

MILL POND VILLAGE HOMEOWNERS ASSOCIATION
ADMINISTRATIVE RESOLUTION 98-03
(ENFORCEMENT AND DUE PROCESS)

WHEREAS, Article IV, Section 1 of the Declaration of Covenants, Conditions and Restrictions states: The provisions of the Declaration shall run with and bind the property and shall insure to the benefit of, and be enforceable by the H111 Pond Village Homeowners Association; and

WHEREAS, Article IV, Section 1 of the Bylaws states: The affairs of the Association shall be managed by a Board of Directors; and

WHEREAS, Section 55-513 (A) of the Property Owners' Association (POA) Act of Virginia provides, "the Association with the power, to the extent provided in the Association's Documents or rules adopted pursuant thereto, to assess charges against owners for violations of the Associations Governing Documents or rules and regulations adopted pursuant thereto, for which the owner or his family members, tenants, guests or other invites' are responsible"; and

WHEREAS, Section 55-513 (B) of the Property Owners' Association (POA) Act of Virginia provides that certain procedures, to include a hearing and notice thereof, must be followed before such charges may be assessed; and

WHEREAS, It is the intent of the Board of Directors to establish and operate under procedures for enforcement of violations and to assure each member due process in cases where there is a question of compliance, thereby attempting to minimize the necessity of seeking action in or through a court of law;

NOW, THEREFORE, BE IT RESOLVED THAT, The following procedures and rules governing enforcement and due process be adopted.

I. CRIMINAL ACTIVITIES AND MEMBER DISPUTES

The Board of Directors will not take part in, nor attempt to mediate civil disputes solely between members or hear criminal cases.

II. DEFINITIONS

- A. "Association" shall mean and refer to Mill Pond Village Homeowners
- B. "Associations Governing Documents" shall mean and refer to The Articles of Incorporation, The Declaration of Covenants, conditions and Restrictions, Bylaws and Associations Rules and Regulations.
- C. "Board" shall mean and refer to the Board of Directors of the Mill Pond Village Homeowners association.
- D. "Committee" shall mean the established standing group of those persons as the Board may appoint to administer and enforce the Association's Governing Documents.
- E. "Committee Chairperson" shall mean an individual elected by committee members and approved by the Board of Directors.
- F. Complainant shall mean and refer to the person(s) or entity making the complaint.

- G. "Respondent" shall mean and refer to the person(s) upon whom the complaint is being made.
- H. "Tribunal" shall mean individuals empanelled by the Board of Directors to hold Hearings in the absence of a standing committee.

III. INFORMAL ACTIONS

Any member of the Association, Board of Directors, Committee or Management Agent has the authority to request that a member, resident, guest or invitee cease or correct any act or omission which is in violation of the Associations Governing Documents promulgated thereto.

IV. COMPLAINT

- A. Any member, resident, or management agent who requests that the appropriate committee/tribunal take action to enforce the Associations Governing Documents shall complete, date and sign a written complaint. Oral complaints that are unable to be verified shall be used for informational purposes only, and will not be acted upon.
- B. The complaint shall set forth in ordinary and concise language the acts or omissions with which the member is charged, to the end that the respondent can prepare a reasonable reply or defense.
- C. The member is responsible for the conduct and actions of their family members, residents, guests or invites.
- D. The written complaint shall be submitted to the Management Agent for a determination as to whether it appears that a rule or provision of the Associations Governing Documents allegedly has been violated.
- E. The Management Agent shall then submit the complaint to the appropriate committee/tribunal for action. By this Board of Director's policy resolution, the Management Agent may send Demand Notices in cases in which a clear and observable violation is present, and the identity of the alleged respondent can be reasonably determined.

V. OTHER REMEDIES

- A. This policy resolution shall not be deemed to require a hearing prior to assessment of rules violation charges if a member is afforded an opportunity to be heard before the committee and so chooses not to exercise that right or to prevent the Association from exercising any other remedies authorized or available under its Governing Documents, or by law.
- B. All remedies sought to abate or correct a violation shall be deemed to be cumulative and not exclusive.

VI. DEMAND NOTICE

- A. The demand notice shall specify:
 - 1) The nature of the alleged violation,
 - 2) Provision(s) of the Associations Governing Documents allegedly violated,

- 3) The action required to abate the alleged violation,
 - 4) A date determined by which the alleged violation must be remedied,
 - 5) A statement explaining that it is the members right to have an opportunity to be heard before a Committee/Tribunal or pay a violation fee. If the member does not request a hearing, in writing within 5 days, it is expected that the member has corrected the violation(s), will pay the violation charges, and has waived the rights to a hearing.
- B. Demand notices shall be addressed to the member(s) of record at the address which the member has provided the Association in writing or to the lot address if no other address has been provided. A Demand Notice shall be served either by certified mail, postage prepaid, return receipt requested or by first class mail service. Service by first class mail shall be deemed delivered five (5) days after such mailing when placed in a regular depository of the United States Postal service.

VII. NOTIFICATION OF COMPLIANCE

It shall be the respondent's responsibility to notify the committee in writing of the date and time a violation has been corrected or abated. Upon receipt of notification of compliance the management agent or a member of the committee shall investigate and confirm that full compliance has taken place. Notice of being in compliance shall be delivered by first class mail.

VIII. NOTICE OF HEARING

- A. If the alleged violation is not remedied within the date and time specified in the demand notice and the member requests a hearing or if the committee/tribunal determines a hearing is necessary, the committee/tribunal shall set a reasonable date, time and place for a hearing and send a notice of same to the respondent and if applicable to the complainant and any witnesses.
- B. The Notice of Hearing shall be addressed to the member at the address which the member has provided the Association in writing or to the lot address if other address has not been provided. The Notice of Hearing shall be served, at least fifteen (15) days in advance thereof or as required by law, either by certified mail, return receipt requested or by first class mail service. Service by first class mail shall be deemed delivered five (5) days after such mailing when placed in a regular depository of the United States Postal Service.
- C. The Notice of Hearing shall be in a form so designated by the Board and shall include the following information:
 - 1) Date, time and place at the hearing.
 - 2) The respondent shall be given an opportunity to be heard before the committee/tribunal and may or may not be represented by counsel.

- 3) The alleged violation(s), citing provisions of the Associations Governing Documents, and/or the Virginia Property Owners' Association Act.
- 4) The penalties for violation of the Associations Governing Document as allowed by law.

IX. THE HEARING BODY

- A. The actual hearing shall be in front of a quorum of the standing committee or other tribunal so designated by the Board of Directors or the Committee Chairperson.
- B. The Hearing Body may deliberate in executive session.
- C. The imposition of violation charges or other actions shall be made by motion in open session, and must be reflected in the official minutes of the hearing.

X. ATTENDANCE

- A. In cases where there is a clear and observable violation and the identity of the alleged respondent can be reasonably determined, and the failure of either or both the respondent or complainant to attend the hearing shall not be grounds, in and of itself, to cancel or otherwise invalidate the hearing. Under these circumstances, it will be at the Hearing Body's sole discretion either to continue with the hearing, reconvene at a later time or cancel the hearing.
- B. In cases where there is no clear and observable violation that the Committee/Tribunal could see the Committee/Tribunal will require the Complainant to attend the hearing. If the Complainant is so required to attend the hearing, is duly notified of the hearing and no request for continuance is made, the failure of the Complainant to attend the hearing will cause the charges of alleged violation(s) to be dropped and the proceedings to be considered closed.
- C. In the event that the Hearing Body fails to achieve a quorum, the hearing shall be reconvened at such a time and date determined by the Committee or Tribunal. A "Notice of Hearing" is required for the new hearing unless so waived by all parties.

XI. CONDUCT OF THE HEARING

- A. The hearing may be conducted according to administrative rules of evidence.
- B. The respondent may testify and/or present any relevant evidence, and will be given full opportunity to examine all documents, evidence and cross-examine all witnesses.
- C. The respondent is not required to testify and no judgment should be considered or, inferred by the Committee/Tribunal.
- D. Each party shall have the right, within reasonable time limits, imposed by the committee/tribunal, to:
 - 1) make a opening statement,

- 2) introduce evidence, testimony and witnesses,
 - 3) cross examine opposing witnesses,
 - 4) make a closing statement.
- E. The hearing shall be conducted in closed session unless the respondent requests that the hearing be open. In the event of an open hearing the chairperson of the hearing may impose a reasonable limit on the number of persons who can be accommodated in the hearing room.
 - F. After proper notice has been given, and the respondent fails to appear at the hearing or if no hearing is requested, the Committee/Tribunal may, at its discretion, uphold the assessment of charges, legal action and/or recommend that other remedies be taken.
 - G. Charges shall be assessed from the final compliance date as set forth in the original demand letter and shall be treated as an assessment against the member's lot in accordance with section 55-513 (B) of the Virginia Property Owners' Association Act.
 - H. Within fourteen (14) days of the hearing, the Committee/Tribunal shall notify respondent of its decision and the assessment of any charges.

XII. RESCHEDULING

At the Committee/Tribunal's discretion a hearing may be rescheduled or continued for extreme extenuating circumstances.

XIII. APPEAL

Upon receipt of the Hearing Body's findings, the respondent has given days to request an appeal of those findings to the Board of Directors. The appeal must, be in writing and sent to the Association by certified mail, return receipt requested, or by personal delivery to the Management Agent. The request for an appeal must be based on procedures used in the hearing process or on new and compelling evidence in the respondents favor.

- 1. YES NO Caroline Ahearn _____
- 2. YES NO Leigh Bravo Leigh Bravo
- 3. YES NO Karl Mueller Karl Mueller
- 4. YES NO Kelley Perconti Kelley E. Perconti
- 5. YES NO Cheryl Smith Cheryl A. Smith

With a quorum of Board Members present, Resolution 98-03 has been adopted.

ATTEST:

CERTIFIED BY:

Leigh Bravo
Secretary of the Association

Cheryl A. Smith
President, Board of Directors

Date: 7/21/98

Date: 21 July 98