

**TOWNES OF ORANGE HUNT HOMEOWNERS ASSOCIATION**  
**Resolution # 2023- 01**

**Policy Regarding Due Process**

WHEREAS, Section 55.1-1819 of the Virginia Property Owners' Association Act ("Act"), and Article VII, Section 1(a), of the Townes of Orange Hunt Homeowners Association's (the "Association") Bylaws, provide that a board of directors of a Virginia property owners association shall have the power to establish, adopt and enforce rules and regulations with respect to use of the common areas and such areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to members; and

WHEREAS, Section 55.1-1819 of the Act, Article IV, Section 1(d) of the Declaration and Article VI, Section 1(b) of the Bylaws provide that, to the extent the declaration or rules and regulations adopted pursuant thereto expressly so provide, the board of directors of an association shall have the power to suspend members' rights to use common area, facilities and services for nonpayment of assessments and to assess charges for violations of an association's governing documents as all may be adopted and amended from time to time; and

WHEREAS, Section 55.1-1819 of the Act, Article IX, Section 1 of the Bylaws, and Article XI, Section 1(c) of the Association's Declaration of Covenants, Conditions, and Restrictions ("Declaration") provide that before the board of directors of an association can impose any charges or suspension against a member, the board must provide such member with certain rights of due process, including without limitation a reasonable opportunity to cure the alleged violation and an opportunity to be heard and represented by counsel before the Board or other tribunal; and

WHEREAS, Section 55.1-1828 of the Act charges all lot owners and all those entitled to occupy a lot in the Association (collectively "lot owners") with compliance with the Association's Declaration;

WHEREAS, the Association's Board of Directors desires to adopt a revised policy of due process to ensure any enforcement action taken pursuant thereto complies with the due process requirements of the Act and the Associations governing documents; and

WHEREAS, the Board of Directors believes that this revised Policy Regarding Due Process is in the best interests of the Members to the end that the Townes of Orange Hunt community will be better preserved and maintained as a high-quality community.

NOW THEREFORE, IT IS HEREBY RESOLVED THAT the following revised due process procedures are hereby adopted by the Board and shall supercede all prior resolutions establishing due process procedures:

**I. Complaint.**

- A. Any owner, resident or agent of the Association, including without limitation, the Association's management agent, members of the Board, or the Architectural Control Committee, may report an alleged violation of the terms and provisions of the Association's Governing Documents to the Board. The Association's Governing Documents include the Declaration, Articles of Incorporation, Bylaws, architectural rules and regulations, and any other Association guidelines,

resolutions, or rules, as all may be adopted and amended from time to time (collectively the “Governing Documents”).

- B. Any person or entity desiring to report an alleged violation of the terms and provisions of the Governing Documents shall:
  - 1. Complete as fully as possible a written complaint containing all of the following information:
    - a. Name and address of the person allegedly in violation, including dates and location;
    - b. Detailed description of alleged violation including dates and location;
    - c. Any personal action(s) taken to attempt to resolve the alleged violation and the dates such action was taken;
    - d. Name, address, and signature of the complaining party;
    - e. Date complaint is made; and
  - 2. Submit the complaint to a member of the Board or the Association’s management agent for a determination as to whether it appears that a provision of the Governing Documents has been violated.
- C. Issues concerning an owner’s failure to pay assessments will be resolved by the Board of Directors in accordance with Section VI below.
- D. Notwithstanding the foregoing, the Board may, in its sole discretion, begin enforcement proceedings in the absence of a written complaint if it otherwise becomes aware of an alleged violation and determines that action is required.

## II. Notice of Violation & Opportunity to Cure.

- A. The Board or the Association’s management agent shall execute a written notice of violation, regarding an alleged violation and deliver it by United States mail, to the owner of the lot where the violation occurred or is occurring, or the alternate address provided to the Association by the owner.
- B. The written notice of violation shall contain all of the following:
  - 1. Name and address of the owner of the lot allegedly in violation;
  - 2. Detailed description of the alleged violation, referencing the provision(s) of the Governing

Documents that has allegedly been violated;

3. Possible adverse action that the Board may take; and
  4. Corrective action required to abate or remedy the alleged violation and the date by which the alleged violation must be resolved (“Abatement Deadline”).
- C. The Abatement Deadline must be set on a date that provides the alleged violator with a reasonable period from delivery of the written notice of violation to correct the alleged violation, provided however, that matters determined by the Board to be of a serious safety, health or detrimental nature must be abated within twenty-four (24) hours from delivery of the written notice. The Board, in its sole discretion, shall determine what constitutes a “reasonable period” to correct the alleged violation.
- D. If the alleged violator does not remedy the alleged violation by the Abatement Deadline, the Board reserves the right to issue additional written notices that shall follow the basic form of the first written notice and shall include any additional information deemed important by the Board concerning the alleged violation.

### III. Notice of Hearing.

- A. If the alleged violation continues past the Abatement Deadline specified in the most recent written notice of violation delivered pursuant to Section II or if the same rule is subsequently violated, the Board shall hold a hearing within nine (9) months of the Abatement Deadline set out in the notice of violation or the reoccurrence of the alleged violation to render a final determination on the existence of a violation and the possible imposition of sanctions against the lot owner for said violation(s).
- B. A notice of hearing shall be mailed by certified United States mail, return receipt requested, to the lot owner(s) of record at least fourteen (14) days prior to the hearing at the address of their lot and to any such other address as they may have designated. A copy shall be sent in the same manner to any resident person at the lot address, if named in the complaint.
- C. The notice of hearing shall specify all of the following:
1. The time, date and place of the hearing;
  2. The alleged violation referencing the provision of the Governing Documents that has allegedly been violated;
  3. That the owner is invited to attend the hearing and shall be given an opportunity to present any evidence, statements or witnesses;
  4. That the owner may be represented by counsel; and

5. The possible sanctions that could be imposed for the alleged violation.

#### IV. Hearing.

- A. The hearing shall be scheduled at a reasonable and convenient time and place at the discretion of the Board.
- B. The Board, within its discretion, may grant a continuance if requested at least forty-eight (48) hours prior to the scheduled hearing, provided however, that in case of an emergency a continuance may be granted within that period. No further notice of hearing shall be required in case a continuance is granted.
- C. The hearing shall be conducted in open meeting, unless otherwise requested by the lot owner, with a quorum of the Board present, and shall provide all parties, or their respective counsel, the right and opportunity to:
  1. Call, examine, and cross-examine witnesses;
  2. Introduce testimony and evidence;
  3. Rebut testimony and evidence;
  4. Share equal and reasonable time limits for the presentation of testimony and evidence to be determined by the Board; and
  5. Obtain a recording of the minutes of the hearing (at owner's expense).
- D. A hearing will proceed as scheduled, even if any of the parties to the complaint are absent, provided notice of the hearing was given.
- E. The hearing shall be informal regarding legal formalities. Any relevant evidence that is not privileged is admissible without regard to whether such evidence is hearsay or otherwise inadmissible in a court of law. The Board may exclude irrelevant, immaterial or unduly repetitive evidence.
- F. The parties may cause the hearing to be transcribed at their/its own expense, provided that any person or party entitled by law to transcribe the hearing, other than the Board, must provide prior written notice to the Board of his or her intention to do so. Such notice must be given in writing at least seven (7) days, via the Association's Management Agent, before the hearing and must state the manner in which the hearing will be transcribed. Such notice shall be deemed effective and given on the date it is received by the Board and may be given to any Board member. Placement of the equipment and the process of transcribing the hearing must not impede the hearing.

- G. The Board may make a finding based upon substantial evidence that a violation has occurred. Other findings shall be reflected in a written statement.
- H. The Board may administer an oath to any person upon request of either party.
- I. The Board may expel any party, attorney, witness or spectator from any hearing for improper, disorderly or contemptuous conduct.
- J. Following the presentation of evidence at the hearing, the Board, at its discretion, may go into executive session to discuss whether satisfactory proof of the alleged violation was presented, and if so, whether any sanctions should be imposed.
- K. The Board shall make its decision in an open meeting.

V. Notice of Decision.

- A. The Board will notify the alleged violator in writing of its decision within seven (7) days of the hearing by certified mail, return receipt requested, to the owner at the address of record with the Association. A copy shall be sent in the same manner to any resident at the lot address, if named in the complaint.
- B. The notification of decision shall specify:
  - 1. Whether the person has been found to be in violation;
  - 2. The provision of the Governing Documents that was violated;
  - 3. The sanctions imposed; and
  - 4. The date on which those sanctions begin.
- C. The Board may, at its discretion, give a party found in violation of the Governing Documents a reasonable period to remedy the violation, prior to enforcing sanctions.

VI. Non-Payment of Assessments.

- A. The Governing Documents and the Act authorize the Association to suspend an owner's right to use facilities or services that are provided directly through the Association for nonpayment of assessments to the extent that access to such owner's lot through the common area is not precluded and provided that such suspension does not endanger the health, safety, or property of any owner, tenant, or occupant.
- B. Before taking any action to suspend an owner's privileges, the Board of Directors shall provide notice of and hold a hearing for any owner who is more than ninety (90) days past due on the payment of any assessment or portion thereof in accordance with Sections III and IV of this

Resolution.

- C. Following such hearing, the Board shall provide notice of its decision in accordance with Section V of this Resolution. Any such decision by the Board shall be final.

#### VII. Available Sanctions and Other Remedies.

- A. The Board may, upon determining that a violation of the Governing Document exists, prescribe or seek any remedies available to it under the Governing Documents, the Act, and in other laws of the Commonwealth of Virginia. Such remedies include, but are not limited to, monetary charges and the suspension of parking privileges for the period during which assessments are not paid or for up to sixty (60) days for any other violation of the Governing Documents.
- B. Monetary charges shall be accordance with 55.1-1819D of the Act.
- C. This Resolution is in no way intended to preclude the Board from exercising other enforcement procedures and remedies authorized by the Association's Governing Documents, including, but not limited to, the initiation of a lawsuit or using its self-help rights to correct a violation.

#### VIII. Miscellaneous

- A. This Due Process Resolution supersedes and replaces all previous Association policies and resolutions regarding the Association's due process procedures.
- B. This Due Process Resolution is to be interpreted and enforced in accordance with the laws of the Commonwealth of Virginia.
- C. If any provision of this Due Process Resolution is declared by a court of competent jurisdiction to be invalid or otherwise ineffective, the remainder of this Due Process Resolution shall remain in full force and effect.
- D. This Due Process Resolution may be amended by a majority vote of the Board at a meeting of the Board at which a quorum is present.
- E. The Association's rules and regulations are hereby amended to include this Due Process Resolution.

## RESOLUTION ACTION RECORD




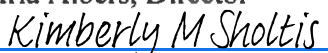
Resolution Type: Policy No. 2023-01

Pertaining to: Policy Regarding Due Process

Duly adopted at a meeting of the Board of Directors held on July 20, 2023

Motion by: Andrew Chupashko Seconded by: Joan Krauss

### VOTE:

	YES	NO	ABSTAIN	ABSENT
 <u>Andrew Chupashko (Jul 26, 2023 09:41 EDT)</u> Andrew Chupashko, President	<u>X</u>	—	—	—
 <u>Joan Craft Krauss (Aug 6, 2023 11:34 EDT)</u> Joan Krauss, Vice President	<u>X</u>	—	—	—
 <u>Arla Albers, Director</u>	<u>X</u>	—	—	—
 <u>Kimberly M Sholtis (Sep 21, 2023 08:55 EDT)</u> Kim Sholtis, Secretary	<u>X</u>	—	—	—
<u>Lewis Aldridge</u> Lewis Aldridge, Treasurer	—	—	—	<u>X</u>

### ATTEST:

  
Kimberly M Sholtis (Sep 21, 2023 08:55 EDT)

Kim Sholtis, Secretary

Sep 21, 2023

Date

Resolution effective as of date of adoption; July 20, 2023

Signature:   
Lewis Aldridge (Sep 8, 2023 13:26 EDT)

Email: aldridge.lewis@gmail.com