

MERRYMOUNT PROPERTY OWNERS' ASSOCIATION, INC.

POLICY RESOLUTION NO. 2

COMPLAINT AND DUE PROCESS PROCEDURES

WHEREAS, Merrymount Property Owners' Association (the "Association") is a property owners' association organized and operating pursuant to the Virginia Property Owners' Association Act ("Act") and the Merrymount On Lake Gaston Amended and Restated Declaration of Declaration of Protective Covenants recorded in the land records of Mecklenburg County, Virginia in 2014 ("Declaration");

WHEREAS, Article IV Section 2 of the Bylaws of the Association grants the Association's Board of Directors ("Board") all powers necessary for the administration of the affairs of the Association except where specifically reserved to the members or applicable law;

WHEREAS, Article V, Section 11 and Article XIII of the Declaration provide that the Board has the right to enforce the provisions of the Association's governing documents, including through suspension of use rights and the assessment of violation charges; and

WHEREAS, pursuant to Section 55.1-1819 of the Act the Association is required to satisfy certain notice and due process procedures before assessing violation charges or suspending the right to use Association-provided facilities or services.

NOW THEREFORE, IT IS RESOLVED THAT the Board of Directors hereby adopts, as part of the Association's rules and regulations, the following policies and procedures for assessing violation charges and for suspending use rights in accordance with the Act and the Declaration, and hereby rescinds any previously-adopted policies and procedures pertaining to this subject matter:

Definitions. Unless otherwise defined in this Policy, the words, terms or phrases used in this Policy will have the same meanings as defined in the Declaration.

A. Application of this Policy.

1. This Policy is applicable to:

- (a) Alleged violations of the Declaration or the Association's rules and regulations (collectively, the "Governing Documents") for which the Board is contemplating imposing, or wishes to preserve the right to impose, violation charges against an Owner (other than related to nonpayment of assessments); and
- (b) Suspending the right to use Association-provided facilities or services pursuant to the Declaration or the Act (for nonpayment of assessments or the violation of the Association's rules and regulations).

2. Except as provided above, the procedures in this Policy are not mandatory prerequisites for taking any other type of enforcement action available to the Association.
3. Owners are responsible for their own violations and for violations by their family members, tenants, guests, employees, agents and invitees, as may be applicable.

B. Complaints Alleging Noncompliance.

1. Submission of Written Complaint. Any Owner or other person who requests that the Association take action against an Owner to enforce the Governing Documents must submit a signed and dated written complaint to the Association's management agent ("Managing Agent") in a form similar to and containing the information contained on **Exhibit "A"**, which is attached hereto. The complaint should identify the offending person (Owner, resident, tenant, etc.) and the applicable address, and describe the condition, act or omission that constitutes (or is believed to constitute) a violation of the Governing Documents. The complaint should be as specific as possible as to time(s), date(s), and person(s) involved. However, the failure to submit such a complaint does not prevent the Association from taking enforcement action in response to a violation of the Governing Documents that otherwise comes to the attention of the Board or the Managing Agent.
2. Initial Review of Complaint. The submitted complaint will be reviewed by the Board (or the Managing Agent) for a determination as to whether the complaint is sufficiently complete and whether further investigation or proceeding with the below notice and hearing procedures is appropriate based on that complaint. The Board (or Managing Agent) may request additional information or documentation to determine the sufficiency of the complaint.

C. Informal Resolution of Complaints/Reminder Letters

1. The Association's directors, officers, Managing Agent and other authorized representatives of the Association have the authority to request an Owner, resident, guest or other person within the Property to cease or correct a violation of the Governing Documents for which that person is directly or indirectly responsible. Such informal requests may be made before formal action is initiated by the Association.
2. The Board or the Managing Agent may send "friendly reminders" or other communications to a non-compliant person prior to taking more formal action as set forth below.

D. Notice of Violation.

1. Delivery of Notice. If determined appropriate, a written notice of violation that provides the lot owner a reasonable opportunity to correct the violation, which may be in a form similar to **Exhibit "B"** hereto, shall be sent by first class mail or shall be hand-delivered to the lot owner at the address which the owner has provided the Association or at the lot's address if no other address has been provided. A copy may be sent to the tenant if there is a tenant. A copy of the Notice may also be sent by email if the Owner has provided an email address to the Association. Notices sent by mail per this Policy are deemed effective as of the date of mailing (as evidenced by the postmark).
2. Temporary Compliance / Repeated Violation. Notwithstanding anything in this Policy to

the contrary, if the same type of violation occurs again at any time within 12 months from the date of the prior violation-related notice to the same Owner, then the reoccurrence of the same type of violation within that 12-month period will be deemed to be a failure to cure the previously cited violation, and that temporary compliance will not be considered sufficient to require or trigger the need for the Association to provide yet another opportunity to cure the same violation before proceeding with a hearing or other enforcement action. In these circumstances, for instance, the Association is not required to send another Notice of Violation but may instead proceed directly with a Notice of Hearing as referenced below.

E. Failure to Request a Hearing.

1. In the event the responsible Owner ("Respondent") fails to timely request a hearing in response to the Notice of Violation as outlined in Section D above, sanctions may be imposed by the Board against the Respondent without holding a hearing if the violation has not yet been cured or if it is a repeated violation (per Section D(2) above). However, even if the Respondent fails to timely request a hearing, the Board reserves the right to schedule a hearing on the matter if it deems it appropriate under the particular facts and circumstances presented.
2. If violation charges or suspensions of use rights are imposed without a hearing, as described above, the Managing Agent will promptly notify the Respondent in writing of any sanctions imposed (with the notice being sent by certified mail, return-receipt requested and by first-class mail, postage prepaid).
3. Board Authorization to Managing Agent. When the previously specified deadline has passed and no hearing is timely requested by the Respondent (and unless the Board has informed the Managing Agent to refrain from taking action on the matter or to schedule a hearing even if a hearing is not requested by the Respondent), then in the circumstances described below, sanctions are automatically assessed or imposed without the need for a case-by-case vote by the Board, and the Managing Agent is authorized to post the charges on the Respondent's account and/or implement the suspension of use rights in accordance with the following:
 - a. *In cases of nonpayment of assessments*, if the Association's records indicate that the Respondent's assessment account remains more than 60 days past due, the Board hereby authorizes and directs the Managing Agent to notify the Respondent (by first-class mail and by certified mail, return-receipt requested) that the right to park on the Common Area and the right to use Common Area open space and recreational facilities are suspended, effective immediately and lasting until the account is paid in full. The Board also reserves the right to take legal action to collect the delinquent assessments.
 - b. *In cases of continuing violations of the Governing Documents (not related to nonpayment of assessments)*, if the Managing Agent confirms that a previously cited violation has not been corrected, the Board hereby approves the assessment of per diem violation charges (starting from the compliance deadline specified in the most recent prior notice) at a rate of \$10.00 per day for as long as the violation continues (up to a

period of 90 days), and authorizes and directs the Managing Agent to post the charges to the Respondent's account and to promptly notify the Respondent (by first-class mail and by certified mail, return-receipt requested) of the imposition of the violation charges. The Board also reserves the right to take any other available enforcement measures permissible under the Governing Documents or applicable law, including legal action, to enforce the Governing Documents.

- c. *For a repeated violation of a non-continuing nature of the Governing Documents (not related to nonpayment of assessments)*, if the Managing Agent determines that the violation cited in the most recent notice is the same type of violation that was cited in a prior notice sent to the same Respondent within the previous 12-months, then the Board hereby approves the assessment of a violation charge in the amount of \$50.00 per cited violation and authorizes and directs the Managing Agent to post the charge(s) to the Respondent's account and to promptly notify the Respondent (by first-class mail and by certified mail, return-receipt requested) of the imposition of the violation charge(s). The Board also reserves the right to take any other available enforcement measures permissible under the Governing Documents or applicable law, including legal action, to enforce the Governing Documents.

F. **Request for a Hearing.** If the Respondent desires a hearing, the Respondent must request a hearing in writing so that it is received by the Managing Agent within the time period stated in the Notice of Violation pursuant to Section D above.

G. **Notice of Hearing.**

1. If the alleged violation is not remedied within the date or time specified in the demand letter referenced in Section III and the owner requests a hearing, or if the Board of Directors determines a hearing is necessary, a notice of hearing shall be sent. Notice of a hearing shall be hand-delivered or mailed by registered or certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, or within such other time as may be required by the Act, to the lot owner at the address which the lot owner is required to provide to the Association.
2. **Delivery of Hearing Notice/Content.** After receipt of a timely request for a hearing (or if the Board otherwise decides to hold a hearing), the Managing Agent will send the Respondent written notice, the notice of hearing may be similar to Exhibit "D" attached hereto, of the date, time and place of the hearing. The notice of hearing will be sent by mailing it by first-class mail and by certified mail, return-receipt requested, to the Respondent's address of record with the Association. In addition, the Managing Agent may also send a copy of the Notice by email to the Respondent if the Respondent has provided an email address to the Association. This Notice of Hearing must be sent at least fourteen (14) days prior to the hearing and in addition to the date, time and place of the hearing, must state the alleged violation, the potential for violation charges (and/or suspension of use rights, as applicable), and that the Respondent may be represented by his/her own legal counsel at the hearing.
3. **Scheduling/Continuances.** The hearing will be scheduled at a reasonable time and place

within the discretion of the Managing Agent (in consultation with the Board). The Board or the Association's president may grant a continuance of the hearing if a written continuance request is received by the Managing Agent prior to the hearing date. A continuance request must describe the reasons for the request. If a continuance is granted, notice of the new date, time and place will be mailed by first-class mail to the Respondent at his or her address of record (or with the Respondent's consent, it may be sent by email). However, it is ultimately the Respondent's responsibility to contact the Managing Agent prior to the originally scheduled hearing date to determine whether a continuance request was granted.

H. **Hearing Procedures.**

1. If a hearing is requested and/or scheduled as set forth above, a hearing will be conducted by the Board to afford the Respondent a chance to present his or her position regarding the alleged violation(s) of the Governing Documents and whether sanctions should be imposed. However, if the Respondent fails to appear at the hearing at the scheduled time, the Board may deem the allegations to have been admitted. Any defects in the hearing notice will be deemed waived by the Respondent if the Respondent appears at the hearing (either in person or by legal counsel) for any purpose other than to object to the validity of the notice.
2. The hearing will be conducted in executive session, but witnesses and/or complaining parties present at the hearing will be allowed to make presentations during the hearing. The hearing need not be conducted according to technical rules of evidence applied in a court of law. The presiding officer at the hearing may determine the particular manner in which the hearing will be conducted, such as setting reasonable time limits on presentations, so long as the procedures are otherwise consistent with the Act and the provisions of this Policy. If the alleged violator acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Board of Directors may, in its discretion, dispense with a hearing after having afforded the alleged violator with an opportunity for a hearing.
3. Right to Legal Counsel. Respondents have the right to have their own legal counsel represent them at the hearing, but attorney-representation is not required. Respondent's failure to have an attorney at the scheduled hearing will constitute a waiver of such right for purposes of the hearing.
4. Decision and Notice of Hearing Results.
 - a. After all presentations have been made within the allotted time period, the Board will request others who are present to leave the room (except for the Managing Agent and/or the Association's legal counsel, if applicable) and, while still in executive session, discuss whether it believes that there is satisfactory evidence of the violation and whether sanctions should be imposed.
 - b. After reconvening into open session, the Board will decide the matter by majority vote; however, if additional time is needed to reach a decision, the Board may continue the

hearing to an announced date and time for purposes of additional deliberation, with no further written notice required.

- c. Within seven (7) days after the hearing (including any continuances), the Managing Agent must send written notice of the hearing results to the Respondent by first-class mail and by certified mail, return receipt requested, to the Respondent's address of record with the Association.

I. **Sanctions.** After complying with the procedures in this Policy, the Board has the authority to impose the following sanctions (in addition to, or instead of, other remedies available to the Association):

1. Impose violation charges for violations other than nonpayment of assessments. In accordance with the Act and the Declaration, the Board may assess charges for violations of the Governing Documents (other than related to nonpayment of assessments, the consequences of which are addressed in other sections of the Governing Documents). Violation charges are treated as an assessment against the Respondent and the Respondent's Lot for the purposes of collection and filing liens. As of the date this Policy was adopted, the Act provides that for each single offense, a charge of up to \$50.00 can be assessed; or for a violation of a continuing nature, a charge of up to \$10.00 per day can be assessed for up to 90 days or until the violation ceases, whichever occurs first.
2. Suspension of Use Rights.
 - a. *For Respondents more than 60 days' past due in the payment of assessments,* the Board may suspend the right to use Association-provided facilities and nonessential services, such as Common Area parking spaces and other facilities on the Common Area. The suspension remains in place until the account is paid in full, unless a different arrangement is agreed to by the Board in writing as part of an approved payment plan to settle the debt. Once parking privileges are suspended and written notice of the suspension is delivered or mailed to the Respondent, vehicles in violation of the suspension become subject to immediate towing at the vehicle owner's sole risk and expense.
 - b. *For continuing or repeated violations of the same provision of the Association's rules and regulations,* the Board may suspend the right to use the Association's Common Area recreational facilities and any nonessential services offered by the Association, for a period of up to 60 days pursuant to Article V, Section 11 of the Declaration.
 - c. Suspensions apply not only to the Respondent but also to all occupants of, and visitors to, the Respondent's Lot. It is the Respondent's obligation to notify his/her tenants, guests and household members of the suspension; however, the Association reserves the right to notify them as well.

J. **Other Remedies.** This Policy is not to be interpreted to require the use of the above notice and hearing procedures prior to the Association exercising any available remedies other than assessing violation charges or suspending use rights. The exercise of any one or more remedies will not constitute an election of remedies. Remedies may be cumulative and also include,

without limitation, the following:

1. Entry onto Lot. The Association (acting through its authorized agents, representatives and/or contractors) has the authority under Article XIII, Section 4 of the Declaration, to repair, maintain or restore the Lot, all improvements, the exterior of the Dwelling Unit, and any other improvements on the Lot if the Owner has failed or refused to do so after 14 days' prior written notice of its intent, with the costs of such action(s) being assessed against the Owner and the Lot;
 2. Legal Action. The Board has the authority to file a lawsuit for monetary damages and/or injunctive relief, and to enforce unpaid liens through foreclosure;
 3. Resale Disclosure Packet. Pursuant to the Act, violations of the Governing Documents may be disclosed in any resale disclosure packet issued by the Association in conjunction with the sale or other transfer of a Lot; and/or
 4. Reporting to Government Officials. Violations that appear to violate local, state or federal laws, ordinances or regulations may be reported to the appropriate government official, agency or department.
- K. Records. The Managing Agent will keep copies of all correspondence related to violations in the Owner's file or in a separate file specifically for violations, as well as a record of each hearing (including proof of notice or indication whether the Respondent appeared at the hearing). For the record of the hearing, the sample form attached as **Exhibit D** may be used.

EFFECTIVE DATE OF RESOLUTION

The effective date of this Resolution will be May 5, 2023.

EXHIBIT "A"

Rules Violation Complaint

Date: _____

1. Name of person(s) violating rules: _____

2. Address of person(s) violating rules: _____

3. Are the person(s) named in No. (1) tenants or owners? _____

4. Describe in detail how and where the rules were violated: _____

5. When did the violation(s) occur? _____

6. Have you personally requested the lot owner or tenant to cease the rules violation?

_____ Yes or _____ No _____ Verbally or _____ By written request

When? _____

7. Name and address of person(s) making complaint: _____

8. Signature(s) _____

9. Indicate the amount of assessment delinquency, if applicable, and the duration of the past due assessment: _____

FOR ASSOCIATION USE ONLY

10. Owner: _____ Tenant: _____

11. Provision(s) of the Association's Declaration, Bylaws or Rule(s) violated: _____

12. Registered Name(s) of lot owner(s) and address of lot: _____

13. Owner's address if non-resident: _____

14. Registered name(s) of tenant(s) and address of lot: _____

15. Comments: _____

16. Date demand letter sent to lot owner: _____

17. Owner/Tenant ___ does/ ___ does not request a hearing.

Date request received: _____

18. Referred to Board of Directors on _____, 2____.

19. Date notice of hearing sent: _____, 2____.

cc: Lot Owner File (optional record may be closed)
Rules Violation File

EXHIBIT "B"

NOTICE OF VIOLATION

(DATE)

(Owner)

You are hereby notified that a complaint has been made against you (or your tenants) for the alleged violation(s) of the following rules and regulations of the Association:

You are requested to immediately cease and correct the above violation(s) within ten (10) days from the date of this letter. If you wish to contest the alleged violation(s) and avoid the imposition of sanctions by the Association you may request a hearing before the Board of Directors in writing within ten (10) days from the date of this letter. If you request a hearing, complete the bottom portion of this letter and return a copy. The Board of Directors or the Association's designated agent will send you a certified return receipt notice stating the hearing time and place. Alternatively, if you elect to cease and correct the violation(s) within ten (10) days, please send a copy of this letter to the Board of Directors noting that the violation(s) has/have been stopped or corrected. If you fail to respond to this letter and the violation(s) persist(s), your right to vote at meetings of the Association or use or access to certain facilities or services provided by the Association or located on the Common Areas may be suspended until the violation(s) is/are corrected or violation charges in the amount of FIFTY DOLLARS (\$50) for a one time violation or TEN DOLLARS (\$10) a day for a maximum of ninety (90) days for violations of a continuing nature may be assessed.

Sincerely,

Board of Directors or Designated Agent

cc: Lot owner file (Tenant)

Return to: Merrymount Property Owners' Association, Inc.
(Insert Address) _____

Name: _____ Address _____

_____ I hereby request a hearing before the Board of Directors to contest the violation(s).

_____ I have ceased and/or corrected the violation(s) and will refrain from further violations.

Signature

EXHIBIT "C"

(DATE)

(Owner) _____

Re: FOURTEEN (14) DAY NOTICE OF RULES VIOLATION HEARING

Dear [lot owner] :

You are hereby notified that a hearing will be held before the Board of Directors of the Merrymount Property Owners' Association, Inc. at the _____ on the _____ day of _____, 2____, at _____ a.m./p.m., pursuant to Section 55.1-1819(B) of the Virginia Property Owners' Association Act and the Association's Declaration and duly adopted Rules and Regulations for your tenant's or your alleged violation of the following rules of the Association:

You may be present at the hearing, may, but need not be, represented by counsel, may present any relevant evidence, and you will be given full opportunity to examine and cross-examine all witnesses. You are entitled to request the attendance of witnesses.

Please be advised that if the Board of Directors determines that you are in violation of the Association's Declaration, Bylaws or rules and regulations, your right to vote at meetings of the Association or use or access to certain facilities or services provided by the Association or located on the Common Areas may be suspended until the violation(s) is/are corrected or violation charges in the amount of FIFTY DOLLARS (\$50) for a one time violation or TEN DOLLARS (\$10) a day for a maximum of ninety (90) days for violations of a continuing nature may be assessed. In addition to this hearing, the Board of Directors may elect such other remedies as are authorized by the Virginia Property Owners' Association Act, the Association's governing documents and by law.

If you have any questions or wish to communicate with the Board of Directors regarding this matter, please write to: Merrymount Property Owners' Association, Inc., Board of Directors, [insert address] _____.

Sincerely,
Board of Directors or Designated Agent

cc: Lot Owner File
Rules Violation File (Tenant)
Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

MERRYMOUNT PROPERTY OWNERS' ASSOCIATION, INC.
EXHIBIT "D"

RECORD OF HEARING

Hearing Date and Time: _____

Owner(s): _____

Lot Address: _____

Mailing Address if other than Lot: _____

Alleged Violation(s): _____

Provision(s) of Declaration/Rules Allegedly Violated:

Persons in Attendance: _____

Date Notice given: _____ (by certified mail, return-receipt requested)

Decision of Board and Reasoning:

Sanctions Imposed (date commencing):

Additional Comments:

**MERRYMOUNT PROPERTY OWNERS' ASSOCIATION, INC.
RESOLUTION ACTION RECORD**

Resolution Type: Policy No. 2

Pertaining to: Complaint and Due Process Policies and Procedures

Duly adopted at a meeting of the Board of Directors held on May 5, 2023.

Motion by: Wilma Poole Seconded by: Joe Duffy

VOTE:

DIRECTOR (printed name):	YES	NO	ABSTAIN	ABSENT
<u>Joseph Duffy</u>	✓			
<u>Lu Andy</u>	✓			
<u>Pam Rock</u>	✓			
<u>Wilma Poole</u>	✓			
<u>[Signature]</u>	✓			

ATTEST:

[Signature] Secretary Date 5/5/23

Resolution's Effective Date: May 5, 2023.



CERTIFICATE OF MAILING

I hereby certify that on the 5th day of May, 2023 a copy of the above-referenced Resolution was mailed (by first-class U.S. mail) to all Owners as reflected in the Association's books and records.

[Signature]
Managing Agent

