

## SMTA

### An Introduction to the Adoption of Rules Regarding Discriminatory Activity and Related Liability

**To Our Homeowners:** Attached is a resolution adopted by your Board at the strong urging of our outside counsel. This resolution in effect insulates our HOA from liability when certain types of discriminatory disputes occur between two or more homeowners. It also demands that HOA's take appropriate action when it becomes aware of such actions. The U.S. Department of Housing & Urban Development (HUD) recently adopted regulations whereby claims for harassment because of race, color, religion, sex, national origin, disability or familial status currently in effect under the Fair Housing Act (enacted in 1968) are brought into agreement in both the employment and housing environment.

Of particular importance is that these new regulations directly impact HOA's because directors and officers of HOA's are responsible for investigating an owner's or tenant's claim of housing related harassment. As a result, if a resident of a HOA has been harassed (as defined) by another resident within the same HOA, the board, its officers and the HOA can be held liable and face damages unless the board takes appropriate action.

In effect, the remedy would be for these homeowners to settle their dispute in court without any involvement by our HOA, its officers and directors. An action could also be brought by HUD.

The regulations define **"hostile environment harassment"** as an instance **"when conduct due to race, color, national origin, religion, sex, disability or familial status is sufficiently severe or pervasive as to create an environment that unreasonably interferes with the availability, sale, rental, use or enjoyment of a dwelling..."**. If **"a person was subjected to unwelcome, spoken, written or physical conduct, and the conduct was sufficiently severe or pervasive that it unreasonably interfered with or deprived the victim of his, her or their right to use and enjoy the housing, then an action can be brought under the Fair Housing Act."**

Our HOA could face direct liability for not only their direct action but for **"failing to take prompt action to correct and end a discriminatory housing practice by a third party."** In this case, a third party could be a HOA resident. Upon learning of such behavior, the HOA Board has an obligation to issue a warning to the offender and/or contact the police.

As you might expect, the attached resolution is drenched in legal jargon, but particular attention should be paid by all of us to paragraphs numbered one through six.

Respectfully submitted,

David A. Lattanzio, Secretary  
SMTA Board of Directors

## Board Resolution

### Sands McCormick Townhomes Association

#### Rules and Policies Regarding Improper Treatment of Residents, Employees and Contractors

**WHEREAS**, Sands McCormick Townhomes Association (the "Association") is governed by the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sands McCormick Townhomes (the "Declaration");

**WHEREAS**, Article II, Section 3 of the Declaration sets forth the authority of the Board of Directors (the "Board") to adopt rules and states that the "Association Rules may (i) restrict and govern the use of any area of the Property by any Owner, or by any invitee, licensee, or lessee of such Owner ... and (iii) may govern all aspects of the Association's rights, activities and duties";

**WHEREAS**, the Board wishes to ensure that the Association is maintained as an environment free of harassment and that all Members of the Association maintain a high standard of ethical conduct while residing on the property.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of the Association hereby adopts the following anti-harassment policy, standards and behavior, ethical rules, and enforcement procedures that are applicable to all Members and residents of the Association:

**It is the policy of the Association to create and maintain an environment free of harassment. The Association will not tolerate hostility or favoritism toward an individual based on race, color, creed, sex, national origin or age. The Association will not condone such behavior by or from any Member, resident, occupant, guest, invitee, Board Member, or staff personnel in any form.**

1. All Members and residents shall refrain from harassing other Association Members, other residents, guests, invitees, Board Members, Association contractors and the community manager and other employees of the management company ("Management Agent"), if any.
2. Members and residents shall not in any way harass, threaten, or otherwise attempt to intimidate any Association Member, resident, or Board Member. The Association shall deem any Member or resident, who harasses, threatens or otherwise attempts to intimidate any Association Member, resident, guest, or Board Member to be in violation of this Policy.
3. Members and residents shall not in any way harass, threaten, or otherwise attempt to intimidate any Association staff, contractor, or Management Agent. All Members and residents shall refrain from interfering with the duties of the Board Members, Association staff, contractors, and Management Agents. No Member or resident shall interfere with the duties of the Association staff, contractors, or Management Agents

executing a contract in process. All communications with contractors must go through the community manager, or must otherwise be in accordance with Board policy.

4. All Members and residents shall show respect to fellow Members, fellow residents, guests, invitees, Board Members, Association contractors and Management Agents.
5. Members shall report any inappropriate and discourteous conduct, or conduct believed to be in violation of this Policy, to the Association president. Members shall also make any complaints concerning the conduct of a Board Member to the Association president or Association vice-president.
6. All Members shall be responsible for the conduct of their lessees, residents, family members, guests and invitees. Members shall be responsible for ensuring that their residents, family members, guests and invitees comply with this Policy and all governing documents.

#### VIOLATIONS OF POLICY

**Any Member who is found to be in violation of this Policy will be subject to appropriate remedial action, including, but not limited to, injunctive relief being sought against him/her, legal fees, and fines. Such remedial action shall be at the sole discretion of the Board of Directors.**

The President certifies that this Board Resolution was adopted by unanimous consent of the Board of Directors on January 8, 2018.

Sands McCormick Townhomes Association

By: Doug Brown

Its: President