deposit Violation and giving a reasonable time (usually 10 days) to cure. This courtesy notice will not result in a Builder Deposit requirement, provided the Potential Deposit Violation is cured by the deadline stated in the courtesy email notice and the builder has not had a prior Builder Violation within the past two years. If the Potential Deposit Violation is not cured by the deadline stated in the courtesy email, the PM will notify the management company to send a violation notice letter to the owner and builder, stating the Potential Deposit Violation and giving a reasonable time to cure the violation (usually 10 days). This notice letter will result in a Builder Deposit being required as stated above, even if the Potential Deposit Violation is cured within the specified time. The notice letter will advise the builder of the Builder Deposit requirement for future new home applications.
- ii. For a Potential Deposit Violation where there is not an approved project, the management company will send a violation notice letter to the owner and builder, stating the Potential Deposit Violation and giving a reasonable time to cure the violation (usually 10 days). This notice letter will result in a Builder Deposit being required as stated above, even if the Potential Deposit Violation is cured within the specified time. The notice letter will advise the builder of the Builder Deposit requirement for future new home applications.

- b. *Immediate Deposit Violations:* The management company will send a letter to the builder advising of the Immediate Deposit Violation and the requirement for a Builder Deposit for future new home applications.

7. Fines Process:

- a. *Final Notice:* Before any fine is imposed by MSPOA on a builder, the management company will send a final notice via certified mail, return receipt requested, to the builder. This notice will include:

- i. the nature of the Builder Violation and the specific date by which the violation must be cured;
    - ii. the proposed fine(s) to be imposed;
    - iii. a statement that the builder may present a written request for a hearing to the Board within thirty (30) days of the notice; and
    - iv. a statement that the proposed fine(s) shall be imposed as contained in the notice unless a request for a hearing is received within the thirty (30) day period.
  - b. If a timely request for a hearing is not received, the fine(s) stated in the notice shall be imposed (usually starting on the 31<sup>st</sup> day after the stated cure date); provided, however, the Board may, but shall not be obligated to, suspend any proposed fine(s) if the violation is cured within the thirty (30) days period. Such suspension shall not constitute a waiver of the right to impose fine(s) for future violations by the builder. In the event of a continuing violation, each day the violation continues beyond the thirty (30) day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the builder. It is the responsibility of the builder to contact the ACC for verification the violation has been satisfactorily resolved. Fines shall continue to accrue until the ACC is notified. In the event a violation recurs within six (6) months from the date of any notice hereunder, the Board may impose fine(s) without further notice to the builder.
  - c. Fine amounts will be specified in the Appendix K to the Design Guidelines (same amounts as for similar violations listed in Appendix H, similar amounts for other Builder Violations). Fines will be deducted from the Builder Deposit. If the fines exceed the deposit, the builder will be invoiced for additional fines.
  - d. The owner construction deposit and the fines process in Appendix H of the Design Guidelines will continue to apply. If there is a Builder Deposit for the project; however, the owner will not be fined for Builder Violations until the fines exceed the Builder Deposit amount and the builder does not pay any additional fines within 30 days after receiving the invoice for the additional fines.
  - e. The Builder Deposit will be refunded when the new home is completed, unless fines have been imposed. The refund will not depend on landscaping being completed, unless the builder is the landscaping contractor.
  - f. A list of builders which must furnish a Builder Deposit will be maintained by the management company and posted on the MSPOA website in a location accessible only by Mystic Shores property owners. The list will contain only the builder name and amount of Builder Deposit required. The list will not include any details such as the owner name and address where the violation(s) occurred or the nature of any violation.
8. **Builders Affected:** The Builder Deposit requirement is expected to affect very few builders. Most of the past violations have been from a few builders. If a builder complies with the Mystic Shores governing documents, that builder will not have to provide a Builder Deposit. Builders required to provide a Builder Deposit will no longer have to do so if they do not have further Builder Violations for at least two consecutive years.

May 15, 2018