

THE VILLAGES AT RIPPON LANDING HOMEOWNERS ASSOCIATION, INC.

RESOLUTION NO. 2010-2

**Rule Violations: Complaint and Due Process Procedures**

**WHEREAS**, Article 2, Section 2.01 and Article 3, Sections 3.01, 3.04 and 3.05 of the Declaration of Protective Covenants, Conditions Restrictions and Reserved Easements ("Declaration") of The Villages at Rippon Landing Homeowners Association, Inc. (the "Association") grants the authority to the Board of Directors to manage the Common Areas, to establish Rules and Regulations pertaining to the use of the property, and to enforce the Declaration, Bylaws, and Resolutions, Rules and Regulations of the Association ("Governing Documents"); and

**WHEREAS**, the Virginia Property Owners' Association Act, Virginia Code Section 55-515 (the "Act"), and Article 3, Section 3.01 of the Declaration, requires all lot owners ("lot owners" or "members") to comply with the provisions of the Declaration and the Governing Documents; and

**WHEREAS**, Section 55-513.A and B(ii) of the Act and Article 2, Section 2.01, of the Declaration provides the Association with the power to enforce the Governing Documents by suspending services or voting rights and/or assessing charges against any member for any violation of the Declaration or the Rules and Regulations for which the member or his family members, tenants, guests, or other invitees are responsible; and

**WHEREAS**, Section 55-513.B. of the Act provides that certain procedures must be followed before suspensions or charges may be assessed; 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 assess charges and/or

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 assess such charges and/or 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 management agent to determine whether it appears that a rule or provision of the Governing Documents allegedly has been violated.

C. The management agent 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. If determined appropriate, 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 shall state that if the violation is not remedied, the lot owner must request in writing a hearing before the Board to avoid imposition of charges and/or suspension of use rights or services. The letter shall 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 and/or rules violation charges may be assessed. The demand letter may be combined with the notice of hearing referenced in Section III if 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 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. 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 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 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 up to ninety (90) days, for any offense of a continuing nature, or such greater amounts as may be authorized by 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 management agent, 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 assess charges or 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, 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 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 and placed in the lot owner's file and appropriate Association files.

#### **VI. Assessment of Charges.**

Pursuant to Section 55-513 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 such owner's lot for the purpose of Section 55-516 of the Act regarding liens. Such charges also shall be the personal obligation of the owner.

#### **VII. Assessment of Costs.**

All costs incurred by the Association as a result of any violation of the Declaration, Bylaws, Rules and Regulations or Resolutions of the Association by a lot owner, his family, employees, agents, lessees or licensees, shall be specifically assessed or charged against the lot as provided by Article 7, Section 7.2 and Article 8, Section 8.2 of the Declaration.

**VIII. Other Remedies.**

This Resolution shall not be deemed to require a hearing prior to assessment of rules violation charges or 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.