

Approved

PARKFAIRFAX CONDOMINIUM UNIT OWNERS ASSOCIATION

POLICY RESOLUTION NUMBER FOUR

ESTABLISHING DUE PROCESS PROCEDURES

WHEREAS, Article III, Section Two, of the Parkfairfax Condominium Unit Owners Association Bylaws assigns the Board of Directors with “. . . all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association,” and further states that the Board of Directors “. . . may do all such acts and things as are not by the Condominium Act, The Declaration or by these Bylaws required to be exercised and done by the Unit Owners Association”; **AND**

WHEREAS, the Condominium Act requires all unit owners comply with the Declaration, Bylaws and rules adopted by the Board of Directors, (the "Condominium Instruments") and provides for suspension of privileges and imposition of charges and other remedies for violations; **AND**

WHEREAS, for the benefit and protection of the Unit Owners Association and the individual unit owners or occupants, the Board of Directors deems it desirable to establish and operate by a procedure to assure due process in cases where there is a question of compliance by a Unit Owner or occupant with provisions of the Condominium Act or the Condominium Instruments thereby attempting to minimize the necessity of seeking action in or through a court of law; **AND**

WHEREAS, Article III, Section 18 of the Bylaws provides for the establishment of a Covenants Committee which will serve, in addition to the Board of Directors, to regulate appearance and use of the Common Elements and the general comfort and welfare of the unit owners and occupants and which has standing to conduct adjudications and issue appropriate rulings; **AND**

WHEREAS, it is the intent of the Board of Directors to establish procedures for the Board of Directors or Covenants Committee where either must take action relative to questions of compliance by an individual with the provisions of the Condominium Act or the Condominium Instruments;

NOW THEREFORE, BE IT RESOLVED THAT these due process procedures shall be adopted and shall replace any prior resolutions on this topic:

PURPOSE OF RESOLUTION

This Resolution is intended to serve as a protection to unit owners and residents to ensure their rights are protected and to serve as a guideline for the Board of Directors and the Covenants Committee in enforcing the Condominium Instruments.

The Board of Directors may determine the specific manner in which the provisions of this resolution are to be implemented, provided that due process is afforded.

Any inadvertent omission or failure to conduct any proceeding in exact conformity with this resolution shall not invalidate the results of such proceeding, so long as a prudent and reasonable attempt has been made to ensure due process according to the general steps set forth in this resolution.

Article I. Complaint Resolution Process

Section 1. Prior to Initiation of Formal Complaint Process

Any Unit Owner or occupant or agent of the Association has the authority to request a unit owner or occupant cease or correct any act or omission which appears to be in violation of the Condominium Instruments. Such informal requests must be made before the formal process is initiated.

If informal requests do not result in compliance, a written complaint providing in reasonable detail the specifics of the alleged violation shall be filed with the Board of Directors or an appointed official.

Section 2. Written Complaint

A. Substance of Complaint

A written complaint may be filed by any Parkfairfax resident or owner. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare a defense. The complaint shall specify the specific provisions of the Virginia Condominium Act or the Condominium Instruments which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts. The complaint must be as specific as possible as to times, dates, places, and persons involved. The complaint must be signed.

B. Preliminary Investigation

Upon receipt and consideration of a written complaint, the Covenants Committee may hear or collect evidence in any form it considers valid and/or may request the General Manager or such other person(s) to make a preliminary investigation as to the validity of the complaint and promptly report the findings. If the alleged violation has been corrected since the complaint was made, or if the complaint is for any other reason no longer valid, the Covenants Committee shall determine the appropriate disposition of the matter and respond to the complainant. The Covenants Committee or Management Staff may make initial attempts to secure compliance through correspondence to the owner or occupant which states the time, date, place, and nature of the violation and which sets forth the time period in which the violation must be corrected.

Copies of such correspondence shall be maintained in the Association files, and a copy may be sent to Legal Counsel for the Association. If preliminary investigation indicates the need for further action, the Covenants Committee may proceed as appropriate with the steps set forth below.

Section 3. Service of Complaint

Upon the filing of a complaint and completion of any appropriate preliminary investigation, the Covenants Committee shall serve a copy thereof on the respondent by either of the following means:

- (1) Personal delivery with receipt; or
- (2) By certified mail, return receipt requested, and also by regular mail addressed to the respondent, at the address appearing on the books of the Association. Service by mailing shall be deemed effective upon deposit in a regular depository of the United States mail.

No order adversely affecting the rights of the respondent may be made in any case, unless the respondent shall have been served as provided herein, although the failure or refusal of the respondent to claim the certified mail notice shall not prevent the Covenants Committee from acting on any matter.

Section 4. Notice of Hearing

Along with the service of the complaint, the Covenants Committee shall mail or deliver by hand a Notice of Hearing, as provided herein, to all parties at least fourteen (14) days prior to a hearing. The Notice of Hearing sent to the respondent shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before the Covenants Committee at _____ on the _____ day of _____, 19____, at the hour of _____, upon the charges made in the complaint served upon you. You may be present at the

If any of the parties can show, prior to the scheduled hearing, good cause as to why they cannot attend the hearing on the set day and indicate times and state dates on which they would be available, the Covenants Committee may reset the time and date of the hearing and promptly transmit notice of the new hearing date. Mailing notice of the new hearing shall be the same as Section 3 Service of Complaint (2).

Section 5. Cease and Desist Orders

The Covenants Committee may, at its own discretion, issue a Cease and Desist order along with the complaint, and Notice of Hearing to be substantially in the following form:

“The Covenants Committee has received the attached complaint. By authority of Article III, Section 18 of the Bylaws, the Covenants Committee hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the Covenants Committee, Board of Directors, or Court of Law permits.”

Section 6. Amended or Supplemental Complaints

At any time prior to the hearing date, the Covenants Committee may file or permit the filing of an Amended or Supplemental Complaint. All parties shall be notified thereof in the manner herein provided. If the Amended or Supplemental Complaint presents new charges, the Covenants Committee shall afford the respondent a reasonable opportunity to prepare a defense thereto.

Section 7. Constraints on the Covenants Committee

It shall be incumbent upon all members of the Covenants Committee to make a determination as to whether they are able to function in a disinterested and objective manner in consideration of the case before the Covenants Committee. Members incapable of such objective consideration of the case shall disclose such to the Covenants Committee and remove themselves from the proceedings and have it so recorded in the minutes. The Chair of the Covenants Committee shall also have the authority to remove a member of the Covenants Committee with the concurrence of the Board of Directors.

In any event, the respondent may challenge any member of the Covenants Committee for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the Board of Directors shall determine the sufficiency of the challenge. If the Board of Directors cannot meet to consider the challenge prior to the scheduled hearing, the hearing shall be postponed until after such a determination is made by the Board of Directors. If a majority of the Board of Directors sustains the challenge, the President shall appoint another person to replace the challenged member of the Covenants Committee. All decisions of the Board of Directors in this regard shall be final.

Section 8. Hearing

A. Whenever the Covenants Committee has commenced to hear a matter and a member of the Covenants Committee is forced to withdraw prior to a final determination, the remaining members shall continue to hear the case.

B. Each party shall have these rights:

- (1) To call and examine witnesses,
- (2) To introduce exhibits;
- (3) To cross-examine opposing witnesses; and,

- (4) To rebut the evidence.

Even if a respondent does not testify in his or her own behalf, the respondent may still be called and examined as if under cross-examination.

C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

D. Neither the complainant nor the respondent must be in attendance at the hearing. At the request of the complainant or respondent, the hearing shall be conducted in private session.

E. The Covenants Committee shall select a person to serve as hearing officer and preside over the hearing. Such hearing officer need not be a unit owner or a member of the Covenants Committee. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. Generally, the parties are each entitled to make an opening statement, starting with the complainant. Then, each party is entitled to produce evidence, witnesses, testimony and to cross-examine the witnesses and opposing party. Then, each party is entitled to make a closing statement. Any party may waive the rights to exercise any part of this process, and the Covenants Committee is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted, so long as the above rights are protected.

F. After all documentary evidence and testimony has been presented to the Covenants Committee, the Covenants Committee shall vote on the issue. Agreement of a majority of the participating members of the Covenants Committee shall be required for a decision. The decision shall be made as promptly as possible but not to exceed 45 days after the hearing, and a written ruling shall be issued by the Covenants Committee to the parties. A summary of the decision, excluding names, may be included in the Association newsletter.

Section 9. Suspension of Privileges and Assessment Charges

A. Disciplinary action imposed by the Covenants Committee may include suspending or conditioning the respondent's and the respondent's family's right to use the recreational facilities or non-essential services. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction; but in the case of continuing infraction (including non-payment of any assessment after the same becomes delinquent), the suspension may be imposed for so long as the violation continues.

B. The Covenants Committee may also assess charges against unit owners, after a hearing as provided for in this Resolution, for violations. The charge shall not exceed one percent of the unit owner's annual assessment for a single offense or ten dollars per day for a continuing offense. Any charges made pursuant to this Section shall be collectible as an assessment.

C. Such other sanctions or corrective action may be imposed or required at the discretion of the Covenants Committee, subject to limitations of law and as contained in the Condominium Instruments.

II. ARCHITECTURAL COMPLIANCE REVIEW

Section 1. Architectural review procedures . . . Procedures for Assuring Architectural Compliance:

The procedures for architectural review shall be as provided in Administrative Resolution Number Two.

Section 2. Recordation as Special Resolution:

Decisions made by the Covenants Committee or, in some cases, the Board of Directors, relative to applications for architectural review, shall be recorded in Part III of the Book of Resolutions, conforming to the format for resolutions set forth in Policy Resolution Number One.

Section 3. Recordation in Land Records:

- (A) In accordance with Article II, Section Five of the Declaration and 55-79.69 of the Condominium Act, the Board of Directors may, by special Resolution, approve applications for relocation of boundaries between units, subject to the provisions set forth in the Act and in Administrative Resolution Number Two.
- (B) In accordance with Article II, Section Five of the Declaration and 55.79.70 of the Condominium Act, the Board of Directors may, by Special Resolution, approve subdivision of a unit, subject to the provisions set forth in the Act and in Administrative Resolution Number Two.
- (C) Construction relative to such changes in unit boundaries or subdivision of a unit may not be commenced until such changes have been lawfully recorded as required by the Condominium Act.

III. INTERPRETIVE RULINGS

Section 1. Purpose of Rulings:

- (1) Clarify the intent of provisions of the Condominium Instruments or Book of Resolutions;
- (2) Decide on the legality of such provisions in the context of the Association, specifically whether or not they are consistent with the provisions of the

Condominium Act, or;

- (3) Decide whether or not a rule or regulation was duly adopted.

The purpose is not to amend, expand, or limit the provisions of those documents, although the Covenants Committee may, in the statement accompanying the ruling, propose amendments, expansions, or limits.

Section 2. Petitions:

- (A) Any owner and any agent of the Association may petition the Covenants Committee for an interpretive ruling by filing a petition directed to the Covenants Committee at the Association Office.
- (B) The petition must be legibly written in substantially the following form:

“The party(ies) below request the Covenants Committee to issue an interpretive ruling on the following provisions of the governing documents or rules and regulations of the Association:

The issue in question is: _____.

Response should be sent to: _____.

IV. REQUESTS FOR RECONSIDERATION AND APPEALS

Section 1. Rights of Petitioning Unit Owners

Any unit owner may submit in writing, within ten (10) working days following receipt of the Covenants Committee decision, a request that the Covenants Committee reconsider its decision, but only if substantially new or additional information or evidence, that was not previously available, is brought forth with the request. Given a request with new or additional information or evidence, the Covenants Committee may determine, based upon that information or evidence submitted with the request for reconsideration, whether to reopen the matter and shall respond to the parties and, if appropriate, schedule a new hearing to be noticed and held in accordance with the provisions of this Resolution including the rendering of a final decision. If new or additional evidence, that was not previously available, is present, the party must request reconsideration by the Covenants Committee before a decision may be appealed to the Board of Directors. If no new evidence or information is present, and thus, no request for reconsideration by the Covenants Committee can be rightfully made, the initial decision made by the Covenants Committee shall be considered the final decision. Any unit owner may appeal the final decision of the Covenants Committee to the Board of Directors, provided that all subordinate avenues of resolution, as provided herein, have been pursued and further provided, that all parties involved comply with the decision of the Covenants Committee until such time, if any, as the Board of Directors amends or reverses the Covenants Committee decision.

Section 2. Appeals Petitions

Appeals petitions must be legibly written and be submitted to the Board of Directors through the General Manager within ten (10) working days from the receipt of a written Covenants Committee ruling.

Section 3. Notice of Hearing

Notice of hearing shall be provided as if for the original complaint except that it will be served by the Board of Directors.

Section 4. Procedures

A. It shall be incumbent upon each member of the Board of Directors to make a determination as to whether he or she is able to function in a disinterested or objective manner in consideration of the appeal before the Board of Directors. Members incapable of such objective consideration of the appeal shall disclose such to the Board of Directors and remove themselves from the proceedings and have it so recorded in the minutes. The remaining members shall hear the appeal without respect to quorum.

In any event, the parties to the appeal may challenge any member of the Board of Directors for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence and testimony at the hearing. The Board of Directors shall meet to determine the sufficiency of the challenge. If a majority of the Board of Directors sustains the challenge, the remaining members shall hear the appeal without respect to quorum.

B. The Board of Directors may decide to hear arguments from the parties on the appeal or allow the Covenants Committee decision to stand.

If the appeal is denied, such denial is, in effect, an affirmation by the Board of Directors of the Covenants Committee decision and is the final word on the matter within the Association.

If the Board proceeds to an appeal hearing, such hearing shall be held in accordance with Article I. Section 8 of this resolution except that the President shall preside over the hearing unless he/she chooses not to do so, in which case the Board of Directors shall select a Hearing Officer.

C. If any appeal is based upon substantially new information pertaining to the original Covenants Committee case or substantially new evidence pertaining to the same, it shall not be heard by the Board of Directors, but shall be returned to the Covenants Committee for reconsideration.

D. The Board of Directors shall render a decision, through a vote of the majority of the Board of Directors hearing the appeal and present at such hearing, within 45 days after such hearing. The decision shall be the final word within the Association on the matter.

Section 5. Effect of Decision

The Board of Directors may uphold the Covenants Committee's decision in its entirety, may amend such decision (except that where a Covenants Committee decision includes a penalty, the Board in no event shall impose more stringent disciplinary action than that imposed by the Covenants Committee), or may overturn such decision.

Section 6. Delegation to Committee

The Board has delegated the hearing and decision responsibility hereunder to the Covenants Committee and may, in any instance, remove that responsibility and hear the case itself.

Section 7. Legal Action

Notwithstanding any provision of this Resolution, the Association may initiate legal action at any time without following the procedures set forth herein, if, in the judgment of the Board of Directors, the interests of the Association so require.

