

**WESTVIEW LAKES HOMEOWNERS ASSOCIATION**

**RESOLUTION 2009-2**

**(Due Process Procedures for Enforcement of Covenants and Rules)**

**WHEREAS**, the Board of Directors is directed by Article X of the Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Declaration"), dated April 12, 2003, and recorded on May 23, 2003, in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia ("Clerk's Office"), as Instrument # 030011402, and by Article II of the Association's Bylaws, as all of the same may have been amended or supplemented from time to time, to enforce the covenants contained in the Declaration and to enforce any Board Resolutions, Architectural Guidelines and Rules and Regulations adopted pursuant to the Declaration and Bylaws in accordance with Section 55-513 of the Code of Virginia, 1950, as amended (the "Property Owners' Association Act"); and

**WHEREAS**, all Owners in Westview Lakes Homeowners Association are members of the Association pursuant to Section 3.1 of the Declaration, and as such all Owners are subject to all of the covenants, conditions and restrictions in the Declaration; and

**WHEREAS**, for the benefit and protection of the Association and of the individual members, the Board of Directors deems it desirable to establish a procedure to assure due process ("due process procedures") in cases where there is a question of compliance by a member, his family, his guests or tenants and the tenant's family and guests, with the provisions of the Declaration, the Articles of Incorporation, Bylaws, adopted Board Resolutions, Architectural Guidelines and Rules and Regulations (the "Governing Documents"), thereby attempting to minimize the necessity of seeking action in or through a court of law; and

**WHEREAS**, it is the intent of the Board to adopt the provisions of Section 55-513 of the Property Owners' Association Act and to establish such due process procedures; and

**WHEREAS**, the Board of Directors will provide notice of this policy to all current owners by mail and to all future owners by including the Resolution in resale disclosure packages prepared pursuant to Section 55-509.5 of the Property Owners' Association Act.

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**NOW THEREFORE**, the Board of Directors of Westview Lakes Homeowners Association (the "Board") does hereby adopt this Resolution in order to adopt the following:

1. Adoption of Section 55-513 of the Property Owners' Association Act. The Association's Board hereby adopts the provisions of Section 55-513 of Virginia's Property Owners' Association Act, which states the Board shall also have the power to:

a. Suspend a Member's right to use facilities or services provided directly through the Association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the Owner's Lot through the Common Areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant; and

b. Assess charges against any Association Member for any violation of the Declaration or Rules and Regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

2. Suspension of Voting Rights. Pursuant to Section 3.4 of the Declaration, the Board shall suspend the voting rights of an Owner for any period during which any assessment against the Owner's Lot remains unpaid. An Owner's voting rights shall be suspended automatically for such delinquency. A due process hearing prior to such suspension is not required by law or by this Resolution and shall not be available prior to such voting rights suspension.

3. Due Process Procedures.

a. When a violation of the Declaration, Articles of Incorporation, Bylaws, Board Resolutions, Architectural Guidelines, Rules and Regulations and/or any amendments and supplements thereto ("Governing Documents") is either observed by or reported to the Board of Directors or the Association's Manager, the Owner will be issued a written warning or, where appropriate, a "cease and desist" letter, to notice the Owner of the violation ("covenant violation notice"). This covenant violation notice will state the specific nature of the violation, the action required to abate or cure the violation, a reasonable time to cure the violation and the Board's authority to impose sanctions for failure to abate or correct the violation, after an opportunity to be heard.

b. In the event the Owner cures or abates the violation within the time frame stated in the covenant violation letter, this rule and regulation hereby notifies Owners that the Board of Directors may, in its sole discretion, consider any repeat of the same violation within the next twelve (12) months a continuing violation of the noticed covenant violation and may schedule a due process hearing in accordance with Rule 3.d and/or Rule 3.e below without further written covenant violation notices.

c. If the covenant violation is of a non-continuing, single occurrence, nature, the Board may, in its sole discretion, schedule a due process hearing without any or further written covenant violation notices other than the due process hearing notice provided for in Rule 3.d and/or Rule 3.e below.

d. If the covenant violation is not cured within the time frame set forth in the covenant violation letter, or if the violation is of a non-continuing, single occurrence, nature, notice that a due process hearing has been scheduled will be issued. The due process hearing notice will set forth the time, date and location of the due process hearing and identify the official body to preside over the hearing.

e. Notice of the due process hearing shall, at least fourteen (14) days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such Owner at the Lot address as well as any alternate address upon the books and records of the Association and shall be delivered as may otherwise be required for notices of meetings of the Association. The Owner shall be advised that an attorney may be present to represent the Owner at the due process hearing.

f. Any request to change a scheduled due process hearing date must be submitted in writing to the Association's Manager so that the request is received at P.O. Box 12141, Newport News, VA 23612, no later than two (2) business days prior to the due process hearing date. Only one due process hearing postponement will be granted. Approval of the Owner's request to postpone the due process hearing shall be mailed by U.S. Mail only to the Owner's address of record with the Association. The postponement approval shall state the time, date and place of the rescheduled due process hearing.

g. The due process hearing shall be conducted by at least a quorum of the Association's Board of Directors.

h. Failure of an Owner to attend the scheduled due process hearing shall not waive the Board's right to continue to hold the due process hearing unless a postponement has been requested and granted in accordance with Rule 3.f above. Should the Owner fail to request a postponement and/or fail to attend the due process hearing, the Board shall have the authority to impose charges against the Owner as set forth in Rule 3.i below in the Owner's absence.

i. If the Board finds the Owner to be in violation, charges may be assessed in an amount not to exceed fifty (\$50.00) dollars for a single offense or ten (\$10.00) dollars per day for a violation of a continuing nature until the violation is cured or, if the violation is not cured, for a period not to exceed ninety (90) days. Such charge(s) shall be treated as and deemed imposed as a special assessment in accordance with Article V and Article X of the Declaration and shall be collected as an assessment.


j. The Board of Directors may, in its sole discretion, consider any repeat of the same violation within twelve (12) months of the date of the due process hearing results letter a continuing violation of the violation for which the due process hearing was held and may impose charges for such covenant violation *provided* such notice of and potential imposition of charges is set forth in the due process hearing result letter required by Rule 3.k below.

k. The due process hearing result shall be mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association within seven (7) days of the due process hearing.

l. Any Owner found to be in violation shall be responsible for all attorney's fees, administrative costs, including any postage fees, and court costs that may result in the enforcement of the Association's Governing Documents. Such charge(s) shall be treated as and deemed imposed as an assessment in accordance with Article V and Article X of the Declaration and shall be collected as an assessment.

**IN WITNESS WHEREOF** the Board of Directors of Westview Lakes Homeowners Association has set their hands on this 21<sup>st</sup> day of September, 2009.

  
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