

**Montclair Sec. 4-B Townhouse Homeowners Association, Inc.  
T/A Nob Hill Forest Townhome Association**

**REGULATORY RESOLUTION NO. 2003-04**

**RESOLUTION ON DUE PROCESS PROCEDURES**

**WHEREAS, Montclair Sec. 4-B Townhouse Homeowners Association, Inc., T/A Nob Hill Forest Townhome Association ("Association")** came into existence as a property owners' association organized and operating pursuant to the Virginia Property Owners' Association Act, § 55-508, *et seq.*, Code of Virginia, (1950, as amended) ("Act") by the filing of the Association Declaration of Covenants, Conditions and Restrictions for the Nob Hill Forest development located in Prince William County, Virginia, which Declaration (and supplemental Declarations) are of record in the land records of Prince William County, and the original Declaration is recorded at Book 1372, Page 1543, *et seq.*; and,

**WHEREAS, Montclair Sec. 4-B Townhouse Homeowners Association, Inc., T/A Nob Hill Forest Townhome Association ("Association")** was incorporated by Articles of Incorporation filed with the State Corporation Commission of Virginia at some time during 1988; and,

**WHEREAS,** the specific purposes for which the Association was formed, as set forth in Article III of the Articles of Incorporation, "are to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association"; and,

**WHEREAS,** Section 55-515 of the Act and the Declaration of Covenants, Conditions and Restrictions (hereinafter "Declaration") charge all Lot owners and their tenants, guests and invitees with compliance with the Declaration and all provisions of the Act; and,

**WHEREAS,** Section 55-513 of the Act confers upon the Board of Directors the power to establish, adopt and enforce rules and regulations with respect to the use of the common areas and with respect to such other areas of responsibility assigned to the Association; and,

**WHEREAS,** Section 44-413B of the Act authorized the Conservancy, through its Board of Directors and to the extent expressly so provided in the Association's Declaration or its rules and regulations, to assess charges against lot owners and suspend use rights or services for violations thereof, for which the lot owner or his family members, tenants, guests or other invitees are responsible; and,

**WHEREAS,** Article VII, Section 1. (Powers and Duties of the Board of Directors) of the By-laws grants the Board of Directors the power, and sets forth as a duty, the Board's enforcement of the Articles of Incorporation, Declaration, Bylaws and Resolutions of the Association; and,

**WHEREAS,** Article II, Section 1.(b) of the Declaration "the right of the townhouse cluster association to suspend the voting rights and rights of use of the common area and facilities by an Owner for any period during which any assessment against any lot remains unpaid..."

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

**WHEREAS,** it is the intent of the Board of Directors to enforce the Declaration and the Association's duly approved rules and regulations for the benefit and protection of the Association's lot owners and residents by establishing procedures which ensure due process and

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT THE** Board of Directors, by the Act, the Declaration and this Resolution, are hereby empowered to suspend rights of use or to services, and to assess charges pursuant to Section 55-513B of the Act, and it is further resolved that the Board of Directors shall assess such charges for any violation of the Declaration, Bylaws or rules and regulations only after the following procedures have been followed:

**I. Complaint.**

- A. Any lot owner, tenant, managing agent, employee or Board member who requests that the Board take action to enforce the Declaration and/or the Conservancy's 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 for a determination as to whether it appears that a rule or provision of the Declaration, Bylaws or rules/regulations allegedly has been violated.
- C. The Board of Directors shall then take appropriate action, such as directing that a demand letter or a cease and desist 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 shall be sent by first class mail or shall be hand-delivered to the lot owner at the address which the owner has provided to 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 abate 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. 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 or suspension of rights or services. The letter shall also state that if not hearing is requested, the owner shall be deemed to have waived the opportunity for a hearing and rules violation charges or suspensions may be assessed. The demand letter may be combined with the notice of hearing referenced in Section III of this Resolution if the violation is 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 demands letter reference in Section II and the owner has requested a hearing, or if the Board determines a hearing is necessary, a notice of hearing shall be sent. Notice a hearing shall be hand delivered or mailed by certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, of within such other time as may be required by the Act, to the lot owner at the address of record with the Conservancy. 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 I.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 low owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel (at the low owner's expense) before the Board.
  3. The alleged violation, citing provisions of the Declaration or the Association's rules which allegedly have been violated.

4. That charges for violation of the Declaration, Bylaws or rules/regulations may include a charge of up to Fifty Dollars (\$50.00) for a single offense, or Ten Dollars (\$10.00) per day for any offense of a continuing nature, for a period not to exceed ninety (90) days or such greater amounts as may be authorized by the Virginia Property Owners' Association Act.
5. That the alleged violation may result in the suspension of services, facilities use or voting rights.

**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 lot 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 lot owner with an opportunity to be heard and to be represented by counsel (if the owner so elects and at the owner's expense.)
- D. The lot owner, tenants, any complaining party, and members of the hearing panel shall have the right (1) to call, examine, and cross-examine the 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 executive session unless the lot owner requests that the hearing be open to members and residents. If the hearing is conducted in open session, 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 these 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 from the final compliance date of the letter, suspend use rights or services or take such other action as may be authorized by the Act, the Declaration or this Resolution.
- G. If the lot owner acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, 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, the Board shall, by hand-delivery or certified mail, return receipt requested, notify the lot owner of its decision, any suspension of use rights and/or the assessment of any charges on the date from which those assessments shall accrue and be due.

**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 on rules violations. Minutes of each hearing or meeting shall be kept and a form similar to that attached hereto as Exhibit "D" shall be completed and placed in the lot owner's file and appropriate Association files.

**VI. Assessment of Charges.**

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

**VII. Other remedies.**

This resolution shall not be interpreted to require a hearing prior to assessment of rules violation charges if a hearing is not requested, or to prevent the Association from exercising any other remedies authorized or available under the Act, the Declaration, the Bylaws or this Resolution, and shall not constitute an election of remedies.