

**MULBERRY TERRACE HOMEOWNERS ASSOCIATION**

**POLICY RESOLUTION 2012-01**

**COVENANT AND RULE ENFORCEMENT POLICY:  
NOTICE AND HEARING PROCEDURES**

**WHEREAS**, Section 55-515 of the Virginia Property Owners' Association Act (the "Act") and the Association's Deed of Dedication and Bylaws ("Governing Documents") require that each Owner and all those entitled to occupy a Lot shall comply with the Act and the Association's Governing Documents; and

**WHEREAS**, the Deed of Dedication provides 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 caused to be performed the functions and obligations of the Association as provided for in the Association's Governing Documents, 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 VIII of the Deed of Dedication provide that the Board may establish, adopt and enforce rules and regulations pertaining to areas of Association responsibility; and

**WHEREAS**, Section 55-513.B of the Act and Articles IV and V of the Deed of Dedication provide the Board with the power to assess charges against Owners and to suspend Owners membership privileges, for violations of the Association's Deed of Dedication, 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 Deed of Dedication and the Act, for any Owner who is in violation of the Governing Documents, including those whose assessment account is more than 60 days past due, the Board may suspend that Owner's right (including 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 for or hold an office within the Association;

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

**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 Deed of Dedication and this Resolution, is hereby empowered to assess

charges and suspend use rights pursuant to the Deed of Dedication and Section 55-513.B of the Act for violations of the Governing Documents, in accordance with the following procedures:

**A. Application of this Resolution.** This Resolution is applicable to all alleged violations of the Governing Documents for which the Board is contemplating imposing violation charges against an Owner or suspending an Owner's right to use the Association-provided recreational facilities and services. However, the notice and hearing procedures in this Resolution are not prerequisites for taking any other type of enforcement action available to the Association. The notice and hearing procedures are also subject to the following exception:

(1) For suspensions of use rights due to nonpayment of assessments, the Notice of Violation referenced below is not required to be sent to the delinquent Owner as long as the Association has sent that Owner another written communication or invoice advising of the potential suspension and the Owners right to request a hearing within a specified number of days.

*NOTE: Owners are responsible for violations by their family members, tenants, guests and invitees, as may be applicable.*

**B. Informal Resolution of Complaints.** The Association's directors and officers or other authorized agent, the Management Agent and any Owner has the authority to request an Owner, tenant, guest, invitee or resident to cease or correct any act or omission that appears to be in violation of the Governing Documents. Such informal requests will usually be made before formal action is initiated by the Association. The Board may also have the management agent send a "friendly reminder" letter to a non-compliant Owner prior to taking more formal action as set forth below.

**C. Formal Action.**

- (1) Formal action by the Association is initiated by the Board or Management Agent upon written request of an Owner or resident, or on the Board's own initiative.
- (2) Formal action is initiated through the delivery of a written Notice of Violation to the Owner, by hand-delivery or by first-class mail to the Owner's address of record with the Association. If the violation is by a tenant, the Board may also send the notice of violation to the tenant at the Lot address.
- (3) The Notice of Violation shall contain the following minimum information:
  - (a) The Owner's name.
  - (b) The alleged violation.
  - (c) The action required to abate or correct the alleged violation.
  - (d) For violations of a continuing nature, a request or demand that the alleged violation be abated or corrected within 15 days of the date of the Notice or such other time period as may be appropriate under the circumstances, in the discretion of the Board or Management Agent.
  - (e) A statement to the effect that the Owner must request in writing a hearing in front of the Board if the Owner wants to contest the cited violation or the imposition of certain sanctions. The letter shall advise the Owner that if no

hearing is requested within the stated time period, then the Owner will be deemed to have waived the opportunity for a hearing and the Board may then impose the applicable sanctions as it deems appropriate. The demand letter need not provide for additional time to correct the violation, or it may be combined with the notice of hearing referenced in Section F below, if previous notices of violation for the same type of violation have been sent to the Owner, or if otherwise determined by the Board to be appropriate.

**D. Failure to Request a Hearing.** In the event the alleged non-compliant Owner ("Respondent") fails to timely request a hearing in response to the Notice of Violation, the Board may assess a violation charge(s) or suspend privileges against the Respondent without holding a hearing. However, even if the Respondent fails to timely request a hearing, the Board reserves the right to schedule a hearing on the matter if the Board deems it appropriate under the particular facts and circumstances presented. The Management Agent or Board will promptly notify the noncompliant Owner in writing of the sanctions imposed.

**E. Request for a Hearing.**

- (1) In the event that Respondent desires a hearing before the Board, the Respondent must request a hearing in writing within the time period stated in the Notice of Violation or other such similar notice as provided by the Association. The Request for a Hearing must be sent to the Management Agent so that it is received within the applicable time period.
- (2) In the request for a hearing submitted by the Respondent, the Respondent should answer the violation notice by admitting or denying the violation in whole or in part, and/or explaining the conduct and setting forth any mitigating circumstances.

**F. Notice of Hearing.**

- (1) Notice's Timing and Content. After receipt of a timely request for a hearing (or if the Board otherwise decides to hold a hearing), the Board or Management Agent shall give the Respondent notice of the hearing's date, time and place by hand-delivery or by certified mail, return-receipt requested, to the Owner's address of record with the Association, at least 14 days prior to the hearing or within such other time period as may be required by the Act, as subsequently amended. The Notice of Hearing shall state the alleged violation, the potential sanctions (violation charges and/or suspension of privileges), and that the Respondent may be represented by legal counsel at the hearing.
- (2) Hearing's Scheduling and Continuances. The hearing shall be scheduled at a reasonable time and place within the Board's discretion. The Board, in its discretion, may grant a continuance if a continuance request is received prior to the hearing date. A continuance request must describe the reasons for the request. If a continuance is granted, notice of the new date and time may be either hand-delivered or mailed by first-class mail to the Owner at his or her address of record. However, it is ultimately the Owner's responsibility to

contact the Board or Management Agent prior to the originally scheduled hearing date to determine whether a continuance request was granted.

**G. Hearing Procedures.**

(1) If a hearing is requested and/or scheduled, as set forth above, a hearing shall be conducted by the Board to afford the Respondent a chance to present his or her position regarding the alleged violation(s) of the Governing Documents. However, if the Respondent fails to appear at the hearing at the scheduled time, the Board may deem the allegations to have been admitted.

(2) Any defects in the hearing notice shall be deemed waived by the Respondent if the Respondent appears or is represented at the hearing.

(3) Presiding Officer. The Board shall select a member of the Board to preside over the hearing. At the beginning of the hearing, the presiding officer should explain the general procedures by which the hearing is to be conducted, including for example, the time limits for presentations.

(4) Conducting the Hearing/Legal Representation. The Board may determine the manner in which the hearing will be conducted, so long as the procedures are otherwise consistent with the Act and the provisions of this Resolution. The hearing need not be conducted according to technical judicial rules relating to evidence and witnesses. Respondents have the right to be represented by an attorney at the hearing, but attorney-representation is not required. Respondent's failure to have an attorney at the scheduled hearing shall constitute a waiver of such right for purposes of the hearing.

(5) Executive Session. The hearing shall be conducted in executive session unless the Owner requests that the hearing be open to other Owners, and further provided that the presiding officer may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. Regardless, the Board may allow witnesses and/or complaining parties to make presentations to the Board during the hearing.

**H. Decision/Notice of Hearing Results.** After all presentations have been made within the allotted time period, the Board shall deliberate in executive session and decide the matter by majority vote of the members of the Board participating in the hearing; if additional time is needed to reach a decision, the Board may continue the hearing to an announced date and time, with no further written notice required (or, if the date and time is not announced at the hearing, then the Association will send advance written notice of the continuance date and time to the Owner, by hand-delivery or first-class mail). Within seven days after the hearing (including any continuances), the Board or Management Agent shall notify the Owner of the Board's decision in writing, by hand-delivery or by certified mail, return receipt requested, to the Owner's address of record with the Association.

**I. Sanctions.** Pursuant to the Deed of Dedication and Section 55-5133 of the Act this Resolution, the Board has the authority to:

(1) Assess charges for violations of the Governing Documents. Any charges

assessed for violations of the Governing Documents shall be in amounts authorized by the Act and shall be treated as an assessment against the Owner's Lot for the purposes of collection and filing liens. Such amounts also shall be the personal obligation of the Owner. Currently, the Act provides that for each violation, a charge of up to \$50.00 can be assessed; or for violations of a continuing nature, a charge of up to \$10 per day for up to 90 days or until the violation ceases, whichever occurs first; and/or

(2) Suspend an Owner's right to use Association-provided recreational facilities and other non-essential services (as long as access to the Owner's Lot through the Common Area is not precluded) if that Owner's assessment account is more than 60 days' past due, with the suspension continuing for the duration of the delinquency, or for any other violation of the Governing Documents, with the suspension lasting not more than 60 days.

*NOTE: A suspension applies to the Owner and that Owner's family members, guests and tenants, unless the Owner is explicitly informed otherwise in writing by the Board or Management Agent.*

**J. Other Remedies.** This Resolution shall not be interpreted to require a hearing prior to assessment of violation charges if a hearing is not requested, or to prevent the Association from exercising any other remedies authorized or available under the Act or the Governing Documents. The exercise of any one or more remedies shall not constitute an election of remedies. Remedies may be cumulative and also include, without limitation, the following:

- (1) Right of Entry. If an Owner fails to properly maintain, repair or restore his or her Lot and the exterior of his or her dwelling as required by the Deed of Dedication (and any related rules), then as authorized by Article VI of the Deed of Dedication, the Association (acting through its agents) has the right, after 14 days' written notice to the non-compliant Owner, to enter onto the Owner's Lot to perform any maintenance, repair or restoration to the Lot, the exterior of the dwelling or other improvements thereon, which is deemed necessary by the Board, with the costs of such action being assessed against the Owner; and/or
- (2) Suspension of Right to Vote and to Run for or hold Office. Pursuant to the Deed of Dedication and this Resolution, the right of an Owner to cast a vote as a member of the Association and to run for or hold office within the Association shall be automatically suspended if that Owner is delinquent in paying any assessment to the Association (i.e., by failing to pay any assessment or installment thereof within 30 days after the applicable due date); and/or
- (3) Legal Action. The Association has the right to file a lawsuit for monetary damages and/or injunctive relief.

**K. Records.** The Board or Management Agent will keep copies of all correspondence related to violations in the Owner's file or in a separate file specifically for violations, and a record of each hearing or related meeting will be kept and placed in the Association's records to satisfy this requirement.

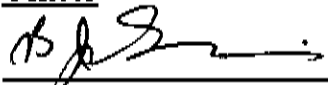

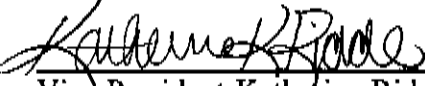
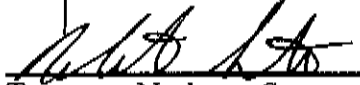
MULBERRY TERRACE HOMEOWNERS ASSOCIATION, INC.

POLICY RESOLUTION 2012-01

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NOTICE AND HEARING PROCEDURES

This Policy Resolution was adjudicated and passed on this 22<sup>nd</sup> day of October, 2012. It shall be effective and enforced as of the same date.

VOTING RECORD

<u>Officer</u>	<u>Yes</u>	<u>No</u>	<u>Not Present</u>
 _____ President-Brian Sison	X		
 _____ Secretary-Karen Stogsdill	X		
 _____ Vice-President-Katherine Riddle	X		
 _____ Treasurer-Norberto Santana	X		
_____ Member at Large			