

HICKORY CLUSTER ASSOCIATION

TYPE: Special

DATE ADOPTED: NOVEMBER 3, 1993

RESOLUTION NUMBER: 3

RULES AND REGULATIONS

Relating to Violations of the Association Instruments and

Rules and Regulations

WHEREAS, Section 55-515, Code of Virginia, as amended, (commonly known as the “Virginia Property Owners Association act”), charges every lot owner and all those entitled to occupy a Lot with compliance with the provisions of the Virginia Property Owners Association Act and Association Instruments, and that “Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its executive organ or any managing agent on behalf of such Association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action, “and

WHEREAS, Section 55-513(A) provides the Association with the power, to the extent provided in the Association Instruments or the Rules and Regulations adopted pursuant thereto, to assess charges against a Lot Owner for violations of the Association Instruments, or Rules and Regulations adopted pursuant thereto, for which a Lot Owner or his family members, tenants, guests, or other invitees are responsible; and

WHEREAS, Section 55-513(B) further provides that certain due process procedures must be followed before such charges may be assessed; and

WHEREAS, Article IV, Section 1 of the Bylaws states “the affairs of the corporation shall be managed by its directors.” Therefore, the Board of Directors may do all such acts and things except as by law, by the Virginia Property Owners Association act, by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Lot Owners; and

WHEREAS, for the benefit and protection of the Association, and its members, the Board deems it necessary and desirable to establish a procedure to assure due process and prompt equitable resolution of disputes in cases where there is a question of compliance by a Lot Owner with the provisions of the Association Instruments or Rules and Regulations thereby attempting to minimize the necessity of enforcement by or through the courts.

NOW THEREFORE, BE IT RESOLVED THAT the following procedures shall be employed where the Board or a duly appointed Covenants Committee (“Committee”) must take action relative to questions of an individual’s compliance with the provisions of the Association Instruments or Rules and Regulations. In the event no Covenants Committee is appointed all reference to the “Committee” shall be deemed to refer to the Board of Directors, unless the context plainly requires otherwise:

A. Informal Resolution of Alleged Violation

Any Lot Owner, officer, director or agent of the Association has the authority to request that a Lot Owner, tenant, guest or invitee cease or correct any act or omission which appears to be in violation of the aforementioned documents. Such informal requests should be made before the formal process is initiated.

With respect to the use of any facility where a violation of the Rules for the use of such facility might endanger life, limb, property or equity of the Association, any agent of the Association may, without further notice, suspend for a period of not greater than seventy-two (72) hours the right of any Owner to use such facility, if a verbal request to cease or correct the violation has not been heeded.

The Association may make initial attempts to secure compliance through correspondence to the Lot Owner which states the time, date, place and nature of the violation and which sets forth the time period in which the violation must be corrected. Copies of such correspondence shall be maintained in the Association files, and a copy may be sent to counsel for the Association.

In the case of disputes between Lot Owners regarding activities within the lots or the appurtenant limited common elements, the Association will generally not become involved in the dispute or act on a Complaint unless there are two or more complaining parties.

B. Formal Hearing – Written Complaint

If the actions described in Section A prove unsuccessful, a formal hearing process shall be initiated upon the filing of a written Complaint by any Lot Owner, officer, director or agent of the Association with the Covenants Committee. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, so that the Respondent will be able to prepare his defense. The Complaint should specify the specific provisions of the Virginia Property Owners Act, the Association Instruments, or the Rules and Regulations which the Respondent is alleged to have violated. The Complaint must be as specific as possible as to times(s), date(s), places(s), and person(s) involved.

C. Investigation

Upon receipt and consideration of the written Complaint, the Committee may request the Managing Agent or a Member of the Board of Directors to make a preliminary investigation as to the validity of the Complaint and promptly report the findings to the Committee. If conditions have been corrected since the Complaint was made, or if the Complaint is, for any other reason, no longer valid, the Committee shall determine the appropriate disposition of the matter and respond in writing to the Complainant. If preliminary investigation indicates the need for further action, then the Committee may proceed as appropriate with the steps set forth below.

D. Service of Complaint

If preliminary investigation indicates further action is necessary, the Committee shall serve a copy of the Complaint and Notice of Hearing on the Respondent by regular mail and by either of the following means: (1) personal service or (2) by registered or certified U.S. mail, return receipt requested, and addressed to Respondent at the address appearing on the books of the Association. The Complaint shall be accompanied with a postcard or other written form as described in Section F below entitled "Notice of Defense" which constitutes a notice of defense hereunder. No order adversely affecting the rights of the Respondent may be made in any case, unless the Respondent shall have been served as provided herein.

E. **Notice of Hearing**

Along with service of the Complaint, the Committee shall serve a Notice of Hearing, as provided herein, on all parties at least fourteen (14) days prior to the hearing. The Notice of Hearing sent to the Respondent shall be substantially in the following form but may include other information.

“You are hereby notified that a hearing will be held before the Covenants Committee at _____ on the _____ day of _____, 199__, at the hour of _____, upon the charges made in the Complaint served upon you. You may be present at the hearing, but need not be represented by counsel, you may present any relevant evidence or statements you wish, and you will be given full opportunity to cross-examine all witnesses testifying against you.”

If any parties can promptly show good cause as to why they cannot attend the hearing on the set date and indicate times and dates on which they would be available, the Committee may reschedule the time and date of hearing and promptly deliver notice of the new hearing date.

F. **Notice of Defense**

Service of Complaint and Notice of Hearing shall be accompanied by a Notice of Defense.

The Notice of Defense shall state that the Respondent may:

1. Attend a hearing before the Committee as hereinafter provided;
2. Object to the Complaint on the grounds that it does not state the acts or omissions upon which the Committee may proceed;
3. Object to the form of the Complaint on the grounds that it is so indefinite or uncertain that the Respondent cannot identify the violating behavior or prepare proper defense; or
4. Admit to the Complaint in whole or in part. In such event, the Committee shall meet to determine appropriate action or penalty, if any.

G. **Amended or Supplemental Complaints**

At any time prior to the hearing date, the Committee may permit the filing of an amended or supplemental Complaint. All parties shall be notified thereof in the manner herein provided, if the amended supplemental Complaint presents new charges, the Committee shall afford the Respondent a reasonable opportunity to prepare proper defense thereto.

H. **Constraints on the Committee**

It shall be incumbent upon each member of the Committee to disqualify him/herself in any case in which the member cannot function in a disinterested and objective manner, i.e., due to personal relationship with parties, a personal interest affected by the outcome, etc. Any potential conflict must be disclosed by the member to the Committee if the member determines not to disqualify him/herself. Any

member of the Committee has the right to challenge any other member he believes is unable to function in a disinterested and objective manner.

Prior to the hearing, the Complainant and Respondent may challenge any member of the Committee for cause. In the event of such a challenge, the Board shall meet within ten (10) days to determine the sufficiency of the challenge. If the Board sustains the challenge, the president shall, at that time, appoint another person to replace the challenged member of the Committee for the purpose of this hearing. All decisions of the Board in this regard shall be final provided that any appointee under this paragraph may also be challenged for cause.

I. Hearing

1. The Committee shall select a person to serve as hearing officer and preside over the hearing. Such hearing officer need not be a Lot Owner or a member of the Committee. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Committee may determine the manner in which the hearing will be conducted, so long as the rights set forth in this section are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding.
2. Neither the Complainant or Respondent must be in attendance at the hearing. Generally, hearings are to be conducted at open sessions at which members of the Association may be present; however, at the request of either Complainant or Respondent, the Committee may agree to conduct the hearing in private session.
3. Each party shall have the right to do the following, but may waive any or all of these rights:
 - a. make an opening statement;
 - b. introduce evidence, testimony and witnesses;
 - c. cross-examine opposing witnesses;
 - d. rebut evidence and testimony;
 - e. make a closing statement.

Even if the Complainant and/or Respondent does not testify in his own behalf, each may still be called and questioned.

4. Whenever the Committee has commenced to hear the matter and a member of the Committee withdraws prior to a final determination, the remaining members shall continue to hear the case and the Committee Chairman shall name a replacement for the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by the hearing officer.

J. **Disciplinary Remedies**

Disciplinary action imposed by the Board may include suspension of a Lot Owner's rights to use the recreational facilities for no more than ninety (90) days for a non-continuous infraction; a suspension may be imposed for so long as a continuous violation exists; or assessing special charges in accordance with the provisions of the Virginia Property Owners Association Act. For any non-continuing infraction, a special charge of up to Fifty Dollars (\$50.00) may be imposed. For a continuing infraction, a special charge of up to Ten Dollars (\$10.00) per day may be assessed.

K. **Appellate Rights of Lot Owners**

The Complainant or Respondent may request a rehearing of the Committee's decision, provided that all subordinate avenues of the Resolution, as provided herein, have been pursued. The Board may make a preliminary review of the circumstances and materials relative to the case and make a determination as to whether it will hear an appeal of the case. The Board may, on the basis of the preliminary review, elect not to review the case, in which case, the Board will so inform the appealing party in writing and the initial Committee decision stands.

1. **Appeals Petitions**

Appeals petitions must be legibly written and submitted to the Board within fourteen (14) days of the publication of the decision in substantially the following form:

(I) (We), _____, hereby petition the Board of Directors to hear an appeal from the decision of the Covenants Committee (Application) (Case), Number _____. (I) (We) further understand that within the Association, the decision of the Board of Directors on rehearing this issue is final.

2. **Notice of Appellate Hearing**

Notice of Appellate Hearing shall be as in Section E of this Resolution.

3. **Procedures**

All of the rights and procedures established in previous pages of this Resolution shall apply to appeals.

4. **Effect of Decision**

The Board may uphold the initial decision in its entirety, modify or reverse such decision.

5. **Further Action**

An individual member may exhaust all available remedies of the Association prescribed by this Resolution before that Lot Owner may resort to a court of law for relief with respect to any alleged violation by another member of any provision of the Association Instruments or the Rules and

Regulations. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board.

L. **Construction**

This resolution is intended to serve as a protection to Lot Owners to assure that their due process rights are protected in an adversary proceeding, and to serve as a guideline for the Board and the Covenants Committee as those bodies carry out their duties to enforce the Association Instruments and Rules and Regulations.

The Board of Directors and Covenants Committee, as appropriate, may determine the specific manner in which the provisions of this Resolution are to be implemented, provided that due process is protected. Any inadvertent omission or failure to conduct and adversary proceeding in exact conformity with this Resolution shall not invalidate the results of such proceeding, so long as a prudent and reasonable attempt has been made to ensure due process was afforded.

“Due process”, as used in this Resolution, refers to the following basic rights:

1. The Complaint shall be provided to the Respondent.
2. A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced.

YES	NO	ABSTAIN	ABSENT
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PRESIDENT: _____

VICE PRESIDENT: _____

TREASURER: _____

AT LARGE: _____

AT LARGE: _____

ATTEST: _____

Secretary

DATE: _____

ADOPTED AT A BOARD MEETING: _____

(Regular or Special)

Robert Carney and Elaine Bess were absent.