

***THE UNIT OWNERS ASSOCIATION OF
COLONIAL VILLAGE III, A CONDOMINIUM***

REGULATORY / POLICY RESOLUTION NO. 10-3

RESOLUTION ON DUE PROCESS PROCEDURES

WHEREAS, Section 55-79.53 of the Virginia Condominium Act, Code of Virginia (1950, as amended) (the "Act") charge all unit owners and their tenants, guests and invitees with compliance with the condominium instruments (Declaration, Bylaws, plats and plans) of the Association, as amended; and,

WHEREAS, Article III, Section 2(f) (*Board of Directors - Powers and Duties*) of the Bylaws, grant the Association, acting through its Board of Directors, the authority to "[m]ake and amend the Rules and Regulations"; and,

WHEREAS, Section 55-79.80:2 of the Act authorizes the Association, through its Board of Directors and to the extent expressly so provided in the condominium instruments or the rules and regulations adopted pursuant thereto, to suspend a unit owner's right to use facilities and services, and to also assess charges against any unit owner "for any violation of the condominium instruments or of the rules and regulations promulgated pursuant thereto..." for which the unit owner or his family members, tenants, guests or other invitees are responsible; and,

WHEREAS, Article X, Section 1(g) (*Compliance and Default - Other Penalties*) of the Bylaws states in pertinent part that the Board of Directors shall have the authority to impose violation charges and other sanctions as permitted by Va. Code § 55-79.80:2, as may be established by resolution of the Board of Directors; and,

WHEREAS, Section 55-79.80:2 of the Act further provides that certain procedures must be followed before such charges or suspensions may be assessed; and,

WHEREAS, it is the intent of the Board of Directors to enforce the condominium instruments for the benefit and protection of the Association's unit owners and residents by establishing procedures which ensure due process and consistency of enforcement;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors, by the Act, the condominium instruments and this Resolution, are hereby empowered to suspend rights of use or to services, and to assess charges pursuant to Section 55-79.80:2 of the Act, and it is further resolved that the Board of Directors shall assess such charges or suspend use rights

for any violation of the condominium instruments or rules/regulations, but only after the following procedures have been followed:

I. Complaint.

A. Any unit owner, tenant, managing agent, employee or Board member who requests that the Board take action to enforce the condominium instruments and rules shall complete, date and sign a complaint in a form similar to and containing the information contained on Exhibit "A" hereto. The unit owner, tenant, managing agent, employee or Board member who requests that the Board take action to enforce the condominium instruments and rules shall be in good standing. "Good standing" will be defined as being current on all association dues, fees, and/or assessments and in compliance of all condominium instruments and rules.

B. The complaint shall be submitted to the Board of Directors for a determination as to whether it appears that a rule or provision of the condominium instruments allegedly has been violated.

C. The Board of Directors shall then take appropriate action, such as, but not limited to, issuing a warning letter, directing that a demand letter be sent or that it be referred to counsel or County authorities.

II. Demand.

A. If determined appropriate, a written demand letter which may be in a form similar to Exhibit "B" hereto shall be sent by first class mail or shall be hand-delivered to the unit owner at the address which the owner has provided to the Association or at the unit address, if no other address has been provided. A copy may be sent to the tenant if there is a tenant.

B. The demand letter shall specify the alleged violation, the action required to abate the violation and a date usually not less than ten (10) days after the date of the demand letter by which the alleged violation must be remedied. 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. The demand letter shall state that if the violation is not remedied, the unit owner must request in writing a hearing before the Board to avoid imposition of charges or suspension of rights or services. The letter shall also state that if no hearing is requested, the owner shall be deemed to have waived the opportunity for a hearing and rules violation charges or suspensions may be assessed. The demand letter may be combined with the notice of hearing referenced in Section III if the violation is of a serious nature or if previous notices of violation have been sent to the owner.

III. Notice of Hearing.

A. If the alleged violation is not remedied within the date or time specified in the demand letter referenced in Section II and the owner requests a hearing, or if the Board determines a hearing is necessary, a notice of hearing shall be sent. Notice of a hearing shall be

hand delivered or mailed by certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, or within such other time as may be required by the Act, to the unit owner at the address of record with the Association. Service by mailing shall be deemed effective two (2) days after the notice has been mailed in a regular depository of the United States mail. The demand letter referenced in Section II. B may be combined with the notice of hearing.

B. The notice of hearing may be similar to Exhibit "C" attached hereto and shall specify:

- 1) The time, date and place of the hearing.
- 2) That the unit owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel (at the unit owner's expense) before the Board.
- 3) The alleged violation, citing provisions of the condominium instruments or rules which allegedly have been violated.
- 4) That charges for violation of the condominium instruments and rules may include assessment of 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 Virginia Condominium Act.
- 5) That the alleged violation may result in the suspension of services, facilities use or voting rights, including suspension of reserved parking privileges.

IV. Hearing.

A. The hearing shall be scheduled at a reasonable and convenient time and place within the Board of Directors' discretion.

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

C. 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 unit owner with an opportunity to be heard and to be represented by counsel (if desired), within reasonable time limits imposed by the Board of Directors.

D. The hearing shall be conducted in private executive session unless the unit owner requests that the hearing be open to owners and residents. If the hearing is conducted in open session, the chairman of the hearing body may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. During the course of any hearing held, the Board, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

E. After proper notice has been given, if the unit 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 services or take such other action as may be authorized by the condominium instruments or by law.

F. If the unit owner acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Board may, in its discretion, dispense with a hearing after having afforded the unit owner with an opportunity for a hearing.

G. Within seven (7) days of the hearing, the Board shall, by hand-delivery or certified mail, return receipt requested, notify the unit owner of its decision, any suspension of use rights and/or the assessment of any charges and the date from which those assessments shall accrue and be due.

V. Records.

The Board or the management agent shall keep copies of all correspondence related to rules violations in the unit owner's file or in a separate file on rules violations. Minutes of each hearing or meeting shall be kept and a form similar to that attached hereto as Exhibit "D" shall be completed and placed in the unit owner's file and appropriate Association files.

VI. Assessment of Charges.

Pursuant to Section 55-79.80:2 of the Act, any charges assessed for violation of rules after notice and hearing shall be in amounts authorized by the Act and shall be treated as an assessment against the owner's unit for the purpose of Section 55-79.84 of the Act regarding liens. Such amounts shall also be the personal obligation of the owner.

VII. Other Remedies.

This Resolution shall not be interpreted to require a hearing prior to assessment of violation charges or suspension of use rights if a hearing is not requested, or to prevent the Association from exercising any other remedies authorized or available under the Act, the condominium instruments or by law and shall not constitute an election of remedies.

The Unit Owners Association of Colonial Village III, A Condominium

**Exhibit "A" to the
Resolution on Due Process Procedures**

Date:

Covenant / Rule Violation Complaint

1. Name of person(s) violating covenant / rule:
2. Unit of person(s) violating covenant / rule:
3. Are the person(s) named in question 1 tenants or owners?
4. Describe in detail how and where the covenant or rule was violated:
5. When did the violation(s) occur?
6. Have you personally requested the unit owner and/or tenant to cease the violation?
____ Yes ____ No ____ Verbally ____ By written request
When?
7. Name and unit number of person(s) making complaint:
8. Signature(s)

FOR ASSOCIATION USE ONLY

9. Owner: _____ Tenant: _____
10. Provision(s) of condominium instruments or rule(s) violated:
11. Registered Name(s) of unit owner(s):

12. Owner's address if non-resident:

13. Registered name(s) of tenant(s):

14. Comment:

15. Date demand letter sent to unit owner:

16. Owner/Tenant _____ does/_____ does not request a hearing.
Date request received:

17. Referred to Board on _____, 20__.

18. Date notice of hearing sent:

cc: Unit Owner File (optional-record may be closed)
Rules Violation File

The Unit Owners Association of Colonial Village III, A Condominium

**EXHIBIT "B" TO THE
RESOLUTION ON DUE PROCESS PROCEDURES
DEMAND TO CEASE AND CORRECT**

Date:

Dear _____:

You are hereby notified that a complaint has been made against you (or your tenants) for the alleged violation of the following covenant (or rule or regulation) of the Association:

Perhaps you were not aware of the covenants running with the land and/or the Association's rules, or perhaps you do not believe you are in violation. However, the covenants and rules are enforced for the benefit of all residents and to maintain property values throughout the community. You are requested to immediately cease and/or correct all of the above violations within ten (10) days from the date of this letter. If you need more time, you must request additional time and notify the Board in writing as to when the violating conditions will be corrected.

If you wish to contest the alleged violation and avoid 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 Board of Directors. The Board of Directors or its management agent will send you a notice by certified mail, return receipt requested, stating the hearing time and place. Alternatively, if you elect to cease and correct the violation within ten (10) days, please send a copy of this letter to the Board of Directors noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, you will be deemed to have waived your hearing right and you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day for a continuing violation for a period of up to ninety (90) days or up to Fifty Dollars (\$50.00) for each single violation without further notice. The Board may also take other legal action against you.

Sincerely,

The Board of Directors

cc: Unit owner file

TO BE COMPLETED BY UNIT OWNER

Name: _____ Unit#

___ 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

Mail this portion to: Colonial Village III Management Office, 1903 N. Key Blvd, Arlington, VA 22201

The Unit Owners Association of Colonial Village III, A Condominium

**EXHIBIT "C" TO THE
RESOLUTION ON DUE PROCESS PROCEDURES**

Date:

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: Notice of Rules Violation Hearing

Dear _____:

You are hereby notified that a hearing will be held before the Board of Directors of the Unit Owners Association of Colonial Village III, A Condominium at: _____ on the ___ day of _____, 201__, at ___ .m., pursuant to Section 55-79.80:2 of the Virginia Condominium Act and the condominium instruments for your tenant's or your alleged violation of the following covenant or rule of the Association: _____.

You may be present at the hearing. You may, but need not, be represented by counsel at your expense. You may present any relevant evidence. You may request the attendance of witnesses.

Please be advised that if the Board determines that you are in violation of the condominium instruments or the rules and regulations, charges of up to Fifty Dollars (\$50.00) for a one-time violation or Ten Dollars (\$10.00) per day for a period of up to ninety (90) days for a continuing violation may be assessed against you and your unit. Additionally, your right to use services and facilities, including reserved parking and the right to vote, may be suspended. In addition to this hearing, the Board may elect such other remedies as are authorized by the Virginia Condominium Act, the condominium instruments, and by law.

If you have any questions or wish to communicate with the Board regarding this matter, please call: _____.

Sincerely,

The Board of Directors

cc: Unit Owner File
Rules Violation File

The Unit Owners Association of Colonial Village III, A Condominium

**EXHIBIT "D" TO THE
RESOLUTION ON DUE PROCESS PROCEDURES**

RECORD OF HEARING

Hearing Date and Time:
Unit Owner(s):
Unit #:
Address if other than lot:

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board:

Charges Imposed (date commencing):

Other Sanctions Imposed:

Comments:

The Unit Owners Association of Colonial Village III, A Condominium

**EXHIBIT "E" TO THE
RESOLUTION ON DUE PROCESS PROCEDURES**

Date:

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: Notice of Hearing Result

Dear _____:

As you were advised by a hearing notice dated _____, 201__, the Board of Directors met on _____, 201__ to discuss the covenant/rule violations alleged against you. You were present / not present for the hearing.

The Board of Directors determined that you / your unit were / was / is in violation of the relevant restrictive covenant or rule _____.
(cite covenant or rule here)

Accordingly, the Board of Directors decided to impose the following sanctions (check applicable sanctions):

_____ The Board of Directors hereby warns you of the violation and requests your cooperation to avoid future violations.

_____ The Board of Directors imposed a one-time violation charge of \$_____ (not to exceed a maximum of \$50.00), which shall be deemed an assessment against your unit and your personal obligation.

_____ The Board of Directors imposed an ongoing violation charge of \$_____ per day (not to exceed \$10.00 per day and not to exceed 90 days in duration), which charges shall be deemed an assessment against your unit and your personal obligation.

_____ The Board of Directors suspended your use of the following facilities or services of the condominium: _____, which suspension shall remain in effect until you correct the noted violation.

_____ The Board of Directors decided to refer the matter to the Association's counsel and to instruct counsel to prepare a lawsuit for injunctive relief and/or monetary damages.

If the sanction imposed above is continuing in nature, **please note that it is your responsibility to correct the violation and notify the Board or the management agent that you have done so.** The ongoing sanction shall continue until the abatement of the violation can be independently verified by the Board or management agent.

Failure by you to bring your unit or your conduct into compliance with the restrictive covenants of record will result in the filing of a lawsuit in equity against you. The lawsuit would seek injunctive relief and all costs and fees incurred by the Association.

Your prompt compliance will be appreciated.

Sincerely,

The Board of Directors

cc: Unit Owner File
Rules Violation File

The Unit Owners Association of Colonial Village III, A Condominium

RESOLUTION ACTION RECORD

Resolution Type: Policy / Regulatory No. 10 - 3

Pertaining to: Due Process Procedures

Duly adopted at a meeting of the Board of Directors held 06/21/, 2010.

Motion by: Ms. Hagg Seconded by: Ms. Hunt

VOTE:

YES NO ABSTAIN ABSENT

Ms. Hunt
Director

✓

Debra M. Kelly
Director

✓

Amanda Hunt
Director

✓

Ms. Hagg
Director

✓

Kara D. Hagg
Director

✓

ATTEST: Debra M. Kelly
Secretary

FILE:

Date 06/21/2010

Book of Minutes - 2010
Book of Resolutions:

Policy	_____	Book No.	_____
Regulatory	_____		_____
Special	_____		_____
General	_____		_____

Page No.

Resolution effective: 08/01/2010