

Compton Village Homeowners Association, Inc.

Regulatory Resolution No. 2001-02

Rule Violation: Complaint and Due Process Procedure

WHEREAS, Article 12 of the Declaration of Covenants, Conditions and Restrictions (hereinafter *Declaration*) of the Compton Village Homeowners Association, Inc., (hereinafter *the Association*) grants the Board of Directors the power to formulate, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Area facilities and the personal conduct of the Association members and their guests thereon; and

WHEREAS, Section 55-515 of the Virginia Property Owners Association Act, Code of Virginia (1950, as amended) (hereinafter *the Act*) and Article 3 and Article 6 of the Declaration, charge all lot owners and their tenants, guests and invitees with compliance with the Declaration, Bylaws, Rules, and Regulations (hereinafter the *Governing Documents*) of the Association as amended; and

WHEREAS, Section 55-513 and 55-514 of the Act, and Article 6, Section 6.2 and Article 12 of the Declaration provide the Association through its Board of Directors with the power to assess charges, fines or suspension of homeowner's rights to use the Association recreational facilities, against lot owner(s) for violations of the Governing Documents, for which the lot owner or his family members, tenants, guests or other invitees are responsible; and

WHEREAS, Section 55-513 B of the Act further provides that certain procedures must be followed before such charges may be assessed; 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 lot owners and residents by establishing procedures which ensure due process and consistency of enforcement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors is hereby empowered to assess charges pursuant to Section 55-514 of the Act and/or suspend owners rights to use the Association facilities and shall assess such charges, fines or suspension of Association rights only after the following procedures have been followed.

Complaint and Due Process Procedures

The Board of Directors or the Architectural Review Board, with the consent of the Board of Directors, before imposing any charges or before taking any action affecting one or more specific owners, shall afford such person(s) the following due process rights.

1. 1. Definitions:

“Board of Directors” means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

“Common area” means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

“Declaration” means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area in an amount in excess of \$150 per year per lot as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of

money in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

“Property Owners' Association” or **“Association”** means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the Declaration.

“Witness” means any person who has knowledge regarding the alleged violations against the Respondent.

“Respondent” means an Owner, other Resident, tenant or guests.

II Complaint (See Exhibit A)

Purpose: To provide the Board of Directors with a fair, complete and accurate report of the facts of rules violation, and the correct names and addresses of owners or parties involved in order that the Board of Directors may reach a fair decision as to the remedy.

1. 1. Any HOA Staff member, lot owner, tenant, agent or Board member who requests the Board take action to enforce the Governing Documents and Rules shall complete, date and sign a Complaint in the form similar to and containing the information contained on Exhibit "A" hereto. The Board as a whole and by majority vote, may take action without completing a complaint form.
2. 2. 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 Governing Documents allegedly has been violated.
3. 3. The Board of Directors shall then take appropriate action, such as to

direct that a demand letter be sent or that the complaint case be referred to counsel or County Authorities **(see Step 3 in Exhibit-B)**.

III. Demand Letter (See Exhibit B)

Purpose: The demand letter is to provide the owner in violation of the Governing Documents the opportunity to rectify or correct the violation, to inform the owner of his/her due process rights to request a hearing before the Board of Directors, and to notify the owner that the Board of Directors may take action if the violation is not ceased or rectified.

1. 1. If determined appropriate, a written demand letter which may be on the form known as Exhibit "B" shall be sent by first class and certified United States mail, return receipt requested, 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.
2. 2. 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. Provided, 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.
3. 3. The demand letter shall state that if the violation is not remedied, the alleged violator must request in writing a hearing before the Board of Directors to avoid imposition of charges. The letter shall also state that if a hearing is not requested, the owner shall be deemed to have waived the opportunity for a hearing and rules violation charges may be assessed. The demand letter may be combined with the notice of hearing referenced in the Section III of this resolution if the violation is of a serious nature or an emergency or if previous notices of violation have been sent to the owner.

IV Notice of Hearing (See Exhibit C)

Purpose: To inform the owner in violation of the date of the hearing before the Board of Directors and to inform the owner of any possible charges and/or actions required to remedy the violation and/or suspension of homeowners rights to use Association facilities.

1. 1. If the alleged violation is not remedied within the date or time specified in the demand letter referenced in Section 11, or the owner requests a hearing or if the Board of Directors determines a hearing is necessary, a notice of hearing shall be sent. Notice of a hearing shall be sent by first class and certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, 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 by first class United States mail. The demand letter referenced in Section II-B may be combined with the notice of hearing.
- B. The notice of hearing form known as Exhibit C (attached) 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 provision of the Governing Documents or rules which allegedly have been violated.
 1. 4. That the 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 for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners Association Act which is limited to Nine-hundred dollars

(\$900.00) or ninety (90) days.

1. 5. Hearing Procedure

Purpose: This section of the resolution is designed to aid the Board of Directors in conducting a hearing in conjunction with the enforcement of rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the Association by the Declaration.

A. Introduction - Pursuant to the Virginia Property Owners' Association Act (Virginia Code §55-508 et seq., 1950) and the Compton Village Declaration of Covenants, Conditions and Restrictions, Article 12 (December 23, 1992), the Board of Directors and the Architectural Review Board of the Association have the power to enforce rules and regulations contained in the Declaration and Bylaws governing Compton Village (also called "Governing Documents"). In particular, the Board of Directors and the Architectural Review Board have the power to impose charges and to suspend the right to vote in the Association or other rights in the case of an Owner found to be responsible for a violation of the Governing Documents. The Board of Directors and the Architectural Review Board also have the power to suspend the right of an Owner or other resident to use the Recreational Facilities for a reasonable period of time. However, before any such charges or suspension may be imposed, the member is to be given an opportunity to be heard and to be represented by counsel before the Board of Directors and/or the Architectural Review Board (§55-513B of the Code of Virginia and Article 12, Section 12.1(i) of the Compton Village Declaration of Covenants, Conditions and Restrictions). The hearing is to be conducted fairly and impartially. Section V of this resolution will focus solely on the procedures to be followed during a hearing held before the Board of Directors: all rules and regulations leading to the hearing itself and following the hearing are not herein discussed and outlined; for those regulations it will be necessary to refer either to the other Sections of this Resolution or to the Governing Documents which are sufficiently detailed; in

addition, this section is not intended to automatically apply to hearings conducted before the Architectural Review Board.

- B. Hearing scheduling** - The hearing shall be scheduled at a reasonable and convenient time and place within the Board of Directors' discretion. 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.
1. 3. Private hearing - The hearing shall be conducted in private unless the alleged violator requests that the hearing be open to owners and residents and further provided that the Board of Directors may impose a reasonable limit on the number or such persons who can be accommodated in the hearing room.
 1. 4. Acknowledgment of responsibility - If the alleged violator acknowledges responsibility for the violation charged, or does not wish to contest the alleged charges, the Board may, in its discretion, dispense with a hearing after having afforded the alleged violator with an opportunity for a hearing.
 2. 5. Procedural Guidelines to be followed at a hearing before the Board of Directors.
 1. 1. **Introductory remarks by the President of the Board or any chosen Director**- The Director shall introduce himself/herself and state his/her role. The other Directors shall then be introduced. If the Property Director is present, then he or she shall also be introduced. The Director shall state the source of the authority by which the hearing is held and the basic procedural requirements to be afforded to the Respondent. The Director shall then proceed by outlining how the hearing will be held:
 1. **1.Statement of charges or other sanctions, and procedural steps**

already taken- The Director will briefly state the alleged violations and sanctions sought to be imposed, and all the procedural steps that have already been taken leading up to the hearing, such as notices, and means and date of delivery.

2. **2. Testimony-** The Board will then hear testimony first by the witness(es) supporting the alleged violation, then by the Respondent. The Respondent shall have the right to cross-examine said witness(es).
3. **3. Close Executive Session-** After hearing all evidence and testimony, the Board of Directors will discuss the issues in Executive Session.
4. **4. Voting -** After the Executive Session, the Board will reconvene into Open Session to take a vote on the matter.
5. **5. Communication of the Hearing Result -** The hearing result will be hand delivered or mailed by registered or certified mail return receipt requested to the Respondent at the address of record with the association within three days of the hearing.

1. **2. Closing remarks before the commencement of the hearing-** The Director shall ascertain 1) that the Respondent understands the proceedings as they have been outlined; 2) that the Respondent has received notice of the hearing; and 3) that the Respondent understands the allegations as set forth in the notice. The Director shall do so by addressing directly the Respondent.

2. **3. Testimonial phase of the hearing -** After the closing remarks before the commencement of the hearing, the testimonial phase of the hearing shall begin. During this phase the Board of Directors shall hear all relevant testimony and ask

questions regarding all alleged violations. Relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely on 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 the objection in civil or criminal actions in court of competent jurisdiction in the State of Virginia. However, the foregoing statement does not apply to any privilege derived from the United States and the state constitutions as well as Federal and State rules of evidence. Therefore, the mere admission of evidence which would be inadmissible in judicial proceedings shall not vitiate the hearing result as long as the hearing result is not without a foundation in evidence having rational probative force. The Board shall conduct the hearing fairly and expeditiously. The Board shall have the right to limit in time and scope the testimony of any witness for the purpose of eliminating unjustifiable delay or repetitious evidence. The Board shall first hear the testimony of any witness supporting the alleged violations. The Board shall ask questions if it deems so necessary. The Respondent shall have the right to ask questions and cross-examine the witness(es) and shall have the right to be represented by Counsel who shall then participate in the hearing applying the rules as they have been outlined in this document. The Board shall then hear the testimony presented by the Respondent and may ask questions if necessary. If necessary, the Board may also recall any of the witness(es) who have already given testimony and the Respondent shall also have the right to cross-examine those witness(es) on the newly offered testimony. The Board may accept exhibits that substantiate the testimony presented by either the witness(es) or the Respondent. All Exhibits shall initially be marked for identification as "HOA's Exhibit #_____" and "Respondent's Exhibit # ____" respectively and those both moved and admitted into evidence shall be further so marked.

3. 4. Discussion in Close Executive Session - While in close session, the Board of Directors shall consider all evidence presented by the witness(es) and by

the Respondent to include their oral testimony and exhibits submitted to the Board of Directors.

4. 5. Rendering of Hearing Result - Upon conclusion of the Executive Session, the Board of Directors shall reconvene in Open Session and vote on the matter. A written report of the hearing to include the Hearing Result shall be hand delivered or mailed by registered or certified mail return receipt requested to the member at the address of record with the association within three business days of the hearing. Exhibit "D" may be used to inform the lot owner of the Board of Directors's decision.
1. 1. Default- In the event that the Respondent does not appear at the hearing and fails to give notice of his/her impossibility to attend and to request the rescheduling of the hearing, the Board of Directors will conduct the hearing despite his/her absence as long as there is at least one witness giving direct testimony supporting the alleged violation.

2. 2. Absence of Witnesses- In the event that no witnesses appear at the hearing, the hearing shall be canceled and the matter before the Board of Directors shall be dismissed without prejudice unless there is indication that the witness(es) could not attend the hearing in which case a new date shall be set and new notice of hearing shall be served upon the Respondent. Notice of new hearing date can be waived if the Respondent is present and is given notice at that time.

VI. Records - The Board of Directors shall make a record of the hearing either by electronic recording, or notes or minutes taken during the hearing by the secretary of the Board of Directors. Such record shall be kept in accordance with generally accepted business practices. In addition, In addition, all correspondence relative to rules violation shall be kept in the lot owner's file or in a separate file on rules violations. Exhibit "D" shall be completed and placed in the lot owner's file and appropriate Association files and Exhibit "E" shall be completed and kept in appropriate Association files.

VII. Assessment of Charges

Pursuant to Section 55-513 B of the Act, any charges assessed for violation to 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 as specified in 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 require hearing to assessment of rules violation if a hearing is not requested or to prevent the

Association from exercising any other remedies authorized or available under the Act, the Governing Documents, or by laws and shall not constitute an election of remedies.