

**WELLINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.**

**Policy Resolution 2008-1  
Enforcement of Association Instruments and Governing Documents**

**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;

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, in the opinion of the Board, the following require updated and/or replacement and this resolution replaces the following resolutions and rules:

- (a) *Delinquency Policy* (October 26, 1993);
- (b) *Delinquency Policy* (June 18, 1990);

- (c) *Acceleration of Assessments Policy* (October 29, 1993)
- (d) *Acceleration of Assessments Policy* (February 19, 1992)
- (e) *Procedures for Enforcing Association Regulations* (July 17, 1997),
- (f) *Regulation Regarding Enforcement of Rules* (August 12, 1992)

WHEREAS, for the benefit and protection of the Association and its members, the Board deems it necessary and desirable to outline options for enforcing the provisions of the Association instruments and governing documents; and

WHEREAS, it is the intent of the Board to maintain the character of the Association and the health and safety of owners, tenants, and invited guests; and to establish procedures where action must be taken relative to questions of compliance by an individual within provisions of the Act, Association instruments, and governing documents.

NOW, THEREFORE, BE IT RESOLVED THAT the Board adopts the *Enforcement of Association Instruments and Governing Documents* policy.

## **ARTICLE I**

### **VIOLATION OF THE ASSOCIATION INSTRUMENTS AND GOVERNING DOCUMENTS**

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 and the rules and regulations. The failure to comply with the Association instruments, governing documents, and rules and regulations authorizes the Board of Directors to impose monetary charges or suspend an owner's right to use common area facilities or services.

## **ARTICLE II**

### **ENFORCEMENT OPTIONS**

**Section 2.0 Section Explanation.** This section summarizes enforcement options available to the Board of Directors to include imposing a monetary charge, accelerating quarterly assessments, assessing expenses, Cease and Desist, and self-help, vehicle towing, and suspension and use of common area facilities and services.

**Section 2.1 Enforcement Options.** Enforcement options available to the Board of Directors against an Association member (hereafter: the Respondent) found in violation of the Association's instruments and governing documents may include, but are not limited to, the following:

(a) Assessing monetary charges against the Respondent in accordance with Section 55-513B (ii) of the Act; the amount of the charges so assessed for a violation of the governing documents and / or rules and regulations shall not exceed *fifty dollars* (\$50.00) for a single offense, or *ten dollars* (\$10.00) per day for any offense of an continuing nature for a period not to exceed *ninety* (90) days or such greater amounts as may be authorized by the Act and shall be treated as an assessment against the member's lot;

(b) Assessing expenses against the Respondent such that a late fee of 15% shall accrue when the quarterly assessment is thirty-one (31) days past due and in the case of a returned (dishonored) check a charge of not less than \$25.00 or the rate charged by the financial institution, whichever is larger shall accrue. Further, all fees incurred by the Association in connection with the collection of a delinquent account and such sums including the delinquent assessment, interest, administrative late charges, legal costs, and attorney's fees shall be applied to the account. After an account becomes delinquent, payment received from an owner will be credited in the following order of priority:

- (i) charges for attorney's fees and court costs;
- (ii) interest, administrative fees, and returned check fees;
- (iii) all other charges and fees incurred by the Association as a result of any violation by an owner, his/her family, employees, agents, tenants, or licensees of the governing instruments of the Association;
- (iv) any and all special assessments;
- (v) the regular assessment.

(c) Suspending or conditioning the Respondent's right to use common area facilities (including, but not limited to, the Gazebo, playground, and exercise areas) or parking (other than the one parking space permanently assigned under the provisions of Article II, Section 3 of the Declaration), in accordance with Section 55-513B of the Act and Article I, Section 1.11 of the Association Resolution 2008-02, Due Process Procedures. For any single, non-continuing infraction, such suspension shall be for a period of not more than *sixty* (60) days. For a continuing infractions (including non-payment of any assessment after the same becomes delinquent), suspension may be imposed for as long as the violation continues;

(d) Accelerating assessments such that the total remaining assessment balance for the year, along with accrued late fees, is due and payable on demand if the quarterly assessment installment is not paid within ninety (90) days of the due date;

(e) Issuing a Cease and Desist Request in accordance with Article I, Section 1.6 of the Association Resolution P2008-02, Due Process Procedures;

(f) Once perfected, the Association shall have a lien on every lot for unpaid assessments against the lot in accordance with the provisions of Chapter 26, Section 55-516 of the Act and the lawful provisions of the Declaration.

(g) When lot owners, tenants, and guests violate the Association instruments they shall be held liable for any damages to the Association caused directly or indirectly by the violation including cost of enforcement, which shall include legal costs.

(h) When lot owners, tenants, and guests violate Association instruments relating to parking, after due notice or for multiple violations, the Board may elect to have the offending vehicle towed at the sole risk and expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, and shall not be guilty of any criminal act and such towing shall not be grounds for relief of any kind.

(i) The right to vote in elections of officers or on matters relating to the changing the Declaration and the Bylaws or the institution of a special assessment shall be suspended by the Board until such time as deemed appropriate but under no circumstances shall said suspension continue after all monies due the Association are paid;

(j) When a lot owner violates the Association instruments relating to architectural design, to include landscaping, after attempts have been made to rectify the situation with no success the Board may elect to invoke the right of "self-help" by taking corrective action itself. Upon deciding this course of action, 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 at the lot owner's expense.

### **ARTICLE III CONSTRUCTION**

**Section 3.0 Section Explanation.** This section addresses proceeding guidelines, implementation, and severability; defines "Enforcement"; 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 the enforcement provisions of the Act, the Declaration, the Bylaws and other rules and regulations 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 procedures.

**Section 3.3 Implementation.** The Board of Directors may determine the specific manner in which the provisions of this resolution are implemented, provided that due process is protected.

**Section 3.4 Severability.** Any inadvertent omission or failure to enforce the provisions of the Act, the Declaration, the Bylaws and other rules and regulations in exact conformity with this resolution shall not invalidate the results of such enforcement, so long as a prudent and reasonable attempt is made to assure due process.

**Section 3.5 Enforcement Defined.** “Enforcement”, as used in this resolution, refers to the following:

(a) The act or process of compelling compliance with the Virginia Property Owners’ Association Act (as amended) and the Association Declaration of Covenants, Conditions, and Restrictions (as amended), the Bylaws (as amended), and the governing documents; and

(b) Basic principles of fairness shall be applied.

**Section 3.6 Due Process.** Procedures for “due process” relating to remediation of violations of the Association instruments are contained in Association resolution 2008-02: Due Process Procedures.

**Section 3.7 Replacement.** This resolution replaces the following resolutions and rules:

- (a) *Delinquency Policy* (October 26, 1993);
- (b) *Delinquency Policy* (June 18, 1990);
- (c) *Acceleration of Assessments Policy* (October 29, 1993)
- (d) *Acceleration of Assessments Policy* (February 19, 1992)
- (e) *Procedures for Enforcing Association Regulations* (July 17, 1997),
- (f) *Regulation Regarding Enforcement of Rules* (August 12, 1992)

**Section 3.7 Omissions and Conformity.** Any inadvertent omission or failure to enforce the provisions of the Act, the Declaration, the Bylaws and other rules and regulations in exact conformity with this resolution shall not invalidate the results of such enforcement, so long as a prudent and reasonable attempt has been made to assure enforcement according to the general steps set for in this resolution and due process.

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

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

\_\_\_\_\_  
President

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