

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

**Policy Resolution 2008-02  
Due Process Procedures**

**PREAMBLE**

WHEREAS, Article VII, Section 1 (Powers) and Section 2 (Duties) of the Bylaws of the Wellington Commons Homeowners Association, Inc., (hereafter the "Association") provides that the Association Board of Directors (hereafter the "Board"), shall have all of the powers and duties necessary for the administration of the affairs of the Association and the Board is authorized to take any and all actions that are not expressly prohibited by the Virginia Property Owners Association Act (hereafter the "Act") or the Association instruments required to be taken by the Association;

WHEREAS, Section 55-515 of the Act and Article VI, Section 11 of the Declaration charges all lot (dwelling unit) owners and all those entitled to occupy a dwelling unit with compliance with the provisions of the Act and the Association's Declaration and Bylaws (hereafter the "Association instruments"), and Rules and Regulations and Resolutions (hereafter collectively the "governing documents") duly promulgated; and

WHEREAS, Section 55-513 B of the Act and Article VII, Section 1(b) of the Bylaws (i) authorizes the Board to suspend a member's voting rights and right to use common areas and facilities or services, and

WHEREAS, Section 55-513 B (ii) of the Act further authorizes the Board to assess charges against any lot owner for any violation of the Declaration or rules and regulations by resolution of the Board;

WHEREAS, Section 55-513 B of the Act requires that the Board of Directors adopt and publish a written resolution to enact the statutory power to assess monetary charges against members for violations of the regulations of the Association; and

WHEREAS, Section 55-513 B of the Act also provides that certain procedures must be followed before certain suspensions or charges may be imposed; and

WHEREAS, Article VII, Section 1 (c) of the Bylaws and Article X, Section 1 of the Declaration authorizes the Board of Directors to enforce the Association instruments, including the rules and regulations;

WHEREAS, for the benefit and protection of the Association, the owners and residents, the Board deems it necessary and desirable to establish a procedure to assure due process prior to assessing violation charges or suspending certain membership privileges in cases where there is a question of compliance by an owner or resident with provisions of the Act, and the Association instruments and governing documents, and to

assure a fair and impartial hearing in those situations thereby attempting to minimize the necessity of seeking action in or through a court of law; and

WHEREAS, it is the intent of the Board of Directors to establish Due Process Procedures where action must be taken relative to questions of compliance by an individual with provisions of the Act or Association instruments and governing documents.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors, pursuant to the Act, the Declaration and this Resolution, is hereby empowered to assess monetary charges and suspend use rights pursuant to the Declaration and Section 55-513 B of the Act for violations of the Association's instruments and governing documents, in accordance with the following procedures."

**ARTICLE I**  
**VIOLATION OF THE ASSOCIATION INSTRUMENTS AND GOVERNING DOCUMENTS**

**Section 1.0 Overview.** The Association instruments establish, within the law, the framework for providing for the governance, business, and communal aspects of the Association. The Board of Directors supports this by administering, maintaining, and enhancing a residential real estate development through a system of property rights, binding covenants and restrictions, and rules and regulations. When members, owners, tenants, and guests violate the Association instruments, either willfully or through negligence, they cause harm to the health and safety of the Association as a whole. In the interest of maintaining a well-functioning community and one that maintains property values members, owners, tenants, and guests are obligated to adhere to the tenets contained in the Association instruments, governing documents, and the rules and regulations. Failure to do so brings with it sanctions when the Board of Directors or its designated agents enforce them. This section addresses the due process procedures pertaining to the Association. It contains specific actions required to ensure a fair and equitable application of the Association's Instruments and Governing Documents.

**Section 1.1 Actions prior to Initiation of Formal Due Process Procedure.**

(a) Any owner, resident, director, officer or managing agent of the Association has the authority to request that an owner or resident cease or correct any act or omission that appears to be in violation of the Act or the Association instruments and governing documents. Such informal requests should be made before the formal process is initiated.

(b) In the case of disputes between lot owners or occupants regarding activities within lots, where such disputes do not involve violations of the Association's instruments and governing documents, the Association will generally not become involved in the dispute or act on a complaint.

## **Section 1.2 Written Complaint.**

(a) If actions described in Section 1.1 prove unsuccessful, the *Due Process Procedure* shall be initiated upon the filing of a written complaint by any lot owner, resident, director, officer, or managing agent of the Association (hereafter referred to as the “Complainant”) with the Board.

(b) The Complaint shall constitute a written statement of charges that shall set forth in ordinary and concise language the actions, behavior or omissions with which the lot owner or tenant (hereafter referred to as the “Respondent”) is charged, and the locations, date(s) and or time(s) the alleged violations occurred, so that the Respondent will be able to prepare a response in defense of the alleged violation.

(c) The Complaint shall specify provisions of the Act or Association instruments and governing documents that the Respondent is alleged to have violated and should contain supporting facts. Complaints against any act or omission by a non-owner resident or nonresident on the premises shall be directed to the owner and/or resident who is responsible for their presence on the property and any and all owners, residents or nonresidents may be named as respondents.

## **Section 1.3 Notice of Violation.**

(a) Upon receipt of a Complaint, a designee of the Board will preliminarily investigate whether the complaint accurately identifies a violation of the Association instruments and governing documents.

(b) If the designated inspector determines that there is a violation of the Association instruments and governing documents, the Board of Directors shall notify the lot owner and/or the resident, if the lot is leased, that a violation has been noted. The Notice shall include the time, date, place, nature of the violation, the action required to abate the violation, and a date usually not less than ten (10) days—and generally not to exceed thirty (30) days—after the date of the written complaint by which the alleged violation must be remedied. The *Notice of Violation* shall be in the form attached as Exhibit 1. The notice will be sent via regular mail to the owner at his/her address listed in the Association's records, and to the property address, if the owner's listed address is different from the property address. A copy shall also be maintained in the Association files. Provided, however, when the violation may constitute a health, safety or fire hazard, demand may be made to remedy the violation within twenty-four (24) hours.

(c) If the violation has been corrected or the Complaint is invalid for any reason, the Owner may contact the Management Agent to verify that the records have been corrected.

(d) If the violation is not remedied to the satisfaction of the Board of Directors in a period generally not to exceed thirty (30) days as specified in the *Notice of Violation*, the

Board of Directors will schedule the matter for a hearing at the next meeting of the Board of Directors scheduled in fourteen (14) days or more.

**Section 1.4 Notice of Hearing.**

(a) Upon referral of a Complaint to the Board of Directors, after a notice of violation has been sent, the Board of Directors shall serve a *Notice of Hearing* on all parties at least fourteen (14) prior to the scheduled date for a hearing by either of the following means: (1) personal service; (2) registered or certified mail, return receipt requested, and addressed to the parties at the address appearing on the books of the Association. Service by mailing shall be deemed effective five (5) days after such mailing in a regular depository of the United States mail. The notice of hearing may be similar to Exhibit 2 attached hereto and shall specify:

- 1) The time, date, and place of hearing;
- 2) That the unit owner and resident, if applicable, shall be given an opportunity to be heard and to be represented by counsel (at the lot owner's expense) before the Board;
- 3) The alleged violation, citing provisions for the Association's instruments and governing documents that allegedly have been violated.
- 4) That monetary charges for a violation of the Association's instruments, governing documents, and/or rules and regulations may include assessment up to *fifty dollars* (\$50.00) for a single offense, or *ten dollars* (\$10.00) per day for any offense of a continuing nature for a period not to exceed *ninety* (90) days or such greater amounts as may be authorized by the Act.
- 5) That other actions may be taken as specified in Policy Resolution 2008-1, "Enforcement of Association Instruments and Governing Documents".

(b) If no response is received from the lot owner by the hearing confirmation date; or the owner confirms attendance but fails to attend the hearing without providing reasonable and satisfactory explanation; the lot owner shall be deemed to have waived the right to such hearing, and the monetary charges or facilities suspension may be assessed as if the hearing has been completed with a judgment unfavorable to the lot owner.

**Section 1.5. Service of Complaint.** The Board of Directors shall serve a copy of the written *Complaint*, if any, on the *Respondent* along with the *Notice of Hearing*.

**Section 1.6 Cease and Desist Request.** The Board of Directors may issue, at its own discretion, a *Cease and Desist Request* along with the Complaint and Notice of Hearing. Such *Cease and Desist Request* shall be substantially in the form attached as Exhibit 3 to the Resolution.

**Section 1.7 Referral for Legal Action.** Upon recommendation of the Board of Directors, the Board may determine that the violation is such that legal action should be initiated concurrent with or instead of the due process proceeding.

**Section 1.8 Amended and Supplemental Complaints.** At any time prior to the hearing date, the Board of Directors may file or permit the filing of an amended and supplemental Complaint. All parties shall be notified thereof in the manner provided herein. If the amended and supplemental Complaint presents new charges, the Board of Directors shall afford the Respondent a reasonable opportunity to prepare a proper defense.

**Section 1.9 Statements.**

(a) Written statements may be introduced by a party if a copy of the statement is mailed or delivered to the opposing party. Written statements from the Respondent should be provided to the Association through its designated management agent.

(b) The statement, if introduced in evidence, shall be given the same effect as if the author had testified orally.

**Section 1.10 Hearing.**

(a) The Chair of the Board of Directors shall serve as the hearing officer and preside over the hearing, unless otherwise determined by the Board of Directors.

(b) The hearing shall be scheduled at a reasonable and convenient time and place within the Board's Discretion.

(c) The Board within its discretion may grant a continuance. If the lot owner for which the hearing is scheduled requests a continuance to a different time or date, no further notice shall be required.

(d) The *Complainant* and the *Respondent* may be called and questioned regardless of whether they testify in their own behalf.

(e) The hearing is not to be conducted according to technical rules of evidence or procedure applied in a court of law. Rather, the purpose of the hearing shall be to provide the lot owner with an opportunity to be heard and to be represented by counsel (if desired and at own expense), within the reasonable time limits imposed by the Board.

(f) The hearing shall be conducted in a private executive session unless the lot owner requests that the hearing be open to the members of the Association. If the hearing is conducted in open session, the chairman of the hearing may impose a limit on the number of such persons who can be accommodated in the hearing room. During the course of the hearing held, the Board, within its discretion, may afford those

residents involved in the dispute or violation an opportunity to be heard within reasonable time limits.

(g) After proper notice has been given, if the lot owner fails to appear at the hearing or if no hearing is requested, the hearing or meeting may continue as scheduled and the Board may assess charges from the final compliance date of the letter, suspend use rights or service, or take such other action as may be authorized by the governing documents or by law.

(h) If the lot owner acknowledges responsibility for the violation charged, or appears but does not wish to contest the alleged the violation, the Board may dispense, at its discretion, with a hearing after having afforded the lot owner with an opportunity for a hearing.

(i) After all presentations have been made within the allotted time, the Board shall deliberate in executive session and then (in open session) decide the matter by majority vote of the members of the Board participating in the hearing; if additional time is needed to reach a decision, the Board may continue the hearing to an announced date and time, with no further written notice required (or, if the date and time is not announced at the hearing, then the Board will send advance written notice of the continuance date and time to the Owner, by hand-delivery or first-class mail). Within seven days after the hearing (including any continuances), the Board shall notify the Owner of the Board's decision in writing, by hand-delivery or by certified mail, return receipt requested, to the Owner's address of record with the Association.

**Section 1.11 Enforcement Options:** The Board of Directors may impose disciplinary action on the Respondent as explained in Resolution 2008-01.

**Section 1.12 Records.** The Board or managing agent shall keep copies of all correspondence related to rules violations in the lot owner's file or in a separate file on rules violations. Minutes of each hearing or meeting shall be kept and placed in the lot owner's file and appropriate Association files.

**Section 1.13 Self-help.**

(a) The Board of Directors, pursuant to the Act and the Declaration (Article VI, Section 15; Article VII), reserves the right to authorize any member of the Architectural Committee, or member of the Board of Directors, or any other representative of any of them; shall have the right to enter upon and inspect any lot for the purpose of ascertaining whether or not the provision of these restrictions have been or are being complied with, and such person shall not be guilty of trespass by reason of such entry.

(b) In the event the Board of Directors decides to invoke this right, a written notice shall be posted on the front door of the dwelling unit at least twenty-four (24) hours before undertaking the corrective action, advising of the Association's intent to enter the lot and remedy the violation.

## **ARTICLE II TENANTS**

**Section 2.0 Section Explanation.** This section addresses owner responsibility, required notices, and lot owner rights.

**Section 2.1 Owner Responsibility.** Owners are held responsible for their own violations as well as the violations by their family members, tenants, guests, and invites.

**Section 2.2 Notice to Lot Owner.** If a tenant violates the Act, the Association instruments, governing documents, or the rules and regulations, the Owner of the dwelling unit occupied by that tenant shall be considered a Respondent and, as a party to the action, shall receive certified copies of all correspondence or other documents sent to the tenant pursuant to this resolution.

**Section 2.4 Lot Owner Rights.** The lot owner shall have all rights provided in Article I.

## **ARTICLE III CONSTRUCTION**

**Section 3.0 Section Explanation.** This section addresses proceeding guidelines, implementation, and severability; defines “Due Process”; and addresses inadvertent omissions and conformity regarding following the procedures provided in this resolution.

**Section 3.1 Proceedings.** By this resolution, the Board of Directors assures that due process is provided to lot owners and tenants in proceedings before the Board of Directors to enforce the Act and the Association instruments and to serve as a guideline for such proceedings.

**Section 3.2 Implementation.** The Board of Directors, as appropriate, may determine the specific manner in which the provisions of this resolution are implemented, provided that the requirements of this Resolution are substantially met.

**Section 3.3 Severability.** Any inadvertent omission or failure to conduct proceedings in exact conformity with this resolution shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt is made to assure due process according to the general steps set forth in this resolution.

**Section 3.4 Due Process Defined.** “Due Process”, as used in this resolution, refers to the following basic rights:

(a) Notice of the violation shall be provided to the owner and also to the tenant, if applicable;

(b) An allegedly non-compliant owner will be provided the opportunity for a hearing in order to present his/her position regarding the alleged violation and whether violation charges or suspensions of use rights should be imposed.

(c) An opportunity to appeal shall be available; and

(d) Basic principles of fairness shall be applied;

(e) Any party may be represented by counsel at their own expense, if they so desire.

**Section 3.5 Omissions and Conformity.** Any inadvertent omission or failure to conduct proceedings in exact conformity with this resolution shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to assure due process according to the general steps set for in this resolution.

#### **ARTICLE IV EXHIBITS**

This Article contains the following Exhibits:

- EXHIBIT 1: "Notice of Violation" (*Article I, Section 1.3*)
- EXHIBIT 2: "Notice of Hearing" (*Article I, Section 1.4*)
- EXHIBIT 3: "Demand to Cease and Desist" (*Article I, Section 1.6*)
- EXHIBIT 4: "Self Help" (*Article I, Section 1.13*)

**This procedure is effective on the date of its adoption.**

**Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2008**

\_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
Secretary

**Exhibit 1 Notice of Violation**

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

(DATE)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**NOTICE OF VIOLATION**

1. Name of person(s) violating rules: \_\_\_\_\_

2. Address of person(s) violating rules: \_\_\_\_\_

3. Are the person(s) named in question 1 resident(s) or owner(s)? \_\_\_\_\_

4. Describe which rules were violated and how and where the rules were violated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. When did the violation(s) occur? \_\_\_\_\_

\_\_\_\_\_

6. Have you personally requested the owner or resident to cease the rules violation?

Yes \_\_\_\_\_ No \_\_\_\_\_ Verbally \_\_\_\_\_ By written request \_\_\_\_\_.

When? \_\_\_\_\_

7. Name and address of person(s) making complaint: \_\_\_\_\_

\_\_\_\_\_

8. Signature(s) \_\_\_\_\_

\_\_\_\_\_

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**FOR ASSOCIATION USE ONLY**

9. Registered name(s) of lot owner(s): \_\_\_\_\_

10. Address: \_\_\_\_\_

11. Provision(s) of Association Instruments or Rule(s) violated:

\_\_\_\_\_

12. Owner's address if non-resident: \_\_\_\_\_

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13. Registered name(s) of resident(s): \_\_\_\_\_

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14. Comment(s): \_\_\_\_\_

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15. Date demand letter sent to owner: \_\_\_\_\_

16. Owner/Resident \_\_\_\_ does/\_\_\_\_ does not request a hearing.

Date request received: \_\_\_\_\_

17. Referred to Board of Directors on \_\_\_\_\_, 200\_\_.

18. Date notice of hearing sent: \_\_\_\_\_

19. Date notice of decision sent: \_\_\_\_\_

20. Date notice of appeal received: \_\_\_\_\_

21. Date notice of appeal decision of Board sent: \_\_\_\_\_

22. Date notice of appeal hearing sent: \_\_\_\_\_

23. Date of appeal hearing: \_\_\_\_\_

cc: Owner File  
Rules Violation File

**Exhibit 2 Notice of Hearing**

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

(DATE)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

(Tracking Number)  
Full Name  
Street Address  
City, State, Zip Code

**NOTICE OF HEARING**

(Salutation):

Pursuant to Section 55-513B of the Virginia Property Owners Act and Article VII (Powers of the Board of Directors) Sections 1 and 2 of the Bylaws, the Board of Directors is scheduling a hearing for [Insert day, date, and time] at [Insert location address].

The purpose of this hearing is to discuss with you the on-going un-corrected architectural violations relating to the provisions of Article V (Architectural Control); Article VI (Use Restrictions) Section 11; and Article VII (Exterior Maintenance) of the Declaration of Covenants, Conditions. The specific violation is [Insert violation in specific unequivocal terms].

According to our records, you received a reminder on [Insert Date], a First Notice on [Insert Date], and a Final Notice on [Insert Date]. At no time did you correct the violation or contact the Board.

At the hearing, counsel may represent you at your own expense and you will have the opportunity to be heard regarding the charge. You may request a continuance, in writing, of not more than seven (7) working days from the date of this scheduled hearing. Your letter of request must arrive at least one (1) week prior to the scheduled hearing [Insert Date].

You are advised that if you do not appear at this hearing or you do not request a continuance as described above, the Board will hold the hearing in your absence. The Board decision will be mailed to you within seven (7) days of the hearing.

The Board of Directors may administer the enforcement options for non-compliance, as outlined in Policy Resolution 2008-1 "Enforcement of Association Instruments and Governing Documents", including but not limited to the following: 1) A violation charge in the amount of ten dollars (\$10.00) a day not to exceed nine hundred dollars (\$900.00) and not to exceed ninety (90) days; 2) A lien may be placed on your property; 3) Your voting privileges may be suspended for a period not to exceed sixty (60) days; 4) Your quarterly assessment may be accelerated requiring you to pay the total of the annual assessment in full.

Should you correct the violation prior to [Insert Hearing Date], you are responsible for notifying the management company in writing. This notification will stop the hearing process and return your status as a member in good standing. Questions concerning this action should be addressed in writing to the management company and received by them no later than seven (7) working days prior to [Insert Hearing Date].

Sincerely,

**Exhibit 3 Demand to Cease and Desist**

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

(DATE)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**DEMAND TO CEASE AND DESIST**

((Tracking Number)  
Full Name  
Street Address  
City, State, Zip Code

You are hereby notified that a complaint has been made against you (or your tenants) for the following violation(s) of the governing documents of the Association:

\_\_\_\_\_  
\_\_\_\_\_

Perhaps you were not aware of the Association’s rules or do not believe you are in violation; however, the rules are enforced for the benefit of all residents and to maintain property values throughout the Association. You are requested to cease and correct all of the above violations within ten (10) days from the date of this letter and/or to avoid any additional violations. If you wish to contest the alleged violation and contest the imposition of charges or suspension of use rights or services, you must request a hearing before the Board of Directors in writing within ten (10) days from the date of this letter. If you request a hearing, complete the bottom portion of this letter and return a copy to the Association’s managing agent at the address listed below. If you request a hearing within ten (10) days from the date of this letter, the Board will send you a certified, return receipt notice stating the hearing time and place. If you fail to request a hearing within ten (10) days from the date of this letter, you will be waiving your opportunity for a hearing and the Board may proceed with imposing sanctions. When/if you cease or desist or correct the violation, please send written notice (by completing the bottom portion of this letter) to the Board of Directors in care of the Managing Agent noting that the violation has been stopped or corrected. Please note that for violations of the governing documents, your right to use Association facilities and services may be suspended and you may be assessed monetary charges of up to Ten Dollars (\$10.00) per day for a continuing violation or up to Fifty Dollars (\$50.00) for each single violation. The Association reserves the right to also pursue other remedies.

Sincerely,

Board of Directors, or Managing Agent

cc: Owner file (Resident)

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**Return to: Mr. Ken Eiriksson, Community Manager, East Coast Management, 8107 Ainsworth Avenue, Springfield, VA 22152**

Name: \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_ I hereby request a hearing before the Board to contest the violation.

\_\_\_\_\_ I have ceased and/or corrected the violation and will refrain from further violations.

\_\_\_\_\_  
Signature

**Exhibit 4 Self Help**

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

(DATE)

Pursuant to the Virginia Property Owners Association Act (hereafter the "Act") and to the to Instruments and Governing Documents of the Wellington Commons Homeowners Association (hereafter the "Association"), this letter serves as 24-hours notice that the Association will exercise its right to authorize a member of the Association's Board of Directors, its Architectural Control Committee, or other representative of the Association to enter the lot at (specify address) in order to inspect the lot for the purpose of ascertaining whether or not the provisions of the Act, Instruments, and Governing Documents are being complied with and/or for taking corrective action at the lot owner's expense to remedy violations of the Act, Instruments, and Governing Documents.