

DUE PROCESS RESOLUTION
OF
OLD MILL COMMUNITY COUNCIL, INC.



P.O. Box 114
Burke, VA 22009
www.oldmillcommunity.com

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OLD MILL COMMUNITY COUNCIL, INC.

POLICY RESOLUTION NO. 002

Creation of Procedures to Ensure Due Process in Enforcement Cases

WHEREAS, Section 55-513 of the Virginia Property Owners Association Act (“Act”) provides the Board of Directors (“Board”) of the Old Mill Community Council, Inc. (“Association”) with the power to assess monetary charges and suspend membership privileges of members who are in non-compliance with the terms of the Declaration of Covenants, Conditions and Restrictions for Section 1 and the Declaration of Covenants, Conditions and Restrictions for Section 2 (“Declaration”), the Amended and Restated Bylaws, the Articles of Incorporation, and the rules and regulations (collectively, “governing documents”); and

WHEREAS, Article VIII, Section 1(a) of the Amended and Restated Bylaws and Section 55-513 of the Act empowers the Board to adopt and publish rules and regulations governing the use of common areas and facilities, the personal conduct of the members and their guests thereon, and with respect to such other areas of responsibility assigned to the Association by the Declaration; and

WHEREAS, Section 55-513 of the Act provides the Board with the power to enforce the Association’s Governing Documents, and to establish penalties for the infraction thereof; and

WHEREAS, for the benefit and protection of all Owners, the Board deems it desirable to formally adopt a policy resolution to enact the statutory powers to assess monetary charges and to establish a procedure for enforcement of the regulations of the Association which are consistent with principles of due process and Virginia law.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Owners are legally responsible for ensuring that the members of their household, and their tenants, guests, or invitees comply with the Association’s Governing Documents.
2. The Board is authorized to take enforcement actions against Owners for violations observed by members of the Board.
3. If an Owner or resident wishes to formally invoke the enforcement system of the Association, the owner must submit a complaint in writing in accordance with the Association’s Complaint Policy and on any forms developed by the Board of Directors pursuant to the Association’s Complaint Policy, in care of the Association’s Board of Directors. The Board will not investigate any complaints that are anonymous, are not submitted in writing, or otherwise do not comply with the Association’s Complaint Policy.

4. Once the Board receives a complaint, the Board shall review the complaint and determine if the complaint conforms with the Association's Complaint Policy.
5. If the Board determines a complaint does not comply with the Association's Complaint Policy, the Board will so notify the complainant in writing.
6. If the Board determines the Complaint sets forth sufficient allegations of a violation of the Association's Governing Documents that complies with the requirements of the Association's Complaint Policy, the Board shall deliver to the owner against whom the complaint has been leveled, by hand or by first class mail, written notice of the alleged violation of the Association's Governing Documents, which shall notify the Owner of the complaint, the provisions of the Governing Documents which have been violated, and requesting the Owner to cease and desist the action or correct the item within fifteen (15) days of the date of the letter or such other date as may be set forth in the written notice. This initial notice shall be referred to as the "First Notice".
7. The Board reserves the right to dispense with the requirement to send the First Notice and move immediately to sending the Second Notice as described in Paragraph 7 herein, if, in the sole discretion of the Board, the alleged violation of the Governing Document constitutes a risk to the health and safety of the members of the Association or that it is otherwise in the best interest of the Association to expedite the enforcement process.
8. If the Owner does not remedy the offense within the number of days requested in the First Notice, the Board shall send a second written notice (hereinafter "Second Notice") to the Owner against whom the allegation has been leveled, which notice must be delivered Certified Mail, Return Receipt Requested and by First Class U.S. mail. The Second Notice must: (1) notify the Owner of the complaint and the provisions of the Governing Documents which have been allegedly violated; (2) request the Owner to cease and desist the action or correct the item within twenty-one (21) days of the date of the letter or such other date as may be set forth in the written notice; (3) advise the Owner that the Owner may submit in writing a written refutation of the complaint or explanation of the allegations; (4) advise the owner of the Association's authority to impose monetary charges and to suspend privileges as sanctions for offenses of the Association's Governing Documents; (5) inform the Owner of his/her right to request a hearing before the Board to contest the citation and (6) advise the Owner that the Owner must confirm in writing within fifteen days of the date of the letter his/her desire for a hearing to contest the citation.
9. If the Owner has abated the violation and notified the Board within the time frame specified in the Second Notice, the Board will terminate enforcement action and no hearing will be held.

10. If the Owner fails to request a hearing or remedy the violation within the time frame set forth in the letter provided in accordance with paragraph 5, the Board, at its next meeting, shall have the authority to deem the Owner in violation, as cited, and the Board shall have the authority to impose monetary charges and/or suspend privileges in accordance with Article VIII of the Governing Documents and Section 55-513 of the Act. Should the Board decide to impose monetary charges against the Owner, the Board will send, by Certified Mail, Return Receipt Requested and by First Class U.S. mail, a letter notifying the Owner of the monetary charges, which will be deemed effective from the date of the Complaint.
11. If the Owner requests a hearing, the Board shall send a notice of hearing to the Owner by Certified Mail, Return Receipt Requested or by hand-delivery at his or her last known address of record at least fourteen (14) days in advance of the hearing date (Attachment C). In addition to providing a date, time and location of the hearing, the notice shall state the charges or other sanctions that may be imposed and advise the Owner of his or her right to be represented by counsel at the hearing. If the Owner of record appears at the hearing without receiving notice thereof, he will be deemed to have waived the requirement for proper notice.
12. At the hearing, the Board shall hold the hearing in open session, except for its deliberations, which the Board may hold in closed session pursuant to Section 55-510.1 of the Act. The Owner has the right to have counsel present (however, the Board reserves the right to reschedule a hearing if the Owner brings counsel in order for the Association to be similarly represented) and may present evidence in his or her defense. After the Owner has presented his or her defense, the Board will convene into Executive Session to discuss the violation. The Board will return to open session to announce its decision. The Board shall also deliver notice of its decision by Certified Mail, Return Receipt Requested or by hand-delivery, to the parties within seven (7) days of the hearing.
13. Failure by the Owner to attend the hearing shall constitute a waiver of the Owner's opportunity to be heard, an admission of the charge against the Owner, and the Board may make a decision to impose monetary charges and/or suspend privileges or services in its discretion as if the Owner were present at a hearing.
14. The Board may impose for any violation of the Association's Governing Documents a monetary charge of up to \$50.00 per single violation or up to \$10.00 per day for any violation of a continuing nature as permitted by Section 55-513 of the Act. The Committee may impose daily charges for a violation of a continuing nature for a period up to ninety (90) consecutive days or for the maximum period of time permitted by law, whichever is greater. If monetary charges are imposed, such charges shall be treated as an assessment against the Owner's lot for the purposes of Section 55-516 of the Act and the Association's Governing Documents. Any notice advising the Owner of the imposition of

sanctions shall constitute a Notice of Adverse Decision.

15. While all cases will be treated in a similar manner following the above procedures, the Board reserves the right to refer a matter to legal counsel to seek legal remedy at any time, based upon the nature of the allegation. If any notice of citation is issued by the Board under these circumstances, said notice shall notify the Owner of the violation and the monetary charges imposed for the violation. The notice shall also advise the Owner that they may submit a written request for a hearing on or before the hearing confirmation date set forth in the letter to contest the violation and the monetary charges assessed for the violation. Any such notice of violation shall be delivered to the Owner via hand-delivery or Certified Mail, Return Receipt Requested.
16. All Owners are responsible for ensuring that their lot is occupied and used in accordance with the covenants. In the case of matters against a tenant renting a home in the Association, all notices will be mailed to the Owner of record with a copy to the tenants in question, if they are known. If tenants are not known, the tenant copy will be mailed to the address of record care of "current resident." The copies to tenants need not be mailed certified, return receipt requested; they may be mailed via regular, first class U.S. mail.
17. The procedures outlined in this Resolution may be applied to all violations of the Association's Governing Documents, but do not preclude the Association from exercising other enforcement procedures and remedies authorized by the Association's legal documents, including, but not limited to, the initiation of suit or self-help remedies.

The effective date of this Resolution shall be December 15, 2011.

OLD MILL COMMUNITY COUNCIL, INC.

Maureen Thompson, President