

WINTERPORT CLUSTER ASSOCIATION

RESOLUTION NO. 2017-1

Rule Violations: Complaint and Due Process Procedures

WHEREAS, the Winterport Cluster Association (“Association”) is a Virginia property owners association which was established pursuant to a Deed of Dedication, dated January 31, 1979, and recorded among the Land Records of Fairfax County in Deed Book 5112, Page 365, *et sec.*, a Supplemental Deed of Dedication dated March 15, 1979, and recorded among the Land Records of Fairfax County in Deed Book, 5132, Page 35, *et seq.*, and Deed of Resubdivision dated May 30, 1979, and recorded among the Land Records of Fairfax County in Deed Book 5191, Page 145, *et seq.*, which subjected all lot owners to the Association’s reasonable regulations and Bylaws, and to the protective covenants, restrictions, charges, liens and easements contained in the Deed of Dedication of Section One, Reston, recorded in Deed Book 2431 at page 319, as amended (collectively referred to as “Reston Covenants”);

WHEREAS, the Virginia Property Owners’ Association Act, Virginia Code Section 55-513.A. (“Act”), Article VII, Section VII.1(d)(2) of the Reston Covenants and Article IV, Section 1 of the Association’s Bylaws grant the authority to the Board of Directors to manage the affairs of the Association and to establish, adopt, publish and enforce rules and regulations pertaining to the use of and access to the Common Area and any facilities thereon, and the personal conduct of Members and their guests thereon; and

WHEREAS, Section 55-515 of the Act and Article II Section 1 of the Bylaws requires all lot owners (“lot owners” or “members”) to comply with the provisions of the recorded Deed of Dedication, the Bylaws and the Association’s adopted rules and regulations, and provides the Association with the right to enforce all restrictions, conditions, covenants, reservations, liens and charges imposed by the provisions therein; and

WHEREAS, Article II, Section 1 of the Bylaws provides the Board of Directors with the power to suspend privileges to use the Common Area by members for any period of time that assessments remain unpaid, and for any infraction of the published rules and regulations; and

WHEREAS, it is the intent of the Board of Directors, to enforce the Governing Documents for the benefit and protection of the Association's members 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 Governing Documents and this Resolution are adopting the ability to suspend the use of Association facilities, for any violation of the Act, the Governing Documents, or duly adopted Rules or Regulations and are hereby further empowered to suspend such use of Association facilities pursuant to Section 55-513 of the Act, after the following procedures have been followed:

I. Complaint.

A. Any lot owner, tenant, management agent, employee, architectural committee member, or Board member who requests that the Board take action to enforce the Governing Documents and Rules shall complete, date and sign a Complaint in a form similar to and containing the information contained on Exhibit "A" hereto.

B. The Complaint shall be submitted to the Board president to determine whether it appears that a rule or provision of the Governing Documents allegedly has been violated.

C. The Board president shall then submit the Complaint to the Board for appropriate action, such as directing that a demand letter be sent or that it be referred to counsel or county authorities.

II. Demand.

A. A written demand letter which may be in a form similar to Exhibit "B" hereto may be sent by first class mail or shall be hand-delivered to the lot owner at the address which the owner has provided 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 correct 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 within twenty-four (24) hours.

C. The demand letter may state that if the violation is not remedied, the lot owner must request in writing a hearing before the Board to avoid suspension of use rights or services. The letter may also state that if no hearing is requested, the owner will be deemed to have waived the opportunity for a hearing and suspension of services.

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 registered or certified United States mail, return receipt requested, at least fourteen (14) days in advance of the hearing date, 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 two (2) days after the notice has been mailed in a regular depository of the United States mail.

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 lot owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel before the Board.

3) The alleged violation, citing provisions of the Governing Documents or rules which allegedly have been violated.

4) That their use of facilities, Common Area and/or Common Area parking may be suspended, as authorized by the Governing Documents and the Virginia Property Owners Association Act.

5) That other appropriate remedies may be taken.

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 owner for which the hearing is scheduled requests a different time or date, no further notice shall be required.

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 lot owner, tenant, any person lodging a complaint, and members of the hearing panel 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 of Directors.

E. The hearing shall be conducted in private unless the lot owner requests that the hearing be open to owners and residents and further provided that 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.

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 or meeting may continue as scheduled and the Board may impose suspensions as indicated herein from the final compliance date of the letter 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, or does not wish to contest the alleged charge or suspension, the Board 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, or such other time period as may be required by the Act, the Board shall notify the lot owner of its decision, the suspension of any use of facilities or services, the assessment of any charges and the date from which those assessments shall accrue and be due, which shall not be earlier than the date given in the demand letter by which the violation must cease in the case of a continuing violation. A sample Notice of Decision is attached as Exhibit D.

V. Records.

The Board shall keep copies of all correspondence related to rules violations in the lot owner's file or in a separate file for 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.

VI. Other Remedies.

This Resolution shall not be deemed to require a hearing prior to suspension of services if a hearing is not requested, prior to use of other remedies, or 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. In addition, in accordance with Article VII, Section VII.1(d)(c) of the current Reston Covenants, the Association may assess back any administrative costs associated with the enforcement of the Association's Governing Documents and rules and regulations.

**Exhibit "A" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
WINTERPORT CLUSTER ASSOCIATION**

Rules Violation Complaint

Date:

1. Name of person(s) violating rules:
2. Address of person(s) violating rules:
3. Are the person(s) named in question 1 tenants or owners?
4. Describe in detail how and where the rules were violated:

5. When did the violation(s) occur?

6. Have you personally requested the lot owner or tenant to cease the rules violation? ___ Yes,
___ No, ___ Verbally, ___ By written request. When?
7. Name and lot number of person(s) making complaint:
8. Signature(s)

FOR ASSOCIATION USE ONLY

9. Registered name(s) of lot owner(s):
10. Lot Address:
11. Provision(s) of Governing Documents or Rule(s) violated:
12. Owner's address if non-resident:
13. Registered name(s) of tenant(s):
14. Comment(s):

15. Date demand letter sent to lot 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: Lot Owner File

Rules Violation File

**Exhibit "B" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
WINTERPORT CLUSTER ASSOCIATION**

DEMAND TO CEASE AND CORRECT

(Owner)

You are hereby notified that a complaint has been made against you (or your tenants) for the alleged violation of the following rules and regulations 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 community. You are requested to immediately 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 avoid 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. The Board of Directors will send you a certified, return receipt notice 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 in care of the Board president noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, your rights to services and/or use of Common Area facilities, including Common Area parking spaces, may be suspended, as a result of the violation.

Sincerely,
Board of Directors

cc: Lot Owner file/(Tenant)

Return to:

Name: _____ Lot#

_____ 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 "C" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
WINTERPORT CLUSTER ASSOCIATION**

HAND DELIVERY OR
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 Winterport Cluster Association at _____ on the ____ day of _____, 20__, at ____ .m., pursuant to Section 55-513 of the Virginia Property Owners Association Act and the Governing Documents for your alleged violation of the following rules of the Association:

You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and you will be given full opportunity to examine and cross-examine all witnesses. You are entitled to request the attendance of witnesses.

If the Board determines that you are in violation of the Governing Documents and rules and regulations, your rights to services and/or use of Common Area facilities, including Common Area parking spaces, may be suspended. In addition to suspensions, the Board may elect such other remedies as are authorized by the Virginia Property Owners Association Act, the Governing Documents, and by law as provided in the resolution on rules violations and enforcement procedures, including without limitation, referral to County Authorities, injunctive action or a claim for civil damages. The Association may assess the costs of such actions in accordance with the Governing Documents. We hope such actions will not be necessary with your cooperation and appreciate your understanding of the need for all owners to comply with the Association's rules to maintain a pleasant living environment for all owners and residents.

If you plan on attending the hearing, please advise _____, or call _____.

Sincerely,

cc: Lot Owner File
Rules Violation File
(Tenant)

**Exhibit "D" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
WINTERPORT CLUSTER ASSOCIATION**

SAMPLE NOTICE OF DECISION

, 20__

_____ **Hand Delivered or**
Lot Address **Certified Mail Return Receipt Requested**
RE: Notice of Decision

Dear _____:

(Thank you for attending the rules violation hearing held _____, 20___. Or As you know a hearing regarding your rules violation(s) was held on _____, 20___.)

The Board's decision is as follows:

In addition to the above-stated charges, you have also been specifically assessed administrative costs in the amount of _____, pursuant to Article VII, Section VII.1(d)(c) of the First Amendment to the Deed of Amendment to the Deeds of Dedication of Reston ("Reston Covenants"). If the violation(s) continue, the Association may be forced to file for injunctive relief in the Fairfax County Circuit Court or take other appropriate steps as described in the Resolution on Rules Violations and Enforcement Procedures. The attorneys' fees and costs of such proceedings may be assessed against you.

We hope that such an action will not be necessary with your cooperation. If you have any questions, please call me.

Sincerely,
Board of Directors

cc: Board of Directors

**Exhibit "E" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
WINTERPORT CLUSTER ASSOCIATION**

RECORD OF HEARING

Hearing Date and Time:

Lot Owner(s):

Lot Address:

Address if other than lot:

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board and Reasoning:

Charges Imposed (date commencing):

Other Sanctions Imposed:

Comments:

**WINTERPORT CLUSTER ASSOCIATION
RESOLUTION ACTION RECORD**


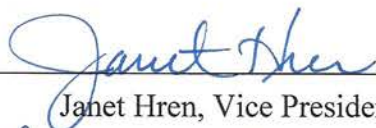


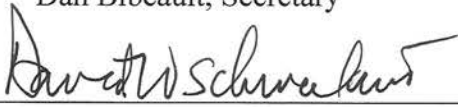
Resolution Type: Regulatory No. 2017-1

Pertaining to: Rules Violations and Enforcement Procedures

Duly adopted at a meeting of the Board of Directors held January 18, 2017.

Motion by: D. Schweikart Seconded by: Daniel Bibeault

VOTE:

	YES	NO	ABSTAIN	ABSENT
<u></u> John Yandziak, President	✓	—	—	—
<u></u> Janet Hren, Vice President	✓	—	—	—
<u></u> Doshau Qualls, Vice President	✓	—	—	—
<u></u> Dan Bibeault, Secretary	✓	—	—	—
<u></u> David Schweikart, Treasurer	✓	—	—	—

Resolution effective as of date of adoption.