

WESTERLEY HOMEOWNERS ASSOCIATION

RESOLUTION NO. 2013-02

Effective December 18, 2013

**(Adoption of Revised Enforcement Procedures  
to Ensure Due Process in Covenant Enforcement Cases)**

**WHEREAS**, Article V, Section 1 of the By-Laws of Westerley Homeowners Association (“By-Laws”) provides that the affairs of Westerley Homeowners Association (“Association”) shall be managed by a Board of Directors (“Board”);

**WHEREAS**, Article VIII, Section 1(c) of the By-Laws provides that that Board shall have the power to exercise for the Association all powers, duties, and authority vested in or delegated to the Association that is not reserved to the Association membership by other provisions of the By-Laws, the Articles of Incorporation, or the Declaration of Covenants, Conditions or Restrictions (“Declaration”);

**WHEREAS**, Article VI, Section 1(v) of the Declaration provides that from time to time the Board shall adopt rules to implement the provision of Article VI of the Declaration and that such rules may be adopted or amended by a two-thirds vote of the Board;

**WHEREAS**, Section 55-513 of the Act grants the Board the authority to establish, adopt, and enforce rules and regulations with respect to such other areas of responsibility assigned to the Association by the Declaration;

**WHEREAS**, Article VI, Section 2(b) of the Declaration provides that in the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon as provided in the Declaration, the Association, after Notice to the Owner and approval by two-thirds vote of the Board, shall have the right to enter upon said lot to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon;

**WHEREAS**, Article VI, Section 2(b) of the Declaration also provides that all costs related to the correction, repair or restoration of Lots as provided in that Section shall become a Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided in the Declaration for non-payment;

**WHEREAS**, Article VI, Section 4 of the Declaration provides that the Association shall have an easement for ingress and egress on any Lot to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three days in advance thereof and such inspection is performed during reasonable hours;

WHEREAS, Article VI, Section 4 of the Declaration also provides that the Association shall have an easement for ingress and egress on any Lot to perform such maintenance as is required by the Declaration on such Lots;

WHEREAS, Section 55-515.A of the Virginia Property Owners' Association Act ("Act"), provides that every owner, and all those entitled to occupy a lot shall comply with all lawful provisions of the Act and the Declaration and any lack of compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any remedy available at law or in equity;

WHEREAS, for the benefit and protection of the Association and its members, the Board deems it necessary and desirable to establish a procedure to assure due process in cases where there is a question of compliance by a Lot owner or occupant of a Lot with provisions of the Act or condominium instruments, thereby attempting to minimize the necessity of seeking action in or through a court of law; and,

WHEREAS, it is the intent of the Board to establish procedures where action must be taken relative to questions of compliance by an individual with the provisions of the Act or the condominium instruments.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the following Due Process Procedures.

## ARTICLE 1

### VIOLETIONS OF GOVERNING DOCUMENTS

#### Section 1.1 Actions Prior to Initiation of Formal Due Process Procedures

A. Any Owner or Officer of the Association or the Association managing agent has the authority to request that an Owner cease or correct any act or omission which appears to be in violation of the Act or the Governing Documents. Such informal requests should be made before formal Due Process Procedures are initiated.

B. In the case of disputes between Owners and occupants regarding activities within Lots, the Association will generally not become involved in the dispute or act on a complaint, unless two or more Owners have complained in writing.

#### Section 1.2 Written Complaint

A. If the actions described in Section 1.1 prove unsuccessful, the Due Process Procedure shall be initiated upon the filing of a written complaint ("Complaint") with the managing agent signed by any Owner, occupant, management agent, employee, or Board member. This Due Process Procedure also may be initiated by a vote of a majority of the Board.

B. 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 Owner or occupant

(hereafter referred to as "Respondent") is charged, so that the Respondent will be able to prepare the Respondent's defense. The Complaint may be submitted by completion of a Complaint form similar to and containing the information contained in Exhibit A to this Resolution.

C. The Complaint shall identify the specific provisions of the Act or Governing Documents which the Respondent is alleged to have violated and shall contain basic supporting facts. Where possible and appropriate, supporting documentation showing the date and a description of the violation shall be provided.

D. The Complaint must be as specific as possible as to times, dates, places, acts or omissions and persons involved. If the violation involves a pet, the Complaint should reasonably identify the pet, if possible.

### **Section 1.3 Notice of Violation**

A. Upon receipt of a Complaint, the Association management agent or other Association representative will inspect the Lot, or otherwise further investigate the Complaint, to determine whether the Complaint accurately identifies a violation of the Governing Documents. If access to the Lot is required to perform this inspection, the Association management agent or other Association representative shall provide at least three days advance notice of the inspection. Any inspections performed pursuant to this section shall be performed between the hours of 8 a.m. and 8 p.m.

B. If the Complaint alleges a violation of a non-continuing nature that cannot be readily confirmed by the Association management agent or other Association representative, the Board will take no action unless the violation is independently reported at least twice.

C. If the Association managing agent determines the Complaint identifies a violation of the Governing Documents, the managing agent will notify the Respondent that a violation has been noted ("First Notice of Violation"). The First Notice of Violation will include the time, date, place and nature of the violation, an opportunity to cure the alleged violation, and the proposed sanction to be imposed if the violation is not cured. The First Notice of Violation shall be substantially in the form attached hereto as Exhibit B. The First Notice of Violation shall be sent by first class mail or shall be hand-delivered to the Owner at the address which the Owner has provided to the Association or at the lot address, if no other address has been provided. Copies of the First Notice of Violation will be maintained in the Association files and placed in the minutes of the Board meeting.

D. If the Association managing agent is not able to determine that the Complaint identifies a violation, the Association managing agent will refer the Complaint to the Board, which shall conduct a preliminary investigation to determine the validity of the Complaint. If the preliminary investigation by the Board indicates a need for further action, the Association managing agent will serve the Respondent with a Notice of Violation.

E. If the violation has been corrected or the Complaint is invalid for any reason, the Association managing agent will respond in writing to the Complainant.

F. If the violation is not remedied to the satisfaction of the Association managing agent within the stipulated correction time frame of the First Notice of Violation or if the Respondent requests, in writing, a hearing on the violation, the Association managing agent will schedule the matter for a hearing at a meeting of the Board scheduled at least fourteen days or more from the end of the stipulated period.

**Section 1.4 Notice of Hearing**

Upon referral of a Complaint, the Board may serve a Notice of Hearing on all parties at least fourteen days prior to the hearing by hand-delivery or registered or certified mail, return receipt requested. The Notice of Hearing shall be sent to the parties at the address appearing on the books of the Association. The Notice of Hearing may be substantially in the form attached hereto as Exhibit C and include sanctions that may be imposed by the Board.

**Section 1.5 Service of Complaint**

The Board should provide a copy of the written Complaint, if any, on the Respondent along with the Notice of Hearing.

**Section 1.6 Hearing**

A. A hearing shall be held before the Board prior to the initiation of self-help or legal action. The President of the Association shall serve as hearing chair and preside over the hearing, unless otherwise determined by the Board. Association legal counsel may attend the hearing at the request of the Board. The Respondent may, but is not required to be represented by counsel.

B. The Board may determine the manner in which the hearing will be conducted, so long as the rights set forth in this Resolution are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses.

C. Neither the Complainant nor the Respondent need be in attendance to conduct the hearing. At the request of either the Complainant or the Respondent, the Board may agree to conduct the hearing in executive session.

D. The Board may reschedule any hearing within its discretion upon good cause shown by the member. Notice of the rescheduled hearing date will be provided to the member at his or her address of record by certified mail.

E. The Respondent shall have the right to make a statement to the Board in response to the Complaint.

**Section 1.7 Decisions**

Following the hearing, the Board shall meet in executive session to determine whether it has received satisfactory proof of the alleged violation, and if satisfactory proof has been presented, determine the appropriate action to be taken against the member to prompt correction of the violation and compliance with the Association Documents.

To be effective, a decision of the Board to engage in self-help shall require a two-thirds vote of the Board. All other decisions shall be made by a majority vote.

A Notice of Hearing Result shall be mailed or hand-delivered to the Respondent summarizing any decision made by the Board.

**Section 1.8 Records**

The Board and the management agent shall keep copies of all correspondence related to rule violations in the Owner's file.

**ARTICLE 2  
TENANTS**

**Section 2.1 Notice to Owner**

If the person charged with a violation of the Act or Association Documents is a tenant or occupant, the Owner of the Lot in which the person resides shall be considered the Respondent and as a party to the action shall receive certified copies of all correspondence or other documents sent to the tenant or occupant pursuant to this Resolution.

**Section 2.2 Owner Rights**

The Owner shall have all rights provided in Article 1.

**ARTICLE 3  
IMPOSITION OF SANCTIONS**

**Section 3.1 Remedies**

The Board may impose, but is not limited to the following:

- (1) Initiating self-help remedies when appropriate and authorized by the Association Documents;
- (2) Assessing expenses ("Restoration Assessments") incurred during self-help remedies to the Respondent;

- (3) Authorizing Association legal counsel to file legal action for damages or injunctive relief in General District Court or Circuit Court; or
- (4) Referring to appropriate County or government authorities.

**ARTICLE 4  
PROCEDURES SPECIFIC TO SELF-HELP**

**Section 4.1 Initiating Self-Help**

In those circumstances in which the Board determines it to be in the best interest of the Association for the Board to initiate self-help remedies, the following procedures shall be applied by the Board of Directors or the Board after the hearing contemplated above:

A. Notice of Intent to Engage in Self-Help: If the Respondent fails to correct the violation within seven days of the date of the Notice of Hearing Result, then the Board of Directors, or its designee, shall give at least forty-eight hours' notice of its intent to enter the Lot to correct the violation, and to charge all costs of self-help and correcting the violation to the member.

B. The Notice of Intent to Engage in Self-Help shall be hand delivered, posted at the front door of the residence on the Lot and sent by first-class mail, postage prepaid, to the Lot address or such other member's address on file with the Association.

C. All Restoration Assessments shall be collected by the Association in the same manner as all other Association assessments.

**ARTICLE 5  
CONSTRUCTION**

**Section 5.1 Proceedings**

This Resolution is intended to assure that due process is provided to members and occupants in proceedings before the Board to enforce the Act and the Governing Documents and to serve as guidelines for such proceedings.

**Section 5.2 Implementation**

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

**Section 5.3 Severability**

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

**Section 5.4 Emergency Circumstances**

The procedures set forth herein do not preclude the Association from taking accelerated measures if a violation creates an emergency circumstance, including, but not limited to, manifest danger to life or property, or immediately necessary for the preservation and safety of the Association or residents, provided that the member in violation has been provided such adequate notice as circumstances permit, and the Association's actions are consistent with the Association Documents.

**Section 5.5 Due Process Defined**

"Due Process" as used in this Resolution refers to the following basic rights:

- (a) Notice;
- (b) Opportunity to be heard; and,
- (c) Fairness.

WESTERLEY HOMEOWNERS ASSOCIATION

RESOLUTIONS ACTION RECORDED

Resolution Type: Policy

Pertaining to: Due Process

Duly adopted at a meeting of the Board of Directors held November 20, 2013

Motion by: Anthony DeRobertis Seconded by: Stephanie Byers

	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>[Signature]</u> President	✓			
<u>[Signature]</u> Vice President	✓			
<u>Mohamad Hamed</u> Secretary				✓
<u>Abdel Halabi</u> Treasurer				✓
<u>[Signature]</u> Director	✓			
Director				
Director				

ATTEST:

\_\_\_\_\_  
Secretary

1/7/2014  
Date

FILE:

Resolution effective: January 7<sup>th</sup>, 2014

#91519



# WESTERLEY HOMEOWNERS ASSOCIATION COMPLAINT FORM 1

[This form must be completed signed/dated on each page by the complainant]

*Please deliver your complaint via United States Postal Service Mail, hand-delivery, electronic mail or facsimile to the Association using the following information:*

Westerley Homeowners Association  
P.O. Box 2070  
Purcellville, VA 20134  
Attn: Property Manager, Westerley Homeowners Association

Name of Complainant(s):

---

Address:

---

Phone: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

(Mobile) \_\_\_\_\_ (Email) \_\_\_\_\_

Preferred method of communication: \_\_\_\_\_ Writing \_\_\_\_\_ E-mail

Please describe the nature of your complaint and cite any provisions of the Association Documents or Virginia Code that is the basis for your complaint:

---

---

---

---

---

---

---

---

---

---

Address of property that are the subject of complaint:

---

---

---

Be advised, the Association may elect not to take action on any complaint which does not conform to the above-referenced delivery requirements or include the requested information on this form.

Upon receipt of your complete, written complaint, the Association will begin investigation of your complaint. The Association will maintain a record of your complaint for one year from the date upon which it takes action to resolve your complaint.

You must date and sign the form. Anonymous complaints will not be accepted.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*To be completed by Association representative only:*

Received \_\_\_\_\_ Date: \_\_\_\_\_