

WEXFORD CONSERVANCY
REGULATORY RESOLUTION NO. 2009-01

RESOLUTION ON DUE PROCESS PROCEDURES

WHEREAS, Wexford Conservancy ("The Conservancy") came into existence as a property owners' association organized and operating pursuant to the Virginia Property Owners' Association Act, § 55-508, *et seq.*, Code of Virginia, (1950, as amended) ("Act") by the filing of the Wexford Declaration of Covenants, Conditions and Restrictions for the Wexford development located in Prince William County, Virginia, which Declaration (and Supplemental Declarations) are of record in the land records of Prince William County, and the original Declaration is recorded at Book 1867, Page 1363, *et seq.*; and,

WHEREAS, Wexford Conservancy was incorporated by Articles of Incorporation filed with the State Corporation Commission of Virginia at some time during 1990; and,

WHEREAS, the specific purposes for which the Conservancy was formed, as set forth in Article IV of the Articles of Incorporation, "are to provide for the maintenance, preservation and architectural control of the Lots and Common Areas within Wexford; and,

WHEREAS, Section 55-515 of the Act and the Declaration of Covenants, Conditions and Restrictions (hereinafter "Declaration") charge all Lot owners and their tenants, guests and invitees with compliance with the Declaration and all provisions of the Act; and,

WHEREAS, Section 55-513 of the Act confers upon the Board of Directors the power to establish, adopt and enforce rules and regulations with respect to the use of the common areas and with respect to such other areas of responsibility assigned to the Conservancy; and,

WHEREAS, Section 55-513B of the Act authorizes the Conservancy, through its Board of Trustees and to the extent expressly so provided in the Conservancy's Declaration or its rules and regulations, to assess charges against lot owners and suspend use rights or services for violations thereof, for which the lot owner or his/her family members, tenants, guests or other invitees are responsible; and,

WHEREAS, Article III, Section 3(c)(7) (*Board of Trustees - Powers and Duties - Enforcement of Governing Documents*) of the Declaration grants the Board of Trustees the power, and sets forth as a duty, the Board's enforcement of the Articles of Incorporation, Declaration, Bylaws and Resolutions of the Conservancy; and,

WHEREAS, Article III, Section 3(c)(2) (*Board of Trustees - Powers and Duties - Rule Making*) of the Declaration grants the Board of Trustees the power to establish rules and

regulations “for the use of the property as provided in Articles IV and VI...;” and,

WHEREAS, Section 55-513B of the Act further provides that certain procedures must be followed before such charges or suspensions may be assessed; and,

WHEREAS, it is the intent of the Board of Trustees to enforce the Declaration and the Conservancy’s duly approved rules and regulations for the benefit and protection of the Conservancy’s lot owners and residents by establishing procedures which ensure due process and consistency of enforcement, and it is further the intent of the Board of Trustees that this Resolution be deemed to set forth rules and regulations of the Conservancy;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Trustees, by the Act, the Declaration and this Resolution, are hereby empowered to suspend rights of use or to services, and to assess charges pursuant to Section 55-513B of the Act, and it is further resolved that the Board of Trustees shall assess such charges for any violation of the Declaration, Bylaws or rules/regulations only after the following procedures have been followed:

I. Complaint.

A. Any lot owner, tenant, managing agent, employee or Board member whom requests that the Board take action to enforce the Declaration and/or the Conservancy’s rules shall submit their complaint in writing to the Management Agent.

B. The Complaint will be reviewed by Management or the Board of Trustees for a determination as to whether it appears that a rule or provision of the Declaration, Bylaws or rules/regulations allegedly has been violated.

C. Management or the Board of Trustees shall then take appropriate action, such as issuing a notice of violation, referring the matter to County authorities or the Association’s legal counsel.

II. Demand.

A. A first notice of violation shall be issued by “hang tag” in writing and/or delivered by regular mail to the owner at his/her address listed in the Association’s records, and to the property address, if the owner’s listed address is different from the property address.

B. The first notice of violation shall generally advise the owner of the nature of the offense, cite the specific provision within the Association’s governing documents that have allegedly been violated, specify the remedy required and state the number of days within which the corrective action must be completed; usually not less than ten (10) days after the date of the demand letter by which the alleged violation must be remedied. However, when the violation may constitute a health, safety or fire hazard, demand may be made to remedy the violation immediately. The first notice of violation shall also advise the member of the following: a) the

Board's authority to impose monetary charges for offenses of the Association's governing documents, and b) the owner's right to request a hearing before the Board of Trustees to contest the violation. The notice of violation shall state that if the owner desires a hearing before the Board, he/she must affirmatively request such a hearing in writing within fourteen (14) days of the date of the notice of violation. The letter shall also state that if no hearing is requested, the owner shall be deemed to have waived the opportunity for a hearing and violation charges or suspensions may be assessed without further process.

C. If the violation is not remedied by the date specified on the notice of violation and if the owner has not requested a hearing to contest the violation, the Board of Trustees may vote on an appropriate disposition (charges, suspension(s) or both) in executive session of the next regularly scheduled Board meeting and the owner shall be notified by certified mail, return receipt requested within seven (7) days thereafter of the Board's decision.

III. Notice of Hearing.

A. If the owner requests a hearing in writing by or before the deadline, or the Board determines a hearing is necessary, the Board of Trustees shall set the time, date and place of the hearing at its discretion. Written notice of the time, date and place of the hearing shall be delivered to the owner by hand or by certified mail, return receipt requested and first class mail at least fourteen (14) days prior to the hearing or within such other time as may be required by the Act, to the lot owner at the address of record with the Conservancy. The notice of violation letter referenced in Section II may be combined with the notice of hearing.

B. The notice of hearing 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 (at the lot owner's expense) before the Board.
- 3) The alleged violation, citing provisions of the Declaration or the Conservancy's rules which allegedly have been violated.
- 4) That charges for violation of the Declaration, Bylaws, or rules/regulations may include a charge of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature for a period not to exceed ninety (90) days or such greater amounts as may be authorized by the Virginia Property Owners' Association Act.
- 5) That the alleged violation may result in the suspension of services, facilities use or voting rights.

IV. Hearing.

A. The hearing shall be scheduled at a reasonable and convenient time and place within the Board of Trustees' discretion.

B. The Board, within its discretion, may grant a continuance. If the lot owner for which the hearing is scheduled requests a continuance to a different time or date, no further notice shall be required.

C. The hearing shall not be conducted according to technical rules of evidence or procedure applied in a court of law. The hearing shall provide the lot owner with an informal opportunity to be heard and to be represented by counsel (if the owner so elects and at the owner's expense), within reasonable time limits imposed by the Board of Trustees.

D. The hearing shall be conducted in executive session, unless the lot owner who requested the hearing specifically requests that it be conducted in open session. If the hearing is conducted in open session, the Board President 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.

E. After proper notice has been given, if the lot owner fails to appear at the hearing or if no hearing is requested, the hearing or meeting may continue as scheduled and the Board may assess charges from the final compliance date of the letter, suspend use rights or services or take such other action as may be authorized by the Act, the Declaration or this Resolution.

F. 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.

G. Following the hearing, the Board of Directors shall meet in executive session to determine an appropriate disposition. The Board shall thereafter vote in open session as to the disposition (without publicly identifying by address or name the violating member).

H. Within seven (7) days of the hearing, the Board shall, by hand-delivery or certified mail, return receipt requested, notify the lot owner of its decision, any suspension of use rights and/or the assessment of any charges and the date from which those assessments shall accrue and be due.

V. 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 "A" shall be completed and placed in the lot owner's file and appropriate Conservancy files.

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VI. 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 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 shall also be the personal obligation of the owner.


VII. 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 Conservancy from exercising any other remedies authorized or available under the Act, the Declaration, the Bylaws or this Resolution, and shall not constitute an election of remedies.

I hereby certify that the foregoing Resolution was duly adopted by the Board of Trustees of the Wexford Conservancy, this 16 day of September, 2009. This policy shall supersede and replace all previously adopted policies concerning the collection of fees, charges and assessments.

This Resolution will become effective Nov. 1, 2009

WEXFORD CONSERVANCY.



Jon Williams, President
Board of Directors

Wexford Conservancy

**EXHIBIT "A" TO THE
RESOLUTION ON DUE PROCESS PROCEDURES**

RECORD OF HEARING

Hearing Date and Time:
Lot Owner(s):
Lot #:
Address if other than lot:

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board:

Charges Imposed (date commencing):

Other Sanctions Imposed:

Comments: