

CHURCHILL SQUARE ASSOCIATION, INC.

REGULATORY RESOLUTION NO. 01-2

DUE PROCESS POLICY AND PROCEDURES

WHEREAS, Article X, Section 1 and Article IX of the Declaration of Covenants, Conditions and Restrictions for Churchill Square ("Declaration") assign the Board of Directors, on behalf of the Association, the power and authority to enforce any restriction established in the Declaration;

WHEREAS, Article VIII, Section 1(a) of the By-Laws grants the Board the power to adopt and publish rules and regulations governing the use of the property;

WHEREAS, Section 55-513 B of the Virginia Property Owners' Association Act ("Act") grants the Association the power, to the extent provided in the Declaration or rules and regulations adopted pursuant thereto, to assess charges against owners for violations of the Association's Governing Documents (including the Declaration, Bylaws, Articles of Incorporation and Rules and Regulations), for which a member or his family members, tenants, guests or other invitees are responsible;

WHEREAS, Section 55-513 B of the Act and Article IV, Section 1(d) of the Declaration further provides the Association with the power to suspend an owner's right to use the services and facilities for violations of the Association's Governing Documents and provides that certain procedures must be followed before such charges may be assessed or suspension initiated;

WHEREAS, for the benefit and protection of the Association, and Members, the Board deems it necessary and desirable and hereby establishes a procedure to encourage consistency of enforcement and due process in cases where there is a question of compliance by a Member with provisions of the Act or the Association's Governing Documents thereby attempting to minimize the necessity of seeking action in or through a court of law and by establishing the following procedures;

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

ARTICLE 1
VIOLATIONS OF THE
ASSOCIATION GOVERNING DOCUMENTS

Section 1.1 Actions prior to Initiation of Formal Due Process Procedure

(a) Any Member, Officer of the Association or the Property Manager has the authority to request that a Member cease or correct any act or omission which appears to be in violation of the Act or the Governing Documents. Such informal requests should be made before the formal process is initiated.

(b) In the case of disputes between Members regarding activities within lots, 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 may be initiated upon the filing of a written complaint by any Member, officer or director of the Association (hereafter referred to as "Complainant") with the Property Manager. The Property Manager may also initiate a Complaint.

(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 Owner or Tenant (hereafter referred to as "Respondent") is charged, so that the Respondent will be able to prepare a defense.

(c) The Complaint shall specify the specific provisions of the Act or the Governing Documents 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. If the problem involved a pet, the Complainant should identify the pet, if possible. Pictures, activity logs, affidavits and other supporting documentation may be submitted with the Complaint and are encouraged.

Section 1.3 Notice of Violation

(a) Upon receipt of a Complaint, the Property Manager will inspect the Lot to determine whether the Complaint accurately identifies a violation of the Governing Documents.

(b) If the Property Manager determines the condition is a violation of the Governing Documents, the Property Manager shall notify the Owner and the Tenant, if the lot is leased, that a violation has been noted on the Lot. The Notice shall include the time, date, place and nature of the violation and advise that the violation must be corrected within thirty days or such other time period as the Property Manager or Board may determine to be appropriate. Copies of this Notice of Violation shall be in a form similar to that 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 Property Manager shall respond in writing to the Complainant.

(d) If the violation is not remedied to the satisfaction of the Property Manager within the specified time period of the Notice of Violation the Property Manager will schedule the matter for a hearing at the next meeting of the Board of Directors scheduled in fourteen days or more.

Section 1.4 Notice of Hearing

(a) Upon referral of a Complaint to the Board of Directors, the Board of Directors shall send a Notice of Hearing to the Respondent at least fourteen days prior to the hearing by either of the following means or by such other time or means as may be required by the Act: (1) hand delivery; or (2) registered or certified mail, return receipt requested, and addressed to the Respondent at the address appearing on the books of the Association. Service by mailing shall be deemed effective five days after such mailing in a regular depository of the United States mail. The Notice of Hearing sent to the Respondent shall be substantially in the form attached as Exhibit 2, but may include other information. Copies may be sent to other concerned parties by regular mail, hand delivery or other electronic means.

(b) If no response is received from the Member by the hearing confirmation date, or the member confirms attendance but fails to attend the hearing without providing reasonable and satisfactory explanation, the Member shall be deemed to have waived the right to such hearing, and the monetary charges or facilities or services suspension may be assessed as determined appropriate by the Board of Directors.

(c) The Notice of Hearing may be combined with the Notice of Violation if of a serious nature or if previous notices of violation have been sent to the owner.

Section 1.5 Cease and Desist Request

The Board of Directors may, at its own discretion, include a Cease and Desist Request in the Notice of Violation and/or Notice of Hearing.

Section 1.6 Amended and Supplemental Complaints

At any time prior to the hearing date, the Board of Directors may file or permit the filing of an amended and supplemental Complaint. The Respondent shall be notified thereof. If the amended and supplemental Complaint presents new charges, the Board of Directors shall afford the Respondent at least 2 days from receipt of the notice to prepare a proper defense.

Section 1.7 Statements

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

(b) The statement, if presented, may be given the same effect as if the author had testified orally.

Section 1.8 Hearing

(a) The President shall serve as hearing officer and preside over the hearing, unless otherwise determined by the Board of Directors.

(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 Board of Directors 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 Board of Directors may agree to conduct the hearing in private session.

(d) Each party shall have the right to be represented by legal counsel and 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.

(e) The hearing shall be conducted in private executive session unless the Owner requests that the hearing be open to owners and residents and further provided that the chairman of the hearing body 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 held, the Board, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

Section 1.9 Decisions

To be effective, a decision of the Board of Directors shall be by a majority vote of a quorum of the Board Members present. A written decision/hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested within three days of the conclusion of the hearing to the Member at the address of record.

Section 1.10 Suspension of Privileges

(a) Enforcement action imposed by the Board of Directors may include assessing rules violation charges against the Respondent or suspending or conditioning the Respondent's right to use the services and facilities in accordance with Section 55-513 B of the Act. For any non-continuing infraction, such suspension shall be for a period of not more than one hundred eighty days. For a continuing infraction, suspension may be imposed for so long as the violation continues.

(b) Voting rights may be suspended immediately upon non-payment of any assessment and no hearing shall be required. After an opportunity for a hearing before the Board and when an account becomes more than 60 days delinquent, use of services and facilities may be suspended for the duration of the delinquency, including parking privileges. A Complaint need not be filed.

**ARTICLE 2
TENANTS**

Section 2.1 Notice to Owner

If the person charged with a violation of the Act or the Association's Governing Documents is a tenant, the Owner of the lot in which the tenant resides 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 Owner Rights

The Owner shall have all rights provided in Section 1.

**ARTICLE 3
SANCTIONS**

Section 3.1 Enforcement Options

Enforcement action imposed by the Board of Directors is cumulative and selection of one remedy does not preclude the use of other remedies. Enforcement action may include, but is not limited to, the following:

(a) Assessing monetary charges against the Respondent as follows or in such larger amounts as may be permitted by Section 55-513 of the Act:

1. Charges for violations of a continuing nature are \$10.00 per day for each day that the violation continues up to 90 days. Repeated violations may be treated as a separate one-time violation.
2. Charges for one-time violations shall not exceed \$50.00.

3. Charges 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.

(b) Assessing expenses against the Respondent.

(c) Issuing a Cease and Desist Request in accordance with Section 1.5 of this Resolution.

(d) Suspend the Respondent's use of the services and/or facilities pursuant to Section 1.10 of this Resolution, including parking privileges.

(e) The following action may be taken at any time and shall not require the filing of a Complaint or a hearing:

1. Injunctive action in the Circuit Court.
2. An action for damages.
3. Referral to appropriate County, State or Federal authorities.
4. Repair work on the Lot in accordance with Article VIII of the Declaration.

ARTICLE 4 **CONSTRUCTION**

Section 4.1 Proceedings

This Resolution is intended to assure that due process is provided to Members and tenants in proceedings before the Board of Directors to enforce the Act and the Association's Governing Documents, and to serve as a guidelines for such proceedings.

Section 4.2 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.

Section 4.3 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 4.4 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.