

THE SIERRA CONDOMINIUM UNIT OWNERS ASSOCIATION

RESOLUTION NO. _____

DUE PROCESS PROCEDURE

WHEREAS, Section 3.1 of the Bylaws of The Sierra Condominium Unit Owners Association (“Association”) provides that the Board of Directors shall have all of the powers and duties necessary for the administration of affairs of the Association and may do all acts and things as are not required by the Virginia Condominium Act (“Act”) or the condominium instruments to be exercised and done by the Association;

WHEREAS, Section 3.1(f) of the Bylaws authorizes the Board of Directors to make and amend any rules and regulations;

WHEREAS, Section 3.1(i) of the Bylaws authorizes the Board of Directors to enforce the condominium instruments;

WHEREAS, Section 9.1(g) of the Bylaws authorizes the Board of Directors and the Covenants Committee to levy reasonable charges against Unit Owners for violations of the Act, the condominium instruments or the Association rules and regulations;

WHEREAS, Section 55-79.80:2 of the Act grants the Association the power, to the extent expressly provided in the condominium instruments or rules and regulations adopted pursuant thereto, to assess charges against unit owners for violations of the condominium instruments for which a unit owner or family members, tenants, guests or other invitees are responsible;

WHEREAS, Section 9.1(h) of the Bylaws authorizes the Board of Directors to suspend or revoke a Unit Owner’s recreational or other privileges for a reasonable period if the assessment payment is in default more than thirty days or for violation of the Condominium instruments or Association rules and regulations;

WHEREAS, Section 55-79.80:2 B of the Act further provides the Association with the power to suspend an owner’s right to use facilities or services, including utility services, for nonpayment of assessments and provides that certain procedures must be followed before any charges may be assessed or suspension initiated;

WHEREAS, for the benefit and protection of the Association, and unit owners, the Board deems it necessary and desirable to establish a procedure to assure due process in cases where there is a question of compliance by unit owners and occupants of unit in the condominium with provisions of the Act or the condominium instruments (including the Declaration, Bylaws, Rules and Regulations and the Book of Resolutions), 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 to establish procedures where action must be taken relative to questions of compliance by an individual with the provisions of the Act or the condominium instruments.

NOW, THEREFORE, BE IT RESOLVED THAT the following Due Process Procedures are adopted.

ARTICLE 1
VIOLATIONS OF THE
CONDOMINIUM INSTRUMENTS

Section 1.1 Actions prior to Initiation of Formal Due Process Procedure.

(a) Any unit owner, managing agent or director of the Association has the authority to request that a unit owner or occupant cease or correct any act or omission which appears to be in violation of the Act or the condominium instruments and rules and regulations. Such informal requests should be made before the formal process is initiated.

(b) The Board of Directors may suspend the right of a unit owner or occupant to use any facility for a maximum period of seventy-two hours if such unit owner's or occupant's use of the facility is in violation of the condominium instruments or rules and regulations and may endanger life, limb or property or equity of the Association and a verbal request to cease or correct the violation has not been heeded.

(c) In the case of disputes between unit owners or occupants regarding activities within units, the Association will generally not become involved in the dispute or act on a complaint, unless two or more parties have complained in writing.

Section 1.2 Written Complaint.

(a) If the actions described in Section 1.1 prove unsuccessful, the Due Process Procedure shall be initiated upon the filing of a written complaint by any unit owner, occupant, officer or director of the Association (hereafter referred to as "Complainant") with the managing agent, the Board of Directors or such other person as designated by the Board of Directors.

(b) 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 unit owner or tenant (hereafter referred to as "Respondent") is charged, so that the Respondent will be able to prepare the Respondent's defense.

(c) The Complaint shall specify the specific provisions of the Act, the condominium instruments or Rules and Regulations, as revised from time to time, which the Respondent is alleged to have violated and shall contain supporting facts.

(d) The Complaint must be as specific as possible as to times, dates, places, acts or omissions and persons involved.

Section 1.3 Notice of Violation.

(a) Upon receipt of a Complaint, a designee of the Board of Directors will inspect the Unit to determine whether the complaint accurately identifies a violation of the condominium instruments.

(b) If the designated inspector determines the condition is a violation of the condominium instruments, the Covenants Committee shall notify the unit owner or the tenant, if the unit is leased, that a violation has been noted. The Notice shall include the time, date, place and nature of the violation and advise that the violation must be corrected within the timeframe established in the Notice of Violation. Copies of this Notice of Violation shall be in the form attached as Exhibit 1 and shall be maintained in the Association files.

(c) If the violation has been corrected or the Complaint is invalid for any reason, the Covenants Committee shall respond in writing to the Complainant.

(d) If the violation is not remedied to the satisfaction of the Covenants Committee as specified in the Notice of Violation, the Covenants Committee will schedule the matter for a hearing at the next meeting of the Covenants Committee scheduled in fourteen days or more.

Section 1.4 Notice of Hearing.

(a) Upon referral of a Complaint to the Covenants Committee, the Covenants Committee shall serve a Notice of Hearing on all parties at least fourteen days prior to the scheduled date for a hearing by either of the following means: (1) personal service; or (2) registered or certified mail, return receipt requested, and addressed to the parties at the address appearing on the books of the Association. Service by mailing shall be deemed effective three days after such mailing in a regular depository of the United States mail. The Notice of Hearing sent to the parties shall be substantially in the form attached as Exhibit 2, but may include other information.

(b) If no response is received from the unit owner or occupant by the hearing confirmation date, or the member confirms attendance but fails to attend the hearing without providing a reasonable and satisfactory explanation, the unit owner or occupant shall be deemed to have waived the right to such hearing, and the monetary charges or facilities suspension may be assessed as if the hearing has been completed with a judgment unfavorable to the unit owner or occupant.

Section 1.5 Service of Complaint.

The Covenants Committee shall serve a copy of the written Complaint, if any, on the Respondent along with the Notice of Hearing.

Section 1.6 Cease and Desist Request.

The Covenants Committee or the Board of Directors 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 form attached as Exhibit 3 to this Resolution.

Section 1.7 Referral for Legal Action.

The Board of Directors may determine that the violation is such that legal action should be initiated concurrent with or instead of the due process proceeding.

Section 1.8 Amended and Supplemental Complaints.

At any time prior to the hearing date, the Covenants Committee may file or permit the filing of an amended and supplemental Complaint. All parties shall be notified thereof in the manner provided herein. If the amended and supplemental Complaint presents new charges, the Covenants Committee shall afford the Respondent a reasonable opportunity to prepare a proper defense.

Section 1.9 Statements.

(a) Written statements may be introduced by a party if a copy of the statement is mailed or delivered to the opposing party.

(b) The statement, if introduced in evidence, shall be given the same effect as if the author had testified orally.

Section 1.10 Hearing.

(a) The Chair of the Covenants Committee shall serve as hearing officer and preside over the hearing, unless otherwise determined by the Covenants Committee.

(b) At the beginning of the hearing, the hearing officer shall explain the rules and procedure by which the hearing is to be conducted. The Covenants Committee may determine the manner in which the hearing will be conducted, so long as the rights set forth in this Resolution 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 of 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 the admission of such evidence improper. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding.

(c) Neither the Complainant nor the Respondent need be in attendance at the hearing. At the request of either the Complainant or the Respondent, the Covenants Committee may agree to conduct the hearing in private session.

(d) Each party shall have the right to do the following, but may waive any or all of 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.

The Complainant and the Respondent may be called and questioned regardless of whether they testify in their own behalf.

Section 1.11 Decisions.

To be effective, a decision of the Covenants Committee shall be by a majority vote. The decision shall be issued within forty-five days of the conclusion of the hearing. The decision shall be written and accompanied by both the majority and minority opinions, if any. Copies of the decision shall be distributed to the parties.

Section 1.12 Suspension of Privileges.

Disciplinary action imposed by the Covenants Committee may include suspending or conditioning the Respondent's right to use facilities or services, including utility services, in accordance with Section 9.1(h) of the Bylaws and Section 55-79.80:2 B of the Act. For any infraction, such suspension shall be for a period of not more than sixty days, unless such suspension relates to the non-payment of assessments.

**ARTICLE 2
TENANTS**

Section 2.1 Notice to Unit Owner.

If the person charged with a violation of the Act, the condominium instruments or Rules and Regulations is a tenant, the Owner of the unit which the tenant occupies shall be considered a Respondent and as a party to the action shall receive certified copies of all correspondence or other documents sent to the tenant pursuant to this Resolution.

Section 2.2 Unit Owner Rights.

The unit owner shall have all rights provided in Section 1.

**ARTICLE 3
SANCTIONS**

Section 3.1 Disciplinary Options.

Disciplinary action imposed by the Covenants Committee may include, but is not limited to, the following:

- (a) Assessing monetary charges against the Respondent in accordance with Section 55-79.80:2 B of the Act;
 - (b) Assessing expenses against the Respondent;
 - (c) Issuing a Cease and Desist Request in accordance with Section 1.6 of this Resolution;
- or
- (d) Suspend the Respondent's use of facilities or services, including utility services, pursuant to Section 55-79.80:2 B of the Act and Section 1.11 of this Resolution.

**ARTICLE 4
APPEALS**

Section 4.1 Rights of Owners

Any owner may request reconsideration of a decision rendered by the Covenants Committee pursuant to this Resolution within thirty days from the decision, provided that all parties involved comply with the decision rendered until such time, if any, as the Board of Directors reverses or amends such decision.

Section 4.2 Appeals Petitions

Appeals petitions must be legibly written and be submitted to the Board of Directors at the Management Office in substantially the following form:

“(I) (We), _____, hereby petition the Board of Directors to hear an appeal of the decision of the Covenants Committee/Board of Directors.

“ (I) (We) further understand that within the Association the decision of the Board of Directors on this issue is final, and that if further action is initiated by the Association, another owner or (myself) (ourselves), it will be through legal proceedings in a court of law.

Signed _____
Date _____”

Section 4.3 Notice of Hearing

Notice of Hearing shall be given by the Board of Directors by certified mail or personal delivery. If delivery cannot be made within 10 calendar days, then Notice shall be sent by first class mail.

Section 4.4 Procedures

The Board of Directors shall review the written record and shall permit oral arguments at the appeal hearing. However, only under extraordinary circumstances will the Board of Directors permit the introduction of new evidence at the appeal hearing.

Section 4.5 Effect of Decision

The Board of Directors may uphold the initial decision of the Covenants Committee or the Board of Directors in its entirety, or modify or reverse the decision.

Section 4.6 Further Action

Any individual member must exhaust all available remedies of the Association prescribed by this resolution before that owner may resort to a court of law for relief with respect to any alleged violation by another member of any provision of the condominium instruments or the Board Resolutions. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any member where the complaint alleges nonpayment of assessments.

ARTICLE 5
CONSTRUCTION

Section 5.1 Proceedings.

This Resolution is intended to assure that due process is provided to unit owners and tenants in proceedings before the Board of Directors to enforce the Act and the condominium instruments, and to serve as a guideline for such proceedings.

Section 5.2 Implementation.

The Board of Directors may determine the specific manner in which the provisions of this Resolution are to be implemented, provided that due process is protected. The Covenants Committee serves at the appointment of the Board of Directors, and the Board of Directors may substitute itself for the Covenants Committee at any time.

Section 5.3 Severability.

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

Section 5.4 Due Process Defined.

“Due Process”, as used in this resolution, refers to the following basic rights:

- (a) The charges shall be provided to the owner and also to the tenant, if applicable;
- (b) A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced;
- (c) An opportunity to appeal shall be available; and
- (d) Basic principles of fairness shall be applied.

THE SIERRA CONDOMINIUM UNIT OWNERS ASSOCIATION

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
and REGULAR MAIL**

Owner/Occupant
The Sierra Condominium Unit Owners Association

Re: The Sierra Condominium Unit Owners Association --
Notice of Violation

Dear Owner/Occupant:

This is to serve as notification that according to information provided to The Sierra Condominium Unit Owners Association, a condition in your unit has been noted as a violation of

The specific condition has been described as follows: _____

Before proceeding forward under the Association's Due Process Procedure, we encourage you to address this condition in your unit. Please take corrective action within _____ days of the date of this letter. Please advise our office of the action you have taken to address this matter. If you fail to take corrective action, the matter will be scheduled for a hearing before the Board of Directors.

Thank you for your prompt attention to this matter and your cooperation. If you have questions, please contact Elizabeth Ann Wolfe, Community Manager, at 703-848-4333.

Sincerely,

Elizabeth Ann Wolfe,
Community Manager

THE SIERRA CONDOMINIUM UNIT OWNERS ASSOCIATION OF

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
and REGULAR MAIL**

Owner/Occupant
The Sierra Condominium Unit Owners Association

Re: The Sierra Condominium Unit Owners Association --
Notice of Hearing Before the Covenants Committee

Dear Owner/Occupant:

This is to serve as notification that according to information provided to The Sierra Condominium Unit Owners Association, you are in violation of

Notice of this violation was previously provided to you by letter dated _____, 20___. A copy of this letter is enclosed for your reference. The specific allegations are also set forth in the enclosed Complaint.

You are hereby notified that a hearing will be held before Covenants Committee on _____, 20__, at ___ a.m./p.m. upon the charges set forth in the Complaint. You may be present at the hearing, may, but need not, be represented by legal counsel, and may present any relevant information including witnesses concerning the Complaint. You will be given a full opportunity to question any witnesses that you wish to present or which are presented by the Association.

Please confirm your attendance by calling Elizabeth Ann Wolfe at 703-848-4333 or if you have a reason why you cannot attend the hearing on the scheduled date, so that an alternative date may be scheduled. You will be entitled to only one rescheduling.

Please keep in mind that if no response is received from you, or if you confirm attendance but fail to attend without providing a satisfactory explanation, you will be deemed to have waived the right to the hearing.

If you are found in violation of the allegations set forth in the Complaint, the Covenants Committee has the authority to assess monetary charges in the amount of \$50.00 for a single offense and \$10.00 per day for no longer than 90 days for an offense of a continuing nature. The Covenants Committee can also assess expenses incurred in resolving this matter, issue a cease and desist order and suspend your ability to vote on Association matters and your use of Association facilities and services. The Association may also pursue legal action if the Board of Directors determines that to be appropriate.

If you have questions, please contact Elizabeth Ann Wolfe, Community Manager, at 703-848-4333.

Sincerely,

President
Board of Directors

Enclosure

THE SIERRA CONDOMINIUM UNIT OWNERS ASSOCIATION

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
and REGULAR MAIL**

Owner/Occupant
The Sierra Condominium Unit Owners Association

Re: The Sierra Condominium Unit Owners Association --
Cease and Desist Order

Dear Owner/Occupant:

The Board of Directors of The Sierra Condominium Unit Owners Association hereby orders you to CEASE AND DESIST the following acts or actions in violation of the condominium instruments:

This order will remain in effect until it is lifted by the Board of Directors or a Court of Law. Your immediate attention to these matters is requested.

Sincerely,

Elizabeth Ann Wolf,
Community Manager