

***Belcastle Court Cluster Association
Resolution R9-2012-09-10
Property Owners' Association Act Complaint Procedure***

Resolution Type: Policy

Effective Date: July 1, 2012 (Refer to Addendum)

WHEREAS, the Code of Virginia, Title 55, Chapter 29, Section 55-530 E requires each Association establish a written procedure for receiving and considering complaints from members and other citizens concerning a matter solely regarding an action, inaction, or a decision by a Property Owners' Association (e.g., Belcastle Court Cluster Association, hereafter referred to as the Association) that is inconsistent with Title 55 of the Code of Virginia and the Property Owners' Association Act;

WHEREAS in accordance with Section 55-530 of the Code of Virginia the Association complaint procedure or form is required to conform with the requirements set forth in Section 55-530 as well as the Association governing documents, which shall not be in conflict with Section 55-530;

WHEREAS the Association shall certify with each annual report filing that the Association complaint procedure has been adopted and is in effect;

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

WHEREAS, Article VII, Section VII.1.d.2 of the Declaration provides that the Association Board 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;

WHEREAS, Article IV, Section 10 of the Association Bylaws provides that the Board 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 Declaration (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 Association Bylaws;

WHEREAS, for the benefit and protection of the Association, the Board deems it necessary and desirable to establish and operate by procedures to assure due process in cases where there is a written complaint filed by a member of the Association or citizen concerning a matter solely regarding an action, inaction, or a decision by the Association that is inconsistent with Title 55 of the Code of Virginia and the Property Owners' Association Act.

NOW THEREFORE be it resolved, effective September 28, 2012 by mandate of the Commonwealth of Virginia, that the following complaint procedure is established to effect a process whereby Association members and citizens may communicate to the Board of Directors any complaint regarding the Board's failure to comply with the Association governing documents and the hierarchy thereof established by law.

I. Definition of Terms

The following words, terms, and phrases, when used shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the Virginia Property Owners' Association Act.

“Adverse decision” or “Final adverse decision” means the final determination issued by an Association pursuant to an Association complain procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the Association complaint procedure have been exhausted. The date of

the final adverse decision shall be the date of the notice issued to the complainant by the Association Board.

“Association” means the incorporated or unincorporated, registered entity (e.g., Property Owners’ Association) upon which responsibilities are imposed and to which authority is granted in the declaration. With respect to this procedure the Association is the Belcastle Court Cluster Association.

“Association complaint” means a written complaint form (See *Attachment A*) filed by a member of the Association or citizen pursuant to this complaint procedure. The complaint under this procedure shall concern a matter solely regarding an action, inaction, or a decision by the Association that is inconsistent with Title 55 of the Code of Virginia and the Property Owners’ Association Act.

“Association complaint procedure” means the written process adopted by the Association to receive and consider Association complaints from members and citizens. The complaint procedure includes contact information for the Office of the Common Interest Community Ombudsman in accordance with Section 55-530 of the Code of Virginia.

“Association governing documents” means collectively the organizational documents, including but not limited to the current and effective articles of incorporation, declaration, and bylaws of the Association. Association documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing Association member conduct and Association governance.

“Board of Directors” means the Association’s governing members elected by Association members and upon whom responsibilities are imposed and to which authority is granted to oversee the maintenance, governance and operation of the Association.

“Complainant” means an Association member or citizen who makes a written complaint pursuant to the Association’s complaint procedure.

“Complaint Record” means all documents, correspondence, and other materials related to a decision made pursuant to the Association’s complaint procedure.

“Declaration” means any instrument, however denominated, recorded among the land records of the county or city in which the Association is located, that (i) imposes on the Association maintenance or operational responsibilities for the common area or (ii) creates the authority in the Association to impose on lots or the owners or occupants of such lots, or any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. Declaration includes any amendment or supplement to the instruments described in this definition.

“Disclosure Packet update” means an update of the financial information referenced in Section 55-509.5 of the Code of Virginia. The update shall include a copy of the original disclosure packet.

“Meeting or meetings” means the formal gathering of the Association Board of Directors where the business of the Association is discussed or transacted.

II. Complaint Process Regarding Violations the Code of Virginia and the Property Owners’ Association Act

- A. Any owner, resident, officer or agent of the Association may initiate the complaint process by filing a written document, via registered/certified mail to the Association official address, delineating an action, inaction, or a decision by the Association that is inconsistent with Title 55 of the Code of Virginia, Chapter 26 – Property Owners’ Association Act and requesting that the Association take action to enforce the applicable law or regulation. The specifics of any complaint and any supporting documentation shall be submitted using *Attachment A* of

this resolution. The person(s) submitting it must sign the complaint.

- B. The complaint shall be submitted to the Board for a determination as to whether it appears that an applicable law or regulation allegedly has been violated. The complaint from shall include (e.g., as attachment) any specific documentation that affects the complaint, including Association governing documents as well as, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the specific legal reference, as well as the requested action or resolution.
- C. The written and signed complaint form shall be submitted no later than 14 days prior to the next scheduled Board meeting via certified mail. The Board, at its sole discretion, may extend such timeframe upon a showing by the complainant of relevant, extenuating circumstances prohibiting delivery within the timeframe specified herein.
- D. Within 7 days of receipt of the written, signed complaint form and all relevant documents, the Board shall provide acknowledgement of receipt of the complaint to the complainant at the address provided. This shall be in writing via registered/certified mail and return receipt required.
- E. The Board shall investigate the complaint. Notice of the date, time, and location of the Board meeting at which the complaint will be considered shall be provided to all Association members. Such notice shall be sent to the complainant, specifically, via registered/certified mail at the address provided at the same time that all Association members are notified of the scheduled Board meeting. (See *Attachment B*)
- F. If the condition has been corrected, or the complaint is insufficient on its face value, the Board shall respond in writing via registered/certified mail and return receipt required, within 14 days after the initial investigation, to the complainant at the address provided that the matter has either been resolved or cannot be pursued. The Board, at its sole discretion, may extend such timeframe upon a showing of relevant, extenuating circumstances prohibiting delivery within the timeframe specified herein. (See *Attachment C*)
- G. If after the initial investigation, further action is necessary, the Board shall then take appropriate action, such as to request further information from the complainant to ensure the Association and Board is conducting business in accordance with the law and all Association documents accurately reflect compliance with the law, or to determine if the matter needs to be referred to someone else, such as Association legal counsel or other dispute resolution organization (e.g., independent arbitration forum), or to the Office of the Common Interest Community Ombudsman. Within 14 days after receipt of the written, signed complaint form and all relevant documentation, the Board may request in writing via registered/certified mail to the complainant address provided additional information that is necessary for the complainant to provide in order to continue processing the complaint. The Board, at its sole discretion, may extend such timeframe upon a showing by the complainant of relevant, extenuating circumstances prohibiting delivery within the timeframe specified herein.
- H. If the complainant does not provide the additional information to the Board within the timeframe specified herein including any extension granted, the Board shall consider the complaint without such additional information.
- I. After a timely, thorough, and complete review of the complaint and all relevant documentation received, the Board shall notify the complainant at the address provided in writing via registered/certified mail within 7 days after reaching a final decision (See *Attachment C*). The Board, at its sole discretion, may extend such timeframe upon a showing of relevant, extenuating circumstances prohibiting delivery within the timeframe specified

herein. Thus, depending on the complexity of the complaint and amount of time and effort required by the Board to properly investigate and decide upon a resolution, the total process may take from 14 to 120 or more days from receipt of the official complaint form and all relevant documentation, notwithstanding any extensions to the timeframes granted by the Board with respect to relevant, extenuating circumstances.

- J. Notice of the Board's final determination shall be dated as of the date of issuance and include specific citations to applicable laws or regulations, or Association governing documents that led to the final determination, as well as the registration number of the Association. The Board's final determination is not subject to further review or appeal by the complainant to the Board. Notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

III. Filing of Notice of Final Adverse Decision with the Common Interest Community Board

A complainant may file with the Common Interest Community Board a notice of final adverse decision in accordance with Section 55-530 F of the Code of Virginia concerning any final adverse decision that has been issued by the Association in accordance with this procedure. The notice shall be filed within 30 days of the date of the final adverse decision. The notice shall be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman and shall contain the following information:

- Name and contact information of the complainant.
- Name, address, and contact information of the Association.
- Applicable Association governing documents.
- Date of final adverse decision.
- Copy of the Association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the Association complaint procedure.

In accordance with Section 55-530 F of the Code of Virginia, the Common Interest Community Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant. The Ombudsman may be contacted at:

Office of the Common Interest Community Ombudsman
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, VA 23233
804/367-2941
CICOmbudsman@dpwr.virginia.gov

IV. Review of Final Adverse Decision by the Common Interest Community Ombudsman

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or an approved waiver of the filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgement of receipt of the notice to the complainant and shall provide a copy of the written notice to the Association. The notice of adverse decision will not be reviewed until the filing

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fee has been received or the Common Interest Community Board has granted a waiver.

In accordance with Section 55-530 G of the Code of Virginia, additional information may be requested from the Association regarding the final adverse decision. Upon request, the Association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

V. Decision from the Notice of Final Adverse Decision by the Common Interest Community Ombudsman

Upon review of the notice of final adverse decision in accordance with Section 55-530 G of the Code of Virginia, if the Common Interest Community Ombudsman determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Common Interest Community Board, the Ombudsman may, in his/her sole discretion, provide the complainant and the Association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Common Interest Community Board.

The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Common Interest Community Board shall be a matter within the sole discretion of the Ombudsman. Such decision is final and not subject to further review. The determination of the Ombudsman shall not be binding upon the complainant or the Association that made the final adverse decision with respect to seeking any other applicable remedies available under the law.

VI. Distribution of Association Complaint Procedure

The Association complaint procedure shall be readily available upon request to all members of the Association and citizens. The Association complaint procedure shall be included as an attachment to the resale certificate and/or the Association Disclosure Packet.

VII. Maintenance of Association Record of Complaint

A record of each Association complaint filed with the Association shall be maintained in for at minimum of one year (12 months) in accordance with Section 55-530 E-1 of the Code of Virginia.

ATTACHMENT A

**BELCASTLE COURT CLUSTER ASSOCIATION
PROPERTY OWNERS' ASSOCIATION ACT COMPLAINT FORM**

Pursuant to Chapter 29 of Title 55 of the Code of Virginia, the Board of Directors of the Belcastle Court Cluster Association has established this complaint form for use by persons who wish to file written complaints with the Association regarding the action, inaction or decision by the governing board inconsistent with applicable laws and regulations. Legibly describe the complaint in the area provided below, as well as the requested action or resolution of the issues described in the complaint. Please include references to the specific facts and circumstances at issue and the provisions of Virginia laws and regulations that support the complaint. If there is insufficient space, please attach a separate sheet of paper to this complaint form. Also, attach all supporting documents, correspondence and other materials related to the complaint.

Sign, date and print your name and address below and submit this completed form to the Association at the address listed below. If the complaint is not submitted to the official Belcastle Court Cluster Association address, it shall not be considered accepted by the Association Board and shall not be acted upon until the complainant submits the form and all relevant information in accordance with the Association's Complaint Procedure.

Belcastle Court Cluster Association
P.O. Box 3402
Reston, VA 20194
Telephone: 703-758-0771

Printed Name _____

Signature _____ Date _____

Mailing Address _____

Lot/Unit Address _____

Telephone Number _____ E-mail Address _____

If, after the Board's consideration and review of the complaint, the Board issues a final decision adverse to the complaint, you have the right to file a notice of final adverse decision with the Common Interest Community Board (CICB) in accordance with the regulations promulgated by the CICB. The notice shall be filed within 30 calendar days of the date of the final adverse decision, shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman (Ombudsman), shall include copies of any supporting documents, correspondence and other materials related to the decision, and shall be accompanied by a \$25 filing fee. The Ombudsman may be contacted at:

Office of the Common Interest Community Ombudsman
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, VA 23233
804/367-2941
CICOmbudsman@dpor.virginia.gov

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ATTACHMENT B

CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. _____

**Re: Belcastle Court Cluster Association
Property Owners' Association Act Complaint Procedure**

Dear _____:

You are hereby notified that a meeting/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 Association's Governing Documents to consider a written complaint filed by a member of the Association or citizen concerning a matter regarding the action, inaction, or decision by the Association Board that is inconsistent with Title 55 of the Code of Virginia and the Property Owners' Association Act:

You may be present at the meeting/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 (if any). You may request the attendance of witnesses.

If you have any questions or wish to communicate with the Board of Directors regarding this matter, please submit written notice via registered/certified mail to the Association's official address. No verbal or other informal contact with an individual Board of Director or the Board as whole shall be considered valid in processing your complaint within the Association's Complaint Procedure as provided in the Belcastle Court Cluster Association Disclosure Packet.

Belcastle Court Cluster Association
P.O. Box 3402
Reston, VA 20194

Sincerely,

President, Board of Directors
Belcastle Court Cluster Association

Association Registration Number: _____

Copy: Association Complaint Files
Legal (if applicable)
Lot owner file (Tenant) / Complaint(s) file

ATTACHMENT C

**RECORD OF ASSOCIATION INVESTIGATIVE MEETING/HEARING and DECISION
CODE OF VIRGINIA AND THE PROPERTY OWNERS' ASSOCIATION ACT COMPLAINT**

Meeting/Hearing Date, Time, Location: _____

Lot Owner(s): _____

Lot # / Address: _____

Address if other than lot: _____

Complaint Rationale and Applicable Legal References:

Association Governing Documents Relevant to the Complaint:

Persons in Attendance for the Complainant (Please print Name and Title [if any]):

Decision of Board of Directors and Reasoning:

Incurred Costs Imposed by Association (date commencing): _____

Other Sanctions Imposed: _____

Comments: _____

ATTEST:

President

Date

Secretary

Date

Association Registration Number: _____

Copy: Association Complaint Files
Legal (if applicable)
Lot owner file (Tenant) / Complaint(s) file

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ADDENDUM
BELCASTLE COURT CLUSTER ASSOCIATION
RESOLUTION ACTION RECORD

Resolution Type: Policy No. R9-2012-09-10

Effective Date: July 1, 2012

Pertaining to: Complaint Procedure

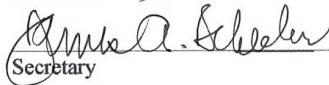
Duly adopted at a meeting of the Board of Directors held September 10, 2012.

ATTEST:



President

9/10/12
Date



Secretary

9/10/2012
Date

FILE:

Book of Minutes: (Year)

Filed

Book of Resolutions: (Year)

Filed