

**LONDON TOWNE HOMEOWNERS ASSOCIATION**

**POLICY OF RESOLUTION NO. 5**

**SPECIAL RESOLUTIONS**

**Relating to Due Process Procedures**

WHEREAS, Article VII of the Association's Declaration of Covenants states that, "The affairs of this Association shall be managed by a Board of five (5) Directors;" and

WHEREAS, Section 55-513 of the Virginia Property Owners Association Act allows the Board of Directors to establish, adopt, and enforce rules and regulations; and

WHEREAS, for the benefit and protection of the Board of Directors and of the individual Owners, the Board finds it appropriate and desirable to establish and operate in accordance with the hereinafter described procedures in order to more adequately assure the just and proper resolution in cases where there is a question of compliance by an Owner with provisions of the Declaration of Covenants, Conditions and Restrictions and Articles of Incorporation adopted by the Board, thereby attempting to minimize the necessity of seeking action in or through a court of law and to preserve the rights of the Board of Directors and of the Owners; and

NOW, THEREFORE, BE IT RESOLVED THAT Special Resolutions dealing with enforcement of provisions of the Virginia Property Owners Association Act, Association Declaration of Covenants and the Conditions and Restrictions and Articles of Incorporation shall be adopted in accordance with the following procedures:

**I. VIOLATIONS OF THE VIRGINIA PROPERTY OWNERS ASSOCIATION ACT, LONDON TOWNE HOMEOWNERS ASSOCIATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARTICLES OF INCORPORATION**

- A. Application of this Resolution. This resolution is applicable to all alleged violations of the Virginia Property Owners Association Act, Declaration of Covenants, Conditions and Restrictions and Articles of Incorporation of the Association except those relating to the payment of assessments, or the parking, use and storage of automobiles; acts or omissions posing or potentially posing immediate danger to life, health or property; and matters specifically addressed in other resolutions.
- B. Informal Resolution of Complaints. Each Owner, officer and designated agent of the Board of Directors has the authority to request any owner, tenant, guest or invitee to cease or correct any act or omission which appears to be in violation of the Virginia Property Owners Association Act, the Declaration of Covenants, Conditions and

Restrictions and Articles of Incorporation of the Association. Such informal requests should be made before formal action is initiated.

In the case of disputes between Owners regarding activities within the unit or the appurtenant limited common element, the Board of Directors will generally not become involved in the disputes or act on a complaint unless two or more persons have complained in writing.

C. Formal Action

- (1) Formal action may only be initiated by the Designated Committee, or managing agent designated by the Board of Directors upon request of an Owner or on its own initiative.
- (2) Formal action is initiated by the Managing Agent or other agent designated by the Board of Directors delivering by hand to such owner, tenant, guest or invitee or by mailing registered or certified United States mail, return receipt requested, and, if mailed by registered or certified United States mail, return receipt requested, also by mailing by first class mail without return receipt requested to such owner, at the address or addresses required for notices of meeting of the Board of Directors or if to a tenant, guest or invitee to the property address a notice of violation.
- (3) The notice of violation shall contain the following information:
  - a. The name of the person or entity alleged to have violated a provision of the Virginia Property Owners Association Act, Association's Declaration of Covenants, Conditions and Restrictions or Articles of Incorporation (hereinafter called the "Respondent").
  - b. The alleged violation.
  - c. The action required to abate or correct the alleged violation.
  - d. A reference to the applicable part of the Virginia Property Owners Association Act, Association's Declaration of Covenants, Conditions and Restrictions or Articles of Incorporation that has been alleged to have been violated.
  - e. A request or demand that the alleged violation be abated or corrected within fourteen (14) days or such shorter period as in the discretion of the Managing Agent or other agent designated by the Board of Directors as may be appropriate to the circumstances.

- f. A statement that the Respondent may request a hearing on the notice of violation and the manner and time for requesting such a hearing; and a statement that the failure to request such a hearing is an admission of the violation and may result in the imposition of a penalty without further notice.
- g. The notice of violation shall be deemed to constitute a demand to cease and desist from such alleged violation. In the discretion of the Managing Agent or other agent designated by the Board of Directors the notice may also contain an additional cease and desist request which shall be substantially in the following form:

You are hereby requested to cease and desist from the foregoing acts or actions until such time, if any, as the ruling of the Board of Directors, if requested, or court of law, permits such acts or actions. Failure to comply with this request may result in a penalty greater than that which would be imposed for a single non-continuing violation.

- (4) The Notice of Violation shall be served upon the Respondent as set forth above and mailed to parties requesting such action and the President of the Board of Directors and the Architectural Committee (if the violation is related to their respective areas of responsibility). Service by mailing shall be deemed effective two (2) days after depositing such item in a regular depository of the United States mail.

D. Failure to Request a Hearing.

In the event the Respondent shall fail to request a hearing or shall admit the violation, the Board of Directors, without further notice shall at its next regularly scheduled meeting impose such penalty as is appropriate or may upon fourteen (14) days written notice to the Respondent, impose, at a special meeting such penalty as may be appropriate. Penalties include assessing charges for violations in accordance with Section 55-513 of the Virginia Property Owners Association Act.

E. Request for Hearing.

- (1) In the event that Respondent desires a hearing before the Board of Directors on the notice of violation, the respondent must request such notice in writing within ten (10) days after mailing of the notice or, if delivered by hand, within seven (7) days after delivery.
- (2) In the request for the hearing, the Respondent shall also answer the violation. The answer may: (a) object to the form of the notice on the grounds that it is so indefinite or uncertain that the Respondent cannot identify the violating

behavior and prepare a proper defense thereto; (b) admit or deny the violation in whole or in part; or (c) explain the conduct and set forth mitigating circumstances.

In the event that the Respondent should object to the form of the notice of violation as set forth above, the Board shall determine the objection. In the event that such objection is upheld by the Board, the Board may direct the Managing Agent or other agent designated by it, to supplement the notice of violation with sufficient particulars to permit the Respondent to identify the violating behavior and prepare a proper defense. Such particulars shall be provided within seven (7) days after the determination of the Board of Directors or such other time as the Board of Directors may establish. In the event that the Board of Directors overrules the objection and finds the notice of violation sufficient, the Respondent shall answer the violation within seven (7) days after the determination of the Board of Directors or such other time as the Board of Directors may establish.

- F. Notice of Hearing. Upon a timely request for a hearing, notice shall be given to the Respondent in a manner permitted for the giving of a notice of violation.

The Notice of Hearing shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before the Board of Directors at \_\_\_\_\_, on the day of \_\_\_\_\_, 19 \_\_, at \_\_\_\_\_ o'clock \_\_.m., upon the notice of violation served upon you. You may be present at the hearing; you may but need not be represented by counsel; you may present any relevant evidence; and you may cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and to the other production of books, documents or other items by applying to the Board of Directors.

If any party can promptly show good cause why he cannot attend the hearing on the date set forth in the notice of hearing and indicate times and dates on which he would be available, the Board may reset the time and date of the hearing and promptly deliver notice of the new hearing date. Except upon a request made by the Respondent, notice of the new hearing date shall be in the same manner as service of notice of the hearing.

G. Hearing Procedures.

- (1) A hearing shall be conducted by the Board of Directors to afford all parties a chance to present or defend their case involving alleged violations of the Declaration of Covenants or applicable law.
- (2) The hearing shall be held pursuant to the notice affording the Respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice of the violation and, if applicable, the notice of the hearing shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the person giving such notice. The notice requirement shall be deemed satisfied if the Respondent appears or is represented at the meeting. The minutes of the meeting shall contain a written statement of results of the hearing and the sanction, if any imposed.
- (3) The Board shall select a member of the Board to preside over the hearing. At the beginning of the hearing, the presiding officer shall explain the rules and procedures by which the hearing is to be conducted.
- (4) 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. 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. Hearsay evidence shall be given such weight as is appropriate under circumstances.
- (5) At the request of either requesting party, the Respondent, the Managing Agent, or on its own motion, the Board may conduct the hearing in a private session.
- (6) Each party shall have a right to do the following, but may waive any or all of these rights:
  - (a) Make an opening statement
  - (b) Introduce evidence, testimony, and witnesses
  - (c) Cross-examine opposing witnesses
  - (d) Rebut evidence and testimony
  - (e) Make a closing statement

Even if the requesting party and/or the Respondent do not testify on their own behalf, each may still be called and questioned.

- (7) Whenever the Board has commenced to hear the matter and a member of the Board withdraws prior to a final determination, the remaining members shall continue to hear the case.
- H. Decision. After all testimony and documentary evidence has been presented to the Board, the Board shall decide the matter by majority vote of the members of the Board participating. The Board shall make its determination only in accordance with this Resolution. The decision may be made at the conclusion of the hearing or may be postponed to no later than sixty (60) days hence. The Board will prepare written findings of fact. A copy of the findings and recommendations of the Board, including majority and minority opinions, if any, shall be mailed by the Board to each party in the matter and his attorney, if any. A summary of the decision, excluding names and persons involved and addressing only the issues and the Board decision as regards the issue shall be included in the Book of Conditions and Restrictions and Articles of Incorporation, in the section for Special Conditions and Restrictions and Articles of Incorporation. The Special Resolution arising from the case shall be numbered sequentially in that section of the Book of Conditions and Restrictions and Articles of Incorporation. Disciplinary action, if any, shall be retroactive to the date of the violation unless otherwise ordered in writing by the Board. After the conclusion of the hearing and prior to rendering its decision the Board may consult with and seek the advice of its counsel.
- I. Sanctions. Pursuant to Section 55-513 of the Virginia Property Owners Association act, the Board resolves that the Association is hereby adopting the power to assess a charge for any violations of the Declaration of Covenants, Conditions and Restrictions and Articles of Incorporation. The Board may also impose any sanctions permitted by the Homeowners Association's governing documents including, but not limited to the right to suspend voting and/or recreational facility privileges.

## II. INTERPRETIVE RULINGS

- A. Purpose of Rulings. Rulings of the Board may serve to: (1) clarify the intent of provisions of the Declaration of Covenants or Conditions and Restrictions and Articles of Incorporation; (2) decide on the consistency of any such provisions with the other provisions of the Virginia Property Owners Association Act, the Declaration of Covenants or the Conditions and Restrictions and Articles of Incorporation, or; (3) decide whether or not a rule or regulation was duly adopted.
- B. Petitions.
- (1) Any owner, officer, director or agent may petition the Board of Directors for an interpretive ruling by filing a petition directed to the Board.
  - (2) The petition must be legibly written in substantially the following form:

The party(ies) below request the Board of Directors to issue an interpretive ruling on the following provisions of the governing documents or rules and regulations of the Council:

The issue in question is:

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Response should be sent to:

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- C. Decisions. To be effective a decision of the Board shall be by a majority vote. The written decision shall normally be issued within forty-five (45) days of the conclusion of the meeting. The decision shall be written and accompanied by both the majority and minority opinions, if any. Copies of the decision shall be distributed to the party(ies) requesting the ruling with the Conditions and Restrictions and Articles of Incorporation. The decision shall state the Board's authority to make a ruling and the basis of the decision. A summary of the decision shall be published in the newsletter or distributed to owners by other means.

### III. INTERPRETATION

This resolution is intended to serve as a protection to Owners to assure that their due process rights are protected in a proceeding, and to serve as a guideline for the Board as they carry out their duties to enforce the Homeowners Association Declaration of Covenants and Rules and Regulations.

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

Any inadvertent omission or failure to conduct an adversary proceeding in exact conformity with this resolution shall not invalidate the results of such proceeding, so long as a prudent and good faith effort has been made to assure due process according to the general steps set forth in this resolution.

“Due process”, as used in this resolution, refers to the following basic rights:

- A. The charges shall be provided to the respondent.

- B. A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced.
- C. An opportunity to appeal shall be available.
- D. Basic principles of fairness shall be applied.

Any individual member must exhaust all available remedies prescribed by this resolution before that Owner may resort to a court of law for relief with respect to any alleged violation by another member of any provisions of the Declaration of Covenants or the Conditions and Restrictions and Articles of Incorporation. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board.