

THE VILLAGES AT TOWER OAKS HOMEOWNERS ASSOCIATION, INC.

**PROCEDURES FOR PROCESSING CASES OF
ALLEGED VIOLATIONS OF THE GOVERNING DOCUMENTS**

Recitals

A. The Bylaws assign to the Board of Directors ("Board") the power to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration of Covenants, Conditions and Restrictions (the "Declaration"); and

B. Article 6, Section 6.2, Article 1, Sections 1.19 and 1.52 of the Declaration authorizes the Board to adopt rules and regulations concerning the use and enjoyment of the General Common Areas and Facilities and Limited Common Areas and Facilities; and

C. Article 15, Section 15.3 of the Declaration authorizes the Villages Design Review Committee ("DRC") to adopt or promulgate rules and regulations, regulate the external design, appearance and location of the Common Areas and the improvements thereon, and the Lots and Living Units; and

D. Article 17, Section 17.1 of the Declaration authorizes the Association, through its agents and employees, to enter upon a Lot to take such steps as may be necessary to abate, remove and extinguish a violation of the Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations (collectively such documents are referred to herein as the "Governing Documents"). Such right of entry may be exercised provided that Registered Notice of such violation has been delivered to the Owner of the Lot upon which such violation exists or to the Member responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such Member, and the Owner and/or Member has failed to abate the violation within thirty (30) days (or such shorter period as may be required in such Registered Notice) after delivery of the Registered Notice; and

E. Article 17, Section 17.3 of the Declaration authorizes the Association to levy fines against an Owner or such Owner's guests, relatives, lessees or invitees, in the manner set forth in Section 17.3) and as more specifically provided in the Procedures for Processing Cases Alleged Violations of the Governing Documents (the "Enforcement Procedures"), and such fines shall be collectible as any other assessment such that the Association shall have a lien against the Lot of such Owner as provided in the Governing Documents and such fines shall also become the binding personal obligation of such Owner.

F. For the benefit and protection of the Association and of the individual owners, the Board deems it necessary and desirable to establish a procedure to ensure due process in cases involving alleged violations of the provisions of the Governing Documents; and

THE BOARD OF DIRECTORS HEREBY RESOLVES that any and all previous enforcement procedures are repealed, and the following enforcement procedures are adopted (any capitalized terms not defined herein shall have the meaning set forth in the Declaration).

I. **ENFORCEMENT PROCEDURES**

A. **Actions Prior to the Initiation of Formal Enforcement Procedures.** Any Owner, resident of the Association ("Resident"), Association director or officer, member of the Design Review Committee ("DRC") or the community manager (hereinafter referred to collectively as "Complainant") has the authority to request that an Owner or resident cease or correct any act or omission which appears to be in violation of the Governing Documents. Informal attempts should be made to resolve any alleged violations prior to the initiation of formal enforcement procedures.

The Board will generally not become involved in disputes between Owners or residents regarding activities within private Living Units, unless such disputes involve alleged violations of the Governing Documents.

The Board or the DRC may make initial attempts to secure compliance through correspondence to the offending party ("Respondent") which states the time, date, place and nature of the violation and which sets forth the time period in which the violation must be corrected. If the respondent is a tenant, the Owner of the Living Unit leased by such tenant shall also be notified at this time. Copies of such correspondence shall be maintained in the Association files, and a copy shall be sent to the attorney for the Association.

B. **Written Complaint.** If the actions described in Part I, Section A prove unsuccessful, formal enforcement procedures shall be initiated upon the filing of a written complaint by Complainant with the community manager, who shall forward the complaint to the Board and/or the DRC. The complaint shall include a written statement of charges which shall set forth in clear and concise language the acts or omissions with which the Respondent is charged, to the end that the Respondent will be able to prepare a defense. The complaint shall specify the specific provisions of the Governing Documents which the Respondent is alleged to have violated and shall contain supporting facts. The complaint must be as specific as possible as to times, dates, places and persons involved. The complaint shall provide that the Respondent has an opportunity for a hearing before the Board upon a written request made within ten (10) days of the sending of the complaint as provided in Part I, Section C. The complaint shall also specify that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed a reasonable amount established by the Board for each offense. Further, the complaint shall also specify that in lieu of requesting a hearing, the Respondent or Owner (if the Respondent is a tenant or person other than the Owner) may respond to the complaint within ten (10) days of the sending of the complaint, acknowledging in writing that the violation occurred as alleged and promising that it will cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

In the event that the Board wishes to exercise its right to enter the Lot to remove or correct a violation pursuant to Article 17, Section 17.3 of the Declaration, the complaint shall provide the Respondent at least ten (10) days (unless a shorter period as may be required by the Board) to terminate or abate such violation.

C. **Service of Complaint.** The complaint shall be served upon the Respondent by registered

or certified United States mail, return receipt requested, postage paid, to the last known address of the Respondent. In order for service to be effective, the Respondent must sign for delivery or the United States Postal Service has certified that delivery was attempted at the aforementioned address. Failure by refusal of the Respondent to acknowledge or accept such complaint shall constitute proper service.

D. Constraints on the Board of Directors and/or the DRC. It shall be incumbent upon each member of the Board and/or the DRC to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of a case before it. Any member incapable of objective consideration of the case shall disclose this fact and shall not participate in the proceedings. Any member of the Board and/or the DRC has the right to challenge any other member if he believes that such other member is unable to function in a disinterested and objective manner.

E. Hearing. In the event that a hearing was timely requested in accordance with the Declaration and these Enforcement Procedures, hearings shall be held before a majority of the members of the Board:

1. The Board shall select one of its members to serve as a hearing officer and preside over the hearing. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Board may determine the manner in which the hearing will be conducted, so long as the rights set forth in these Enforcement Procedures 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 on 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.

2. It is not required that a Complainant or Respondent be in attendance at the hearing. At the request of either the Complainant or the Respondent, the Board may agree to conduct the hearing in private session, subject to the provisions of Maryland or Montgomery County laws.

3. Each party shall have the right to do the following, but may waive any or all of these rights:

- a. make an opening statement;
- b. introduce evidence, testimony and witnesses;
- c. cross-examine opposing witnesses;
- d. rebut evidence and testimony;
- e. make a closing statement.

Even if the Complainant or the Respondent does not testify in their own behalf, each may still be called and questioned by the Board.

4. Whenever the Board has commenced to hear the matter and a member of the Board withdraws prior to a final determination, the remaining members shall continue to hear such matter.

5. The Board may rule upon the complaint at the time of the hearing and may take such other action, including the levy of a fine, as is authorized by the Governing Documents. In any event, the Board shall prepare a written decision disposing of the matters raised in the complaint, and shall serve a copy of the decision upon the Complainant and Respondent within ten (10) days of the hearing, by either of the following means: (1) personal service, or (2) certified mail, return receipt requested. If after good faith efforts the Board is unable to serve a copy of the decision on the Complainant and/or the Respondent by either of the foregoing means, the Board may serve a copy of the decision on the Complainant and/or the Respondent by any other means of service that it deems appropriate under the circumstances which is reasonably calculated to give actual notice, including, without limitation, conspicuous posting of a copy of the decision at the Complainant's and/or Respondent's address as shown on the books of the Association or delivery of a copy of the decision to the Complainant and/or the Respondent by regular mail at such address. A decision which is adverse to the Respondent shall require a majority vote of the entire membership of the Board. If the Respondent is a tenant, a copy of the decision of the Board shall also be served on the Owner of the Living Unit leased by such tenant at the same time as such decision is served on the tenant, in any manner permitted by this Section.

6. In the event that no hearing is timely requested and if no acknowledgement and promise was timely made, the Board shall determine whether there is sufficient evidence of a violation or violations. If the Board determines that there is sufficient evidence, it may levy a fine for each violation as set forth in Part I, Section F.

F. Suspension of Privileges and Levying of Fines. Disciplinary action imposed by the Board may include the suspension of voting rights and the right of an Owner to use the Common Areas or any facilities situated thereon or imposing a fine of at least ten dollars (\$10.00) but not to exceed twenty-five dollars (\$25.00), for any one violation. A violation which continues after the provision of written notice shall be treated as a continuing violation and shall result in a fine of between ten (\$10.00) and twenty-five dollars (\$25.00) per day until the violation ceases, at the Board's discretion. Such charges shall be considered as an assessment against the Living Unit owned or resided in by the Owner or Resident in violation. Such charges shall not be imposed for the nonpayment of assessments. The Board may suspend an Owner's right to vote and/or the right to use the Common Areas or any facilities situated thereon for a period not to exceed sixty (60) days.

The Board may also elect to enter the Lot pursuant to Article 17, Section 17.3 of the Declaration to terminate or abate the violation. The costs of such entry and actions necessary to terminate or abate the violation may be assessed and collected as a Restoration Assessment against the Lot upon or in which such violation occurred. When so assessed, a statement for the amount of such costs shall be given to the Owner of said Lot, at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot as provided in Article 17 of the Declaration.

II. **INTERPRETATION**

These procedures are intended to ensure that due process is provided to Owners and Residents in proceedings before the Board of Directors.

The Board of Directors may determine the specific manner in which the provisions of these procedures are to be implemented, provided that due process is protected.

Any inadvertent omission or failure to conduct proceedings in exact conformity with these procedures shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to ensure due process according to the general steps set forth in this resolution.

"Due process", as used in these procedures refers to the following basic rights:

1. The charges shall be provided to the Respondent.
2. A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced.
3. Basic principles of fairness shall be applied.

III. **MISCELLANEOUS**

A. The use of the masculine gender includes the feminine and neuter genders and the use of the singular includes the plural and vice versa, whenever the context so requires.

B. Certain capitalized terms used in these Enforcement Procedures, unless otherwise defined herein, have the meanings specified for such terms in the Declaration.

WHEREUPON, the Board of Directors of the Villages at Tower Oaks Homeowners Association, Inc. hereby adopts the Procedures for Processing Cases of Alleged Violations of the Governing Documents on this 10th day of November, 2009.

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