

LONDON TOWNE HOMEOWNERS ASSOCIATION

**POLICY RESOLUTION NO. 5
(as amended _____, 2004)
Relating to Due Process Procedures**

WHEREAS, Article VII of the Association's Articles of Incorporation and Article III, Section 1 of the Association's Bylaws state that the affairs of the Association shall be managed by the Board of Directors; and

WHEREAS, Section 55-513 of the Virginia Property Owners' Association Act ("Act") allows the Board of Directors ("Board") to establish, adopt, and enforce rules and regulations ("Rules"), and to impose charges for violations of the Association's Declaration of Covenants and Conditions ("Declaration") and Rules; and

WHEREAS, Article V, Section 1(d) of the Declaration empowers the Association's Board of Directors to suspend an Owner's right to vote on Association matters and the right to use the Association's recreational facilities, for up to 90 days, for violations of the Rules; and

WHEREAS, Section 55-513(B) of the Act requires the Board to follow certain procedures before suspending an Owner's right to use the Association's facilities and services and before imposing violation charges on an Owner; 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 a owner with provisions of the Declaration and Rules 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 the Board, through the Declaration, the Act and this Resolution, is hereby empowered to impose violation charges and suspend the right to use the Association's facilities for violations of the Declaration or Rules in accordance with the following procedures:

I. VIOLATIONS OF THE ASSOCIATION'S DECLARATION AND RULES

- A. Application of this Resolution. This Resolution is applicable to all alleged violations of the Declaration and Rules of the Association (except those relating to the payment of assessments), for which the Board is contemplating imposing violation charges against an Owner and/or suspending an Owner's right to use the Association's facilities and services. Owners are responsible for violations by their family members, tenants, guests and invitees, as may be applicable.
- 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 Declaration and Rules 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 home or lot, 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 and there appears to be a violation of the Declaration or Rules.

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 the Board's own initiative.
- (2) Formal action is initiated by the Managing Agent or other agent designated by the Board of Directors delivering a notice of violation to the Owner, by hand-delivery or by first-class mail at the address or addresses required for notices of Association meetings. If the violation is by a tenant, the Board may also send the notice of violation to the tenant at the lot address.
- (3) The notice of violation shall contain the following information:
 - (a) The Owner's name (hereinafter called the "Respondent").
 - (b) The alleged violation.
 - (c) The action required to abate or correct the alleged violation.
 - (d) A request or demand that the alleged violation be abated or corrected within fourteen (14) days of the date of the Notice 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.
 - (e) A statement to the effect that if the violation is not timely remedied, the Owner must request in writing a hearing in front of the Board to avoid the imposition of charges and/or suspension of rights. The letter shall also state that if no hearing is requested within the stated time period, then the Owner will be deemed to have waived the opportunity for a hearing and the Board may then assess violation charges and/or suspend rights. The demand letter may be combined with the notice of hearing referenced in Section F below, if the violation is of a serious nature or if previous notices of violation have been sent to the Owner.

D. Failure to Request a Hearing.

In the event the Respondent shall fail to timely request a hearing or shall admit the violation, the Board of Directors, without further notice, may dispense with the need for a hearing and, at its next regularly scheduled meeting, impose such sanction as it deems appropriate, or it may send a Notice of Hearing pursuant to Section F below. Possible sanctions include assessing charges for violations or suspending rights in accordance with Section 55-513 of the Act and Article V, Section 1(d) of the Declaration.

E. Request for a Hearing.

- (1) In the event that Respondent desires a hearing before the Board of Directors on the notice of violation, the respondent must request a hearing in writing within ten (10) days after the Notice of Violation is mailed or, if delivered by hand, within seven (7) days after delivery, or such other time period as stated in the Notice of Violation. The Request for a Hearing must be sent to the Association's Managing Agent so that it is received within the applicable time period.
- (2) In the request for a hearing, the Respondent shall also answer the violation by admitting or denying the violation in whole or in part, and/or explaining the conduct and setting forth mitigating circumstances.

F. Notice of Hearing. After receipt of a timely request for a hearing, notice of the hearing's date, time and place shall be given to the Respondent by hand-delivery or by certified mail, return-receipt requested, at the Owner's address of record with the Association, at least 14 days prior to the hearing or within such other time as may be required by the Act, as subsequently amended. The Notice of Hearing shall state the alleged violation and the charges or other sanctions that may be imposed.

The hearing shall be scheduled at a reasonable and convenient time and place within the Board's sole discretion. The Board, within its discretion, may grant a continuance if a continuance request is received prior to the hearing date. A continuance request must describe the reasons why the Owner cannot attend at the scheduled time and must list several alternative dates and times for the hearing to be rescheduled. If a continuance is granted, notice of the new date and time may be either hand-delivered or mailed by first-class mail to the Owner at his or her address of record. However, it is ultimately the Owner's responsibility to contact the Managing Agent prior to the scheduled hearing date to determine whether a continuance request was granted.

G. Hearing Procedures.

- (1) If a hearing is requested and/or scheduled, as set forth above, 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 and/or Rules and applicable law. However, if the Respondent fails to appear at the hearing at the scheduled time, the Board may choose to dispense with a hearing and impose sanctions, deeming the allegations to have been admitted.
- (2) The hearing notice requirement shall be deemed satisfied if the Respondent appears or is represented at the meeting.
- (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, including for example, the time limits for.
- (4) The Board may determine the manner in which the hearing will be conducted, so long as the procedures are otherwise consistent with the Act, and the provisions of this Resolution. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Respondents have the right to be represented by an attorney at the hearing, but attorney-representation is not required. Respondent's failure to have an attorney at the scheduled hearing shall constitute a waiver of such right for purposes of the hearing.
- (5) The hearing shall be conducted in private executive session unless the Owner requests that the hearing be open to owners and residents, and further provided that the presiding Board member may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room.
- (6) 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; if additional time is needed to reach a decision, the Board may continue the hearing to an announced date and time, with no further notice required. Within seven (7) days after the hearing (including any continuances), the Board shall notify the Owner of its decision in writing, by hand-delivery or by certified mail, return receipt requested, to the Owner at the address of record with the Association.

H. 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 and Rules. The Board may also impose

any sanctions permitted by the Declaration, 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 or Rules; (2) decide on the consistency of any such provisions with the other provisions of the Virginia Property Owners Association Act the Declaration or Rules, or; (3) decide whether or not a Rule was duly adopted. The Board's rulings are intended solely to provide guidance, and they do not create legally binding precedent.

B. Petitions.

- (1) Any owner, officer, director or the Managing 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 Association:

The issue in question is:

Response should be sent to:

C. Decisions. 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 Copies of the decision shall be distributed to the party(ies) requesting the ruling. A summary of the decision may be published by the Board 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 statutory rights to notice and an opportunity for a hearing are protected, and to serve as a guideline for the Board as they carry out their duties to enforce the Association's Declaration and Rules.

The Board of Directors, as appropriate, may determine the specific manner in which the provisions of this Resolution are to be implemented, provided that statutory rights are 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 that notice and an opportunity for a hearing are given according to the general steps set forth in this Resolution.

This Resolution shall not be interpreted to require a hearing prior to assessment of violation charges if a hearing is not timely requested or to prevent the Association from exercising any other remedies authorized or available under the Act, the Declaration, Bylaws and Rules, in addition to, or instead of, the imposition of violation charges or the suspension of rights.