

**WAKEFIELD CHAPEL WOODS HOMES ASSOCIATION**

**RESOLUTION NO. 96-1**

**Establishing Due Process Procedures**

**WHEREAS, the Virginia Property Owner's Association Act requires that all Lot Owners and those entitled to occupy a Lot comply with all provisions of the Declaration and rules adopted by the Board of Directors, and provides for suspension of privileges and imposition of charges and other remedies for violations; and**

**WHEREAS, Article VIII, Section 1(b) of the Bylaws assigns the Board of Directors (the "Board") all of the powers and duties necessary for the administration of the affairs of Wakefield Chapel Woods Homes Association (the "Association") and the Board may do all such acts and things as are not by the Declaration, Articles of Incorporation or Bylaws of the Association, directed to be exercised and done by the membership; and**

**WHEREAS, Article VIII, Section 1(a) of the Bylaws empowers the Board of Directors to adopt and publish rules and regulations governing the use of the Association's Common Area and facilities and the personal conduct of members and their guests thereon; and**

**WHEREAS, for the benefit and protection of the Association and of the individual Lot Owners, the Board deems it necessary and desirable to establish and operate by a procedure to assure due process in cases where there is a question of compliance by a Lot Owner with provisions of the Declaration, Bylaws, Articles of Incorporation, and rules and regulations promulgated in accordance thereto (the "governing documents"), thereby attempting to minimize the necessity of seeking action in or through a court of law; and**

**WHEREAS, it is the intent of the Board of Directors to establish procedures for the Board where it must take action relative to questions of compliance by an individual with the provisions of the governing documents, or where the Board is called upon to issue an interpretive ruling;**

**NOW, THEREFORE, BE IT RESOLVED THAT this Resolution shall be adopted to facilitate and implement the following procedures:**

## **L. THE HEARING PROCESS**

### **Section 1. Actions Prior to Initiation of Formal Hearing Process**

Any Lot Owner, officer, or agent of the Association has the authority to request that a Lot Owner cease or correct any act or omission which appears to be in violation of the aforementioned documents. Such informal requests should be made before the formal process is initiated.

With respect to the use of any facility where a violation of rules for the use of such facility might endanger life, limb, property, or equity of the Association, or affect the clean and sanitary conditions of the facility, any agent of the Association may, without further notice, suspend for a period of not greater than seventy-two (72) hours the right of any Lot Owner to use such facility, if verbal request to cease or correct the violation has not been heeded.

The Association may make initial attempts to secure compliance through correspondence to the Lot Owner which states the time, date, place and nature of the violation and which sets forth the time period in which the violation must be corrected. Copies of such correspondence shall be maintained in the Association's files, and a copy may be sent to counsel for the Association.

In the case of disputes between Lot Owners regarding activities within the lots, the Association will generally not become involved in the dispute or act on a complaint unless there are two or more complaining parties.

### **Section 2. Written Complaint.**

**A. Substance of Complaint.** If the actions described in Section 1 prove unsuccessful, a formal hearing process shall be initiated upon the filing of a written Complaint by any Lot Owner, officer, director, or agent of the Association with the Board of Directors. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. The Complaint should specify the specific provision of the governing documents or the Resolutions which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts. The Complaint must be as specific as possible as to time(s), date(s), place(s), and person(s) involved.

**B. Preliminary Investigation.** Upon receipt and consideration of the written Complaint, the Board may request a covenants committee or managing agent, if any, to make a preliminary investigation as to the validity of the complaint and promptly report the findings to the Board. If conditions have been corrected since the Complaint was filed, or if the Complaint is, for any other reason, no longer valid, the Board shall determine the appropriate disposition of the matter and respond in writing to the complainant. If preliminary investigation indicates

the need for further action, then the Board may proceed as appropriate with the steps set forth herein below.

### **Section 3. Service of Complaint.**

Upon the filing of a Complaint and completion of a preliminary investigation that indicates further action is necessary, the Board shall serve a copy of the Complaint on the respondent by either of the following means:

- 1) personal delivery with signed receipt; or
- (2) registered or certified US mail, return receipt requested, and addressed to respondent at the address appearing on the books of the Association.

Service by mailing shall be deemed effective two (2) days after such mailing in a regular depository of the United States mail. No order adversely affecting the rights of the respondent may be made in any case, unless the respondent shall have been served as provided herein, although the failure or refusal of the respondent to claim the certified mail notice hereunder shall not prevent the Board of Directors from acting on any matter.

### **Section 4. Notice of Hearing.**

Along with service of the Complaint, the Board shall serve a Notice of Hearing, as provided herein, on all parties at least fourteen (14) days prior to the hearing. The Notice of Hearing sent to the respondent 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 at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_, at the hour of \_\_\_\_\_, upon the charges made in the complaint served upon you. 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 full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors of the Association."

If any parties can promptly show good cause as to why they cannot attend the hearing on the set date and indicate times and dates on which they would be available, the Board may reset the time and date of hearing and promptly deliver notice of the new hearing date. The mailing of a notice of a new hearing date and time shall be sufficient to reschedule a hearing for this purpose.

### **Section 5. Cease and Desist Request.**

The Board may, at its own discretion, issue a cease and desist request along with the Complaint and Notice of Hearing; such cease and desist request shall be substantially in the following form:

**"The Board has received the attached Complaint. By authority of Article I, Section 5 of the Resolution 96-1 Establishing Due Process Procedures, the Board hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the Board, Board of Directors or court of law permits.**

**Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation."**

**Section 6. Amended or Supplemental Complaint.**

At any time prior to the hearing date and in addition to as otherwise provided in Section 5 hereof, the Board may file or permit the filing of an Amended or Supplemental Complaint. All parties shall be notified thereof in the manner herein provided. If the Amended or Supplemental Complaint presents new charges, the Board shall afford the respondent a reasonable opportunity to prepare proper defense thereto.

**Section 7. Constraints on the Board.**

It shall be incumbent upon each member of the Board to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the Board and shall become inactive during the proceedings and have it so recorded in the minutes. Any member of the Board has the right to challenge any other member who is unable to function in a disinterested and objective manner.

Prior to the hearing, the complainant and respondent may challenge any member of the Board for cause. In the event of such a challenge, the Board shall meet within ten (10) days, if possible, to determine the sufficiency of the challenge. If the Board sustains the challenge, the President shall, at the time, appoint another person to replace the challenged member of the Board for the purpose of this hearing. All decisions of the Board in this regard shall be final.

**Section 8. Conduct of the Hearing.**

**A. Hearing Officer.** The board shall select a person to serve as hearing officer and preside over the hearing. Such hearing officer need not be a Lot Owner or a member of the Board. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted.

**B. Rules of Evidence.** The Board may determine the manner in which the hearing will be conducted, so long as the rights set forth in this section 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.

C. Attendance. Neither the complainant nor respondent must be in attendance at the hearing but the Board shall be entitled to make inferences from the unexplained absence of any party. At the request of either complainant or respondent, the Board may agree to conduct the hearing in private session.

D. Procedural Rights. Each party shall have the right to do the following, but may waive any or all these rights:

- (1) make an opening statement;
- (2) introduce evidence, testimony and witnesses;
- (3) cross-examine opposing witnesses;
- (4) rebut evidence and testimony; and
- (5) make a closing statement.

Even if the complainant and/or the respondent does not testify in his/her own behalf, each may still be called and questioned.

E. Withdrawal by Board Members. Whenever the Board has commenced to hear a matter and a member of the Board withdraws prior to a final determination, the remaining members shall continue to hear the case and, if he so elects, the President may name a replacement for the withdrawing member.

F. Written Decision. The minutes of the meeting shall contain a written statement of the results of the hearing and the charge assessed. The decision of a majority of the participating members of the Board shall be required for a decision and a written decision will be issued to the parties as promptly as possible after the hearing. A summary of the decision, excluding names, may be published in the newsletter if one is in circulation at the time of the decision.

## **Section 9. Disciplinary Remedies.**

A. Disciplinary actions imposed by the Board of Directors may include suspending or conditioning the respondent's and his family's or tenant's right to use facilities or non-essential services offered by the Association for nonpayment of assessments to the extent that access to the Lot through the common area is not precluded. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction; but in the case of a continuing infraction (including non-payment of any assessment after the same becomes delinquent), the suspension may be imposed for so long as the violation continues.

B. The Board of Directors may also assess charges against Lot Owners pursuant to the Property Owner's Association Act. The charge shall not exceed Ten Dollars (\$10.00) per day for a continuing offense or Fifty Dollars (\$50.00) for a single offense. Any charges made pursuant to this Section shall be collectible as an assessment.

C. Such other sanctions or corrective action may be imposed or required in the discretion of the Board of Directors, subject to limitations of law and as contained in the governing documents.

**Section 10. Delegation to a Committee.**

The Board may delegate the hearing and decision responsibility hereunder to a Committee (hereinafter, "Covenants Committee") which shall fulfill its hearing responsibility in accordance with all of the provisions stated in this Resolution and all references to the Board of Directors. This Resolution and all references to the Board of Directors shall be construed to mean the Covenants Committee in Part I of this Resolution. Decisions of the Covenants Committee may be appealed to the Board of Directors in accordance with the following section.

**II. REQUESTS FOR RECONSIDERATION AND APPEALS**

**Section 1. Rights of Lot Owners.**

The complainant or respondent, or applicant, as appropriate, may request a rehearing of the decision, provided that all subordinate avenues of resolution, as provided herein, have been pursued. The Board may make a preliminary review of the circumstances and materials relative to the case and make a determination as to whether it will rehear the case. The Board may, on the basis of the preliminary review, elect not to rehear the case, in which case the Board will so inform the appealing party in writing and the initial decision stands.

**Section 2. Appeal Petitions.**

Appeal petitions must be legibly written and submitted to the Board within fourteen (14) days of the issuance of the decision in substantially the following form:

"(I)(We), \_\_\_\_\_ hereby petition the Board of Directors to rehear the decision of (Application) (Case), No. \_\_\_\_\_. (I)(We) further understand that within the Association, the decision of the Board of Directors on rehearing this issue is final."

**Section 3. Notice of Hearing.**

Notice of Hearing shall be as in Article I, Section 4 of this Resolution.

**Section 4. Procedures.**

All rights and procedures established in Article I of this Resolution shall apply to appeals.

**Section 5. Effect of Decision.**

The Board may uphold the initial decision in its entirety, modify or reverse such decision.

**Section 6. Further Action.**

Any individual member must exhaust all available remedies of the Association prescribed by this Resolution before that Lot Owner may resort to a court of law for relief with respect to any alleged violation by another member of any provision of the governing documents. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board.

**III. CONSTRUCTION**

This Resolution is intended to serve as a protection to Lot Owners to assure that their due process rights are afforded in any proceeding and to serve as a guideline for the Board as those bodies carry out their duties to enforce the governing documents.

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

"Due Process," as described 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 parties may be represented by counsel, witnesses may appear and be cross-examined and at which evidence may be introduced.
- C. An opportunity for rehearing shall be available. Basic principles of fairness shall be applied.

WAKEFIELD CHAPEL WOODS HOMES ASSOCIATION

By:

  
Fred Rodgers, President  
Board of Directors

**I hereby certify that the foregoing Resolution was duly adopted at a regular meeting of the Board of Directors of the Wakefield Chapel Woods Homes Association, This 18<sup>th</sup> day of June 1996.**

**This Resolution will become effective thirty (30) days from the date attested hereto.**

A handwritten signature in cursive script, appearing to read "Ron Shore".

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**Ron Shore, Secretary (Acting)  
Board of Directors**