

ASBURY TERRACE II HOMEOWNERS ASSOCIATION, INC.

REGULATORY RESOLUTION NO. 2022-3

Rule Violations: Complaint and Due Process Procedures

WHEREAS, Section 55-515 of the Virginia Property Owners Association Act (the "Act") and the Association's Declaration of Covenants, Conditions and Restrictions ("Declaration") require that each Owner and all those entitled to occupy a lot shall comply with the Act and the Association's Declaration; and

WHEREAS, the Declaration and Association's Bylaws provide that the Association's business and affairs are to be managed by the Association's Board of Directors ("Board") and that the Board has the power and duty to perform or cause to be performed the functions and obligation of the Association as provided for in the Association's Declaration, Bylaws or Articles of Incorporation, except to the extent those governing documents specifically reserve such authority to the owners; and

WHEREAS, Section 55-513 of the Act and Article IX of the Declaration provide that the Board may establish, adopt and enforce rules and regulations pertaining to areas of the Association's responsibility;

WHEREAS, Section 55-513B of the Act and Article VI of Declaration provide the Board with the power to assess charges against Owners and to suspend Owners membership privileges, for violations of the Association's Declaration, and rules and regulations ("Governing Documents") for which the Owner or his family members, tenants, guests or other invitees are responsible; and

WHEREAS, pursuant to the Declaration and the Act, for any Owner who is in violation of the Governing Documents, including those whose assessments account is more than 60 days past due, the Board may suspend that Owner's right (including the privileges of the residents, guests and tenants of that Owner's lot) to use the Association's recreational facilities or nonessential services offered by the Association, and to suspend that Owner's right to vote as a member of the Association, or to run or hold an office within the Association;

WHEREAS, it is the intent of the Board to enforce the Association's Governing Documents for the benefit and protection of the Association and the Owners and residents by establishing procedural safeguards that comply with the Act and that help ensure consistency of enforcement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors pursuant to the Act, the Declaration and this Resolution, is hereby empowered to assess charges and suspend use rights pursuant to the Declaration and Section 55-513.B of the Act for violations of the Governing Documents, in accordance with the following procedures:

I. Complaint.

A. Any owner, tenant, employee, or Board member who requests that the Board take action to enforce the Governing Documents shall submit a written complaint that includes the date, specific complaint, and signature of complainant.

B. The complaint shall be submitted to the Management Agent for a determination as to whether it is likely that a provision of the Governing Documents has been violated based upon the allegations.

C. The Management Agent shall then submit the complaint to the Board for appropriate action, such as directing that a first notice be sent or that it be referred to legal counsel or county authorities.

II. First Notice of Violation.

A. If determined appropriate, the Association's first formal notice of violation shall be issued in writing and delivered by hand or by first class U.S. Mail to the member at the member's address listed in the Association's records as well as to the address of the property within the Association, if the member's listed address is different from the property address.

B. In the initial notice of violation, the Board shall generally advise the member of the nature of the offense, cite the specific provision within the Governing Documents or Rules and Regulations that the member has allegedly violated, specify the remedy required, and state that the member has fifteen (15) days, or such other reasonable period of time, to correct the action.

C. If the member does not remedy the alleged offense within the number of days requested in the notice of citation, the Board reserves the power to issue a Hearing Notice.

III. Hearing Notice.

A. If the alleged violation is not remedied within the date or time specified in the first violation letter referenced in Section II a notice of hearing shall be sent. The notice of hearing shall be hand delivered or mailed by registered or certified U.S. Mail, return receipt requested at least fourteen (14) days in advance of the hearing, or within such other time as may be required by the Act, to the owner at the member's address listed in the Association's records as well as to the address of the property within the Association, if the member's listed address is different from the property address.

B. The hearing notice shall specify the following:

1. The time, date, and place of the hearing,
2. That the 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 that allegedly have been violated, and
4. That charges for violation of the Governing Documents may include amounts 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 any offense of a continuing nature or such greater amounts as may be authorized by the Act or members' privileges may be suspended to use facilities or services for assessments that are past due for more than sixty (60) days.

III. 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 continuance to 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 alleged violator with an opportunity to be heard and represented by counsel.

D. The Management Agent, owner, tenant, any person lodging a complaint, legal counsel for any party, and members of the hearing panel shall have the right to: (1) call, examine, and cross-examine witnesses, (2) introduce testimony and evidence, and (3) 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 accused violator 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 owner fails to appear at the hearing, the hearing may continue as scheduled and the Board may assess charges or suspend privileges to use facilities or services from the final compliance date of the letter or take such other action as may be authorized by the Governing Documents or by law.

H. The Board shall notify the alleged violator of its decision, the assessment of any charges or the suspension of privileges to use facilities or services, and the date from which those assessments shall accrue and be due or suspension of privileges shall begin, which shall not be earlier than the date given in the demand letter by which the violation must cease. Such decision shall be made and notice of it shall be hand delivered or mailed by registered or certified mail, return receipt requested within seven (7) days of the hearing.

V. Records.

The Board or the Management Agent shall keep copies of all correspondence relative to rules violations in the owner's file or in a separate file for rules violations. Minutes of each hearing or meeting shall be kept and placed in the appropriate Association files.

VI. Suspension of Privileges or Assessment of Charges.

Pursuant to Section 55-513 of the Act, any suspensions imposed shall be in accordance with the Act, and 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 amounts also shall be the personal obligation of the owner.

VII. Other Remedies.

This resolution shall not be deemed 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.

This Resolution No. 2022-3 supersedes and replaces all previous versions of Rules and Regulations – Hearing Procedures and Charges of Assessments for Violation of the Governing Documents.

**ASBURY TERRACE HOMEOWNERS ASSOCIATION, INC.
RESOLUTION ACTION RECORD**

Resolution Type: Regulatory No. 2022-3

Pertaining to: Due Process Procedures

Duly adopted at a meeting of the Board of Directors held February 10, 2022

Motion by: Mark Whitacre Seconded by: _____

	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>Mark L. Whitacre</u> President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Vice President	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Treasurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Secretary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ATTEST:

Abby Luik
Secretary

February 10, 2022
Date:

Resolution effective: February 10, _____, 2022.