

HUPP'S RIDGE HOMEOWNERS ASSOCIATION

POLICY RESOLUTION NO. 2010 - 11

RULE VIOLATIONS: COMPLAINT AND DUE PROCESS PROCEDURES

WHEREAS, the Hupp's Ridge Homeowners Association ("Association") was created pursuant to a Declaration of Covenants, Conditions and Restrictions, ("Declaration") dated April 20, 2004, and recorded among the Land Records of Shenandoah County in Deed Book 1130, Page 330, *et al.*, which subjected all lot owners to the Association's Declaration, reasonable regulations and Bylaws;

WHEREAS, the Virginia Property Owners' Association Act, Virginia Code Section 55-513.A ("Act") and Article VI, Section I of the Association's Bylaws authorize the Board of Directors to exercise for the Association all powers, duties and authority vested in or delegated to the Association; and

WHEREAS, Section 55-515 of the Act requires all lot owners ("lot owners" or "members") to comply with the provisions of the recorded Declaration, 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 V, Section 9(c) of the Declaration 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, Section 55-513.B of the Act provides that the Board of Directors shall have the power to assess charges against members for any violation of the Declarations and Rules and Regulations, and that certain procedures must be followed before suspensions or charges rules violations may be assessed; and

WHEREAS, it is the intent of the Board of Directors, pursuant to Section 55-513.B of the Act, to adopt by Resolution the authority to assess charges for infractions and violations of the Act and the Governing Documents; 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 for any violation of the Act, the Governing Documents, or duly adopted Rules or Regulations and are hereby further empowered to assess such charges pursuant to Section 55-513 of the Act which will be assessed only after the following procedures have been followed:

I. Complaint.

A. Any lot owner, tenant, management agent, employee, Enforcement Committee Member, Covenants 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 of Directors to determine whether it appears that a rule or provision of the Governing Documents allegedly has been violated.

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 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, that 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, to be made within ten (10) days from the date of the letter, 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, such as suspension of use of any facilities or services.

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 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 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. Other Remedies.

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

Effective Date of this Resolution: _____, 2010.

**Exhibit "A" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

Rules Violation Complaint

Date:

1. Name of person(s) violating rules:
 2. Address of person(s) violating rules:
 3. Is (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 _____, 2010.

18. Date notice of hearing sent:

cc: Lot Owner File
Rules Violation File

**Exhibit "B" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

DEMAND TO CEASE AND CORRECT

DATE: _____

(To 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 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. 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 noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day for a continuing violation or up to Fifty Dollars (\$50.00) for each single violation without further notice and other remedies may be pursued as well.

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
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

(Owner) _____

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 Hupp's Ridge Homeowners Association at _____ on the _____ day of _____, 2010, at _____ m., pursuant to Section 55-513 of the Virginia Property Owners Association Act and the Governing Documents for your or your tenant's 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, charges of up to Fifty Dollars (\$50.00) for each one-time violation or Ten Dollars (\$10.00) per day for a continuing violation up to ninety (90) days may be assessed against you and your lot. In addition to charges and/or 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. 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:

_____.

Sincerely,

cc: Lot Owner File
Rules Violation File
(Tenant)

**Exhibit "D" to the
RESOLUTION ON RULES VIOLATIONS AND ENFORCEMENT PROCEDURES
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

SAMPLE NOTICE OF DECISION

_____, 200 ____

Lot Address

**Hand Delivered or
Certified Mail Return Receipt Requested**

RE: Notice of Decision

Dear _____:

(Thank you for attending the rules violation hearing held on _____, 2010. *Or* As you know a hearing regarding your rules violation(s) was held on _____, 2010.)

The Board's decision is as follows:

Rules violation charges have been assessed in the amount of \$10.00 per day from _____, 2010, through the date the violation is corrected or for up to ninety (90) days. Please notify the Board of Directors when you have corrected violation so that an inspection may take place and charges will no longer accrue.

AND/OR:

As a result of the ___ incidents on _____, 2010 and _____, 2010, you are also responsible for a rules violation charge of \$50 for each of the ___ incidents, bringing the total amount due through today to \$ _____. Any subsequent violation will result in an additional charge of \$50.00 per violation.

Rules violation charges are treated for all purposes as assessments and are subject to the same collection and enforcement procedures. If the violation(s) continue, the Association may be forced to file for injunctive relief in the Shenandoah 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 a proceedings may be assessed against you (and the owner of the unit).

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
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

RECORD OF HEARING

Hearing Date and Time:

Lot Owner(s):

Lot Address:

Address if other than unit:

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board and Reasoning:

Charges Imposed (date commencing):

Other Sanctions Imposed:

Comments:

**HUPP'S RIDGE HOMEOWNERS ASSOCIATION
RESOLUTION ACTION RECORD**

Resolution Type: Policy No. 2010-11

Pertaining to: Rules Violations and Enforcement Procedures

Duly adopted at a meeting of the Board of Directors held 10/21, 2010.

Motion by: Bryan Mosher Seconded by: Allison Marsh

	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>Althea Teter</u> Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Allison Marsh</u> Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bryan Mosher</u> Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Katharine Demers</u> Director	<input checked="" 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:
[Signature]
Secretary

10/21/10
Date

FILE:
Book of Minutes _ 2010
Book of Resolutions:

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

Resolution effective: _____, 2010.

Resolution effective: _____, 2010.