

THE HIGHLANDS COMMUNITY ASSOCIATION, INC.

POLICY RESOLUTION #5

Rule Violations: Complaint and Due Process Procedures

WHEREAS, The Highlands Community Association, Inc. (hereafter, "Association") is a property owners' association for the purposes of the Virginia Property Owners' Association Act, Section 55-508 et seq. of the Code of Virginia (hereafter, "Act");

WHEREAS, the Association is responsible for the enforcement of the recorded covenants and restrictions contained in the Declaration of Covenants and Restrictions Affecting all Property Known as The Highlands Owned by Oliver D. Rudy, Trustee Under the Provisions of a Trust Agreement dated March 20, 1988, Designated as Nash Road/Woodpecker Road Trust Agreement, dated April 1, 1992 and recorded on April 13, 1992 in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia in Deed Book 2221, Page 1952, et seq., as amended and supplemented (hereafter, "General Property Declaration") and the Declaration of Covenants and Restrictions of the Highlands Community Association, Inc. and Oliver D. Rudy, Trustee under the Provisions of a Trust Agreement Dated March 20, 1988, and Designated as the Nash Road/Woodpecker Road Trust Agreement, dated April 1, 1992 and recorded on April 13, 1992 in Deed Book 2221, Page 1973, et seq., as amended and supplemented (hereafter, "Declaration of Covenants and Restrictions");

WHEREAS, pursuant to Section 55-513(A) of the Act, the Association's Board of Directors has the "power to establish, adopt and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by declaration";

WHEREAS, pursuant to Article III, Part C, Section 15k of the Bylaws of the Highlands Community Association, Inc., the Association has the power to "make and amend rules and regulations".

WHEREAS, pursuant to Article III, Part C, Section 20 of the Bylaws of the Highlands Community Association, Inc., the Association has the power to enforce the Documents of the Association by sending notices, holding hearings, practicing self help and or by suit at law.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board, by the Act, the General Property Declaration, the Declaration of Covenants and Restrictions, the Bylaws of the Highlands Community Association, Inc., the rules and regulations (hereafter, "Governing Documents"), and this resolution, is hereby empowered to suspend use rights and assess charges pursuant to section 55-513 B of the Act; that the Board and Committee by the Act, the Governing Documents, and this resolution, is hereby empowered to issue a cease and desist request, to suspend use rights and/or to

assess charges pursuant to 55-513 B of the Act; and that the Board and Committee shall assess such charges, suspend such rights to use facilities or services provided by the Association, and issue such cease and desist requests, respectively, for any violation of the Governing Documents only after the following procedures have been followed:

- I. Complaint.
 - A. Any lot owner, tenant, Association managing agent, association employee, Board member or Committee member may make a complaint by signing and dating a Complaint in a form similar to and containing the information contained on Exhibit "A" hereto. Phone calls and emails are also acceptable methods of reporting complaints.
 - B. The Complaint shall be submitted to the Board or Manager, who will determine if a violation has occurred.
 - C. The Board, Committee, or Manager shall take appropriate action, such as directing that a demand letter be sent or that it be referred to counsel or State or Local Authorities.
- II. Reminder.
 - A. If determined appropriate, a written reminder letter which may be in a form similar to Exhibit "B" hereto shall be sent by first class mail (or by certified mail if deemed appropriate) or shall be hand delivered to the lot owner at the address which the owner has provided to the Association or at the lot address, if no other address has been provided. A copy may be sent to the tenant if there is a tenant.
 - B. The reminder letter shall advise the owner that the Association has been made aware of the alleged violation and shall specify the violation, and remind the owner of their and/or their tenants (if applicable) obligations under the governing documents and rules and regulations of the Association. The reminder letter shall also specify a date usually not more than ten (10) days after the date of the reminder letter by which the alleged violation must cease.
 - C. Should the reminder letter not cure the alleged violation, the Association shall send the Demand Letter as outlined in Section III hereof.
 - D. At its discretion, the Association may forego the reminder letter outlined in this Section and instead send the Demand Letter as outlined in Section III hereof as a first contact with an alleged violator.
- III. Demand.
 - A. If the alleged violation has not been cured in response to the Reminder letter, or if otherwise determined appropriate, a written demand letter which may be in a form similar to Exhibit "C" hereto shall be sent by certified mail or shall be hand-delivered to the lot owner at the address which the owner has provided to the Association or at the lot 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. Provided, however, when the violation may constitute a health, safety or fire hazard, demand may be made to remedy the violation in less than ten (10) days.

- C. The demand letter shall state that if the violation is not remedied within the specified time period, then the Association will begin assessing charges that may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for up to ninety (90) days for an offense of a continuing nature or such other amounts as may be authorized by the Virginia Property Owners' Association Act. Dates when these assessed charges take effect will be specified in the Demand Letter.
 - D. The demand letter may state: The Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, the Bylaws, or the Rules and Regulations of the Association by "self-help". The violation of any rule or regulation adopted by the Board of Directors, or the breach of any Bylaw or Declaration provision or the breach of any provision or the Property Owners' Act, shall give the Board the right, in addition to any other rights set forth in the Documents: (1) to enter, except by force or breach of the peace, the Lot in which or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of directors shall not thereby be deemed guilty in any manner of trespass; (2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.
 - E. Upon receiving a Demand Letter. The lot owner may make a request in writing to be heard by the Board to avoid possible imposition of charges. The lot owner's written request to be heard by the board of directors must be mailed within ten (10) days of the date of the Demand Letter. The Demand Letter shall also state that if no hearing is requested in writing within ten (10) days of the date of the Demand Letter, then the owner will be deemed to have waived the opportunity for a hearing and rules violation charges may be assessed.
- IV. Notice of Hearing.
- A. If the alleged violation is not remedied within the time specified in the demand letter referenced in Section III 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 mailed by registered or 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 lot owner at the address which the lot owner is required to provide to the Association. Service by mailing shall be deemed effective three (3) days after the notice has been

mailed in a regular depository of the United States Mail. The demand letter referenced in Section III B may be combined with the notice of hearing.

- B. The notice of hearing may be similar to Exhibit "D" attached hereto and shall specify:
1. The time, date and place of the hearing.
 2. That the lot owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel before the board or committee.
 3. The alleged violation, citing provisions of the Governing Documents or rules which allegedly have been violated.
 4. That charges for violation of the Governing Documents and Rules may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for up to ninety (90) days for an offense of a continuing nature or such other amounts as may be authorized by the Virginia Property Owners' Association Act.
 5. That the alleged violation may result in the suspension of right to use facilities and/or voting rights, as further enumerated in the Declaration.

V. Hearing.

- A. The hearing shall be scheduled at a reasonable and convenient time and place within the board's discretion.
- B. The board or committee, within its discretion, may grant a continuance. If either the Association or the lot owner for whom the hearing is scheduled requests a continuance to a different time or date, written notice to the other party, at least fourteen (14) days in advance of the hearing date, shall be required. Once a new hearing date or time has been established both parties shall be given written notice of such date and time.
- C. The hearing need not be conducted according to technical rules of evidence applied in a court of law. The hearing shall provide the lot owner with an opportunity to be heard and to be represented by counsel.
- D. The management agent, Association staff, lot owner, tenant, any person lodging a complaint, the committee, and/or members of the hearing panel, as appointed by the board or in absence of such appointment, the board shall have the right (1) to call, examine, and cross-examine witnesses, (2) to introduce testimony and evidence, and (3) to rebut testimony and evidence, all within reasonable time limits imposed by the board or committee.
- E. The hearing shall be conducted in private executive session unless the lot owner requests that the hearing be open to owners and residents and further provided that the chairman of the hearing panel, as appointed by the board, 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.

- F. After proper notice has been given, if the lot owner fails to appear at the hearing or if no hearing is requested, the hearing may proceed as scheduled and the Board or committee may assess charges from the date set forth in the Demand Letter (as outlined in Section III of this Resolution) or take such other action as may be authorized by the Governing Documents or by law.
- G. If the lot owner acknowledges responsibility for the violation charged, does not wish to contest the alleged charge, or does not request a hearing pursuant to Section III of this Resolution the board or committee may, in its discretion, dispense with a hearing after having afforded the lot owner with an opportunity for a hearing.
- H. Within seven (7) days of the hearing, the Board or Committee shall notify the lot owner of the decision, suspension of use rights and/or the assessment of any charges and the date from which those assessments shall accrue and be due. Said notification shall be hand delivered or mailed by registered certified mail, return receipt requested, to the member at the address of record with the Association.
- I. The Decision of the Board of Directors shall be final.

VI. Records.

The Board, Committee, or the Management 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 a form similar to that attached hereto as Exhibit "E" shall be completed and placed in the lot owner's file, or separate file, and appropriate Association files. Notice provided to the Lot Owner regarding the hearing, including a copy of the notice and a statement of the date and method of delivery from the person who mailed the notice, should be placed in the minutes of the hearing or meeting. All correspondence pertaining to this owner will stay in the owner's file until they are no longer considered a member of the association.

VII. Assessment of Charges.

Pursuant to Section 55-513 B. of the Act, any charges assessed for violation of rules after notice shall be in amounts authorized by the Act and shall be treated as an assessment against the owner's lot for the purpose of Section 55-516 of the Act regarding liens. Such amounts also shall be the personal obligation of the owner.

VIII. Other Remedies.

This resolution shall not be interpreted to require a hearing prior to assessment of rules violation charges or suspension of the right to use the facilities or services provided by the Association if a hearing is not requested. This resolution also shall not be interpreted to prevent the Association from exercising any other remedies authorized or available under the Act, the Governing Documents, or by law and shall not constitute an election of remedies. Several remedies, including but not

limited to initiating litigation and correction of the violation by the Association and charging the Lot Owner the costs thereof, do not require that this policy be followed or a hearing be held prior to the Association taking such action.

Exhibit "A"

Name and address of person filing complaint.

Date

Board of Directors
_____ Community Association, Inc.

Dear Board:

The body of the letter should describe the violation, complaint or request for action. Location of violation(s), date and times of violation(s), nature of violations and other pertinent information should be included.

Sincerely,

Signature of complainant

Exhibit "B"

The Highlands Community Association, Inc.

(000) 000-0000

Date

Name and address of alleged violator

RE: Violations of the governing documents at your property in
_____ Association

Dear _____:

We are writing this letter as a reminder of the Rules and Regulations concerning your property in the Highlands Community Association. We found the following at your property: *description of alleged violation.*

According to the governing documents: *quote the specific governing document that pertains to the alleged violation.*

Please cure this violation by: *describe the action needed to cure the violation and state the deadline to cure.*

Thank you for your cooperation. Please call the number above with any questions.

Sincerely,

Community manager

Exhibit "C"

The Highlands Community Association, Inc.

(000) 000-0000

CERTIFIED MAIL
REGULAR MAIL

Date

Name and address of alleged violator

RE: Violations of the governing documents at your property in the Highlands Community Association, Inc.

Dear _____:

We are writing to inform you of the violations at your property. We found the following at your property: *describe the violation and quote the document that specifically pertains to the violation.* Please cure the violation(s) within _____ days.

Failure to cure the violation in the requested time will cause the association to assess charges in the amount of _____.

OR

Failure to cure the violation in the requested time will cause the association cure the violation and assess charges against your property for the cost of curing.

If you would like to dispute the findings of this letter, then you may make a written request to be heard by the board of directors. The written request for a hearing must be mailed within fourteen (14) days of the date of this letter. Failure to request a hearing within the fourteen (14) days will cause you to waive your opportunity to a hearing.

Sincerely,

Community manager

Exhibit "D"

The Highlands Community Association, Inc.

(000) 000-0000

CERTIFIED MAIL
REGULAR MAIL

Date

Name and address of alleged violator

RE: Notice of violation hearing for your property located in the Highlands Community Association, Inc.

Dear _____:

The board of directors is requesting your attendance at a hearing of the board concerning violations at you property in the _____ association. You will be given a chance to speak to the board or you may bring legal counsel to speak on your behalf. The hearing will be held (date) _____, at (location) _____, at _____ am/pm. The violations include _____, _____, and _____.

The governing documents state: *quote the specific section of the documents pertaining to the violations.*

The results of the hearing could be that you are assessed charges in the amount of ten dollars (\$10.00) per day for up to ninety (90) days for an ongoing violation, fifty dollars (\$50.00) for a single offense, suspension of services, suspension of voting rights, and/or the association may cure the violation and assess charges for the cost to cure.

Thank you for your cooperation. Please call the number above with any questions.

Sincerely,

Community manager

Exhibit "E"

The Highlands Community Association
Board of Directors' Meeting Date: _____

The meeting of the Board of Directors of The _____ Association was held on (date) _____. The meeting was held at (location)_____.

Call to Order: President _____ called the meeting to order at ____ pm.

Present: The following Board members were present: List only board members in the minutes. The board has the option to attach a sign-in sheet from the meeting. _____

Open Session: Owners may request an open session instead of going into executive session.

Executive Session: _____ moved to adjourn to Executive Session for the purpose of _____ (must identify 1 or more of the 6 statutory reasons to meet in ES); seconded by _____. Motion passed/failed. Executive Session began at _____ pm. The 6 reasons to meet in ES are:

1. Personnel Matters
2. Consult with Legal Counsel
3. Discuss and Consider Contracts
4. Pending or Probable Litigation
5. Matters involving violations of the declaration or rules and regulations.
6. Delinquency Status

_____ moved to close Executive Session and return to Open Session; seconded by _____. Motion passed/failed. Executive session closed at ____ am/pm.

_____ stated in open session that decisions made in Executive Session that require a vote in Open Session appear under "New Business".

New Business:

1. _____ moved to _____, seconded by _____. Motion Passed/failed.

Next Board Meeting: The next regular meeting of The _____ Association, Inc.'s Board of Directors will take place on _____ (Date) at ____ am/pm, at _____ (location).

Adjournment: _____ moved to adjourn the meeting of the board of directors at _____ am/pm. Motion passed/failed.