

***Belcastle Court Cluster Association
Resolution 122002
Renumbered R13-2002-12-11
Due Process Procedure***

Resolution Type: Policy

Effective Date: December 11, 2002

WHEREAS, Section 4 of the Articles of Incorporation and Article II, Section 1.B and Article IV, Section 1 of the Bylaws of Belcastle Court Cluster Association grant the Board of Directors the power to adopt, amend and publish rules and regulations governing the use of the property and the conduct of the Association members and their guests therein;

WHEREAS, Article IV, Section 10 of the Bylaws provides that the Board of Directors shall have, in addition to the powers set forth in the Bylaws, all those powers and rights specifically set forth in Article VII, Section VII.1.d.2 of the Deed of Amendment to the Deed of Declaration of Reston Association recorded in Deed Book 6072 at page 69 among the land records of Fairfax County, which shall take precedence over any of the rights set forth in the Bylaws;

WHEREAS, Article VII, Section VII.1.d.2 of the Deed of Amendment to the Deed of Declaration of Reston Association provides that the Association Board of Directors shall have all powers needed to carry out the purpose of the Association which are enabled by law or that are not specifically reserved to the members, including the power to assess the costs of attorneys fees and court costs, of collecting delinquent assessments and charges of enforcing association rules; and

WHEREAS, Article VIII, Section VIII.3 of the Deed of Amendment of Reston Association provides the Association shall have the right to enforce all provisions of the Deed by any proceeding at law or in equity and to record violations of the provision of the Deed as appropriate; and

WHEREAS, Section 55-515 of the Virginia Property Owners' Association charges all lot owners with compliance with the Declaration, Bylaws, Rules and Regulations (the "Governing Documents") of the Association as amended;

WHEREAS, Section 55-513 B. of the Act, Article 9, Section 9.1 (b) (3), and Article 12, Section 12.1 (h) of the Declaration provide the Association, through its Board with the power to assess charges against lot owners for violations of the Governing Documents, for which the lot owner or his family members, tenants, guests or other invitees are responsible;

WHEREAS, Section 55-513 B. of the Act and Article 12, Section 12.1 (i) of the Declaration further provide that certain procedures must be followed before such charges may be assessed including a hearing after proper notice; and

WHEREAS, the Board of Directors of the Association recognizes that orderly procedures are necessary for the assessment of charges for violations of the Governing Documents including Bylaws, rules and regulations promulgated pursuant thereto; and,

WHEREAS, it is the intent of the Board to enforce the Governing Documents for the benefit and protection of the Association's lot owners and residents by establishing procedures that ensure due process and consistency of enforcement; and,

WHEREAS, the Board of Directors considers that the board should be the tribunal before which hearings are held; and,

BCCA Policy Resolution on Due Process Procedure unanimously approved December 11, 2002 by the Board
Of Directors Jean Keefe, Mark Nobles, Steve Siciliano, Sharon Canter, Paddy Uzzell

WHEREAS, for the benefit and protection of the Association and of the individual owner, the board deems it necessary and desirable to establish and operate by procedures to assure due process in cases where there is a question of compliance by an owner with provisions of the Governing Documents or rules and regulations promulgated pursuant thereto, thereby minimizing the necessity of seeking action through a court of law.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board, by the Act, the Governing Documents and this resolution, is hereby empowered to suspend use and voting rights and assess charges pursuant to Section 55-513 B of the Act; that the Board by the Act, the Governing Documents, and this resolution, is hereby empowered to issue a cease and desist request, to suspend use and voting rights and/or to assess charges pursuant to 55-513 B of the Act; and that the Board shall assess such charges, suspend such use rights, and issue such cease and desist requests, respectively, for any violation of the Governing Documents only after the following procedures have been followed:

I. Complaint re Violations of Association Governing Documents and Rules & Regulations

- A. Any owner, resident, officer or agent of the Association may initiate the enforcement process by requesting to be heard at a board meeting, or by filing a written document requesting that the Board take action to enforce the Governing Documents. The specifics of any complaint or alleged violation, and any supporting documentation, should be in a form similar to and containing the information shown on Exhibit "A" hereto. The complaint must be signed by the person(s) submitting it.
- B. 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.
- C. Upon receipt and consideration of the complaint, the Board may make a preliminary investigation as to the validity of the complaint. If the condition has been corrected, or the complaint is insufficient on its face value, the Board shall respond in writing to the complaining person that the matter has either been resolved or cannot be pursued. If further action is necessary, the Board shall then take appropriate action, such as sending a letter to the non-compliant resident or determining if the matter needs to be referred to someone else.

II. Reminder Letter

- A. If determined appropriate, a written reminder letter which may be in a form similar to Exhibit "B" hereto shall be sent by first class mail (or by certified mail if deemed appropriate) 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.
- B. The reminder letter shall advise the owner that the Association has been made aware of an alleged violation, shall specify the violation and remind the owner of their and/or their tenants (if applicable) obligations under the governing documents and rules and regulations of the Association. If appropriate, the letter may contain information about how to correct the situation. The reminder letter shall also specify a date usually not more than ten (10) days after the date of the reminder letter by which the alleged violation must cease.
- C. Should the reminder letter not correct the alleged violation, the Association shall send the Demand Letter as outlined in Section III hereof.

- D. At its discretion the Association may forgo the reminder letter outlined in this Section and instead send the Demand Letter as outlined in Section III hereof as a first contact with an alleged violator.

III. Demand Letter

- A. If the alleged violation has not been corrected in response to the Reminder letter, or if otherwise determined appropriate, a written demand letter which may be in a form similar to Exhibit "C" hereto shall be sent by certified mail 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.
- B. The demand letter shall specify the alleged violation, the action required to abate the violation, next steps if the violation is not remedied, 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 in less than ten (10) days.
- C. The demand letter shall state that if the violation is not remedied within the specified time period, the lot owner may request in writing a hearing before the Board or Committee to avoid possible imposition of a rules violation assessment. The letter shall also state that if no hearing is requested, the owner will 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 Section IV if of a serious nature or if previous notices of violation have been sent to the owner.

IV. Notice of Hearing

- A. If the alleged violation is not remedied within the time specified in the demand letter referenced in Section III and the owner requests a hearing, or if the Board or Committee determines a hearing is necessary, a notice of hearing shall be sent. Notice of a hearing shall be mailed by registered or 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 three (3) days after the notice has been mailed in a regular depository of the United States mail. The demand letter referenced in Section III B may be combined with the notice of hearing.
- B. The notice of hearing may be similar to Exhibit "D" attached hereto and 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 provisions of the Governing Documents or rules which allegedly have been violated.
 - 4. That charges for violation of the Governing Documents and Rules & Regulations may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for 90 days, to a total of \$900, for any offense of a continuing nature or such other amounts as may be authorized by the Virginia Property Owners' Association Act.
 - 5. That the alleged violation may result in the suspension of right to use facilities and/or voting rights, as further enumerated in the Governing Documents.

V. Hearing

- A. The hearing shall be scheduled at a reasonable and convenient time and place within the Board's discretion.
- B. The Board, within its discretion, may grant a continuance. If either the Association or the owner for whom the hearing is scheduled requests a continuance to a different time or date, written notice to the other party shall be required. Once a new hearing date or time has been established both parties shall be given written notice of such date and time, which notice need not necessarily be fourteen (14) days in advance of such rescheduled hearing. No more than one such continuance shall be granted.
- C. The hearing need not be conducted according to technical rules of evidence applied in a court of law. The hearing shall provide the lot owner with an opportunity to be heard and to be represented by counsel.
- D. The lot owner, tenant, any person lodging a complaint, and members of the Board shall have the right (1) to call, examine, and cross-examine witnesses, (2) to introduce testimony and evidence, and (3) to rebut testimony and evidence, all within reasonable time limits imposed by the Board.
- E. The hearing shall be conducted in private executive session unless the lot owner requests that the hearing be open to owners and residents and further provided that the chairman (President of the Board) of the hearing panel, may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. During the course of any hearing, the Board, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.
- F. After proper notice has been given, if the lot owner fails to appear at the hearing or if no hearing is requested, the hearing may proceed as scheduled, and the Board may assess charges from the date of the Demand Letter (as outlined in Section III of this Resolution) or take such other action as may be authorized by the Governing Documents or by law.
- G. If the lot owner acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Board may, in its discretion, dispense with a hearing after having afforded the lot owner with an opportunity for a hearing.
- H. Within seven (7) days of the hearing, the Board shall notify the lot owner of its decision, suspension of use/voting rights and/or the assessment of any charges and the date from which those assessments shall accrue and be due. Said notification 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.
- I. Upon receipt of a written request made within ten (10) days after the date the Board issues its final decision, the Board shall afford any person deemed by the Board to have standing as an aggrieved party the right to appeal to the Board, and the Board may reconsider, review, modify or reverse any action taken.
- J. The decision of the Board of Directors shall be final.

VI. Records

The Board shall keep copies of all correspondence related to rules violations in the lot owner's file or in a separate file on rules violations. Minutes of each hearing or meeting shall be kept and a form similar to that attached hereto as Exhibit "E" shall be completed and

placed in the lot owner's file, or separate file, and appropriate Association files.

VII. Assessment of Charges

Pursuant to Section 55-513 B. of the Act, any charges assessed for violation of rules after notice and hearing shall be in amounts authorized by the Act and, in certain instances, by Exhibit "F" attached hereto, and shall be treated as an assessment against the owner's lot for the purpose of Section 55-516 of the Act regarding liens. Such amounts also shall be the personal obligation of the owner.

VIII. Other Remedies

This Resolution shall not be interpreted to require a hearing prior to assessment of rules violation charges 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 law and shall not constitute an election of remedies.

EXHIBIT A
ASSOCIATION RULES VIOLATION COMPLAINT FORM

Note: This form must be completed in order for an alleged rules violation to be investigated by the Association. There is no guarantee of anonymity on behalf of the person completing this form; however for good cause the Board of Directors may withhold the identity of the complaining party. If a rules violation hearing becomes necessary as a result of this complaint the appearance at such hearing by the complaining party may be required.

1. Name of person(s) violating rules: _____
2. Lot # of person(s) violating rules: _____
3. Are the person(s) named in question 1 tenants or owners? _____
4. Describe in detail how and where the rules were violated: _____

5. When did the violation(s) occur? _____
6. Have you personally requested the lot owner and/or tenant to cease the rules violation?
Yes _____ No _____ By written request. When? _____
7. Name and lot number of person(s) making complaint:
Signature(s): _____

FOR ASSOCIATION USE ONLY

8. Owner: _____ Tenant: _____
9. Provision(s) of Governing Documents or Rule(s) violated:

10. Registered Name(s) of lot owner(s): _____
11. Owner's address if non-resident _____
Registered name(s) of tenant(s): _____

R13-2002-12-11

12. Comments:

13. Date demand letter sent to lot owner: _____

14. 16. Owner/Tenant does _____ does not _____ request a hearing. Date request received: _____

15. Referred to Board of Directors on: _____

16. Date notice of hearing sent: _____

Copy: Lot Owner File (optional-record may be closed)
Rules Violation File

EXHIBIT B
REMINDER LETTER

Date:
Owner:

Dear:

As you are aware, in BCCA there are certain use restrictions pertaining to the Property which exist in order to preserve the community as an aesthetically pleasing community in which to live. One of these restrictions, outlined in _____ of the Governing Documents states that _____

Acting on concerns raised by other residents in the community, it has been determined (or confirmed) that you (or your tenant) may be in violation of the Governing Documents as follows: _____

In order to remain in compliance with the above noted regulations, it is imperative that you take the following action to cure this violation within ten (10) days of this letter:

On behalf of the Board of Directors and all of the neighbors in the community, thank you in advance for your compliance with the Declaration (and Standards) in this regard. Should you have any questions please call me at 703-_____.

Sincerely,

President
The Board of Directors

Copy: Association Files
Legal (if applicable)
Tenant (if applicable, optional)

EXHIBIT C
DEMAND TO CEASE AND CORRECT

Date:
Owner:
Dear _____

By our Reminder Letter dated _____ you were notified that a complaint has been made against you (or your tenants) for the alleged violation of the following rules and regulations of the Association:

The rules are enforced for the benefit of all residents and to maintain property values throughout the community. As of the date of this letter the alleged violation has not been cured as requested. Specifically, you must:

You are again requested to immediately cease and correct all of the above violations within ten (10) days from the date of this letter. If you need more time to correct the violation or make repairs, you must request additional time and notify the Board of Directors in writing as to when the violation will be remedied. If you believe you are not in violation and wish to contest the alleged violation and avoid the possible imposition of charges you must request a hearing before the Board of Directors in writing within ten (10) days from the date of this letter. If you request a hearing, complete the bottom portion of this letter and return a copy to the Board of Directors. The Board of Directors will send you a notice by certified mail return receipt requested stating the hearing time and place.

Alternatively, if you elect to cease and correct the violation within ten (10) days, please send a copy of this letter to the Board of Directors noting that the violation has been stopped or corrected.

If you fail to respond to this letter and the violation persists you will be deemed to have waived the opportunity for a hearing, and you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day, up to 90 days, for a total of nine hundred dollars (\$900.00) for a continuing violation or up to Fifty Dollars (\$50.00) for each single violation without further notice. Such charges will be effective as of _____. The Board of Directors may also take other legal action against you.

Sincerely,

President
Board of Directors

Copy: Association Files
Legal (if appropriate)
Lot owner/Tenant File

Return to: The Board of Directors

Name: _____ Lot # _____

Address: _____

_____ I hereby request a hearing before the Board of Directors to contest the violation.

_____ I have ceased and/or corrected the violation and will refrain from further violations.

Signature: _____ Date: _____

EXHIBIT D

CERTIFIED MAIL RETURN RECEIPT REQUESTED NO.

Re: Notice of Rules Violation Hearing

Dear _____:

You are hereby notified that a hearing will be held before the Board of Directors of Belcastle Court Cluster Association at _____ on the _____ day of _____, _____, at _____ pm., pursuant to Section 55-513 B. of the Virginia Property Owners' Association Act and the Governing Documents for your tenant's or your alleged violation of the following rules of the Association:

You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and you will be given an opportunity to examine and cross-examine all witnesses. You may request the attendance of witnesses.

Please be advised that if the Board of Directors determines that you are in violation of the Governing Documents and rules and regulations, charges of up to Fifty Dollars (\$50.00) for a one-time violation or Ten Dollars (\$10.00) per day for a continuing violation may be assessed against you and your lot, and your right to use facilities and to vote may be suspended. In addition to this hearing, the Board of Directors may elect such other remedies as are authorized by the Virginia Property Owners' Association Act, the Governing Documents, and by law, including the right to make alterations or do any needed exterior repair work at your cost.

If you have any questions or wish to communicate with the Board of Directors regarding this matter, please call 703 _____.

Sincerely,

President
Board of Directors
Copy: Association Rules Violation Files
Legal (if applicable)
Lot owner file (Tenant)

EXHIBIT E
RECORD OF HEARING

Hearing Date and Time: _____

Lot Owner(s): _____

Lot #/Address: _____

Address if other than lot: _____

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board of Directors and Reasoning:

Charges Imposed (date commencing): _____

Other Sanctions Imposed: _____

Comments: _____

EXHIBIT F
ASSESSMENT OF CHARGES

Charges for rules violations may not exceed the maximum amounts permitted under Section 55-513 of the Virginia Property Owners' Association Act, as amended. Those amounts are \$50.00 per violation for a one-time violation and \$10.00 per day for a continuing violation as of July 1, 2002. However, as further provided in Section 55-513 of the Virginia Property Owners' Association Act, the total charges for any offense of a continuing nature shall not be assessed for a period in excess of ninety (90) days.

A non-inclusive listing of charges for common rules violations follows. The Board reserves the right to establish different charges in the event of special circumstances or changed conditions, and to charge for rules violations not listed below. Additionally, actual costs of damages and repair may be assessed where applicable.

Bylaws violation	\$10.00 per day for every day of continuing violation to a maximum of 90 days (\$900.)
Parking or vehicle violation:	\$25.00 - each offense
Improper storage of firewood, recreational vehicles, tools or equipment	\$10.00 - per day/continuing violation
Design Standards	\$10.00 - per day/continuing violation Cost of correction
Damaging, defacing, or denuding common areas	\$50.00 - per offense Actual cost of repair, restoration, and/or replacement

R13-2002-12-11

**BELCASTLE COURT CLUSTER ASSOCIATION
RESOLUTIONS ACTION RECORD**

Resolution Type: Policy No. R2002-12/11, Renumbered R13-2002-12-11

Effective Date: December 11, 2002

Pertaining to: Association Governance and Rules Violations: Complaint and Due Process Procedures

Duly adopted at a meeting of the Board of Directors held December 11, 2002.

Motion by Paddy Uzzell

	RECORD OF VOTE:			
	YES	NO	ABSTAIN	ABSENT
Jean Keefe	X			
Mark Nobles	X			
Steve Siciliano	X			
Sharon Canner	X			
Paddy Uzzell	X			

ATTEST:

President

Date

FILE:

Book of Minutes – 2002	X
Book of Resolutions: 2002	X