

BAY BREEZE POINT HOMEOWNERS ASSOCIATION, INC.

POLICY RESOLUTION 03-01

**DUE PROCESS PROCEDURES FOR
ENFORCEMENT OF COVENANTS AND RULES**

WHEREAS, the Bay Breeze Point Homeowners Association Board of Directors is empowered by Article VII, Section 7.1(r) entitled Rules, and Article IX, Section 9.3 entitled Enforcement, of the Declaration of Covenants, Restrictions, Reservations and Easements of Bay Breeze Point duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia as Instrument Number 990005632, to govern the affairs of the Association.

WHEREAS, for the benefit and protection of the Association and of the individual member, the Board deems it desirable to establish and operate a procedure to assure due process in cases where there is a question of compliance by a member, his family, his guests or tenants and tenant's guests and family with the provisions of the Documents or adopted Resolutions, 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 establish procedures for the Board and such Committees as may be designated by the Board in the future where they must take

action relative to questions of compliance by an individual with the provisions of the Documents or adopted Resolutions;

NOW, THEREFORE, BE IT RESOLVED THAT THIS POLICY RESOLUTION shall establish the following procedures:

I. VIOLATIONS OF THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS.

Section 1. Actions prior to initiation of formal Special Resolution Process.

Any member or management agent of the Association has the authority to request that a member or resident cease or correct any act or omission which appears to be in violation of the aforementioned documents. Such informal requests must be made before the formal process is initiated.

Section 2. Written Complaint. If the actions described in Section 1 prove unsuccessful, the Due Process Procedures shall be initiated upon the receipt of a written complaint from any resident or from any officer or member of the Board to the Association Manager. The written complaint must contain as many specifics as are available as to time, date, location, persons involved, and details of the offensive conduct so that the facts may be investigated by the Association Manager. Also, the Association Manager, with the concurrence of any Board member, may initiate formal action based on his or her observations of violations. The Association Manager or any appointed Board member shall prepare a written Statement of Charges which shall set forth in ordinary and concise language the acts or omissions with which the allegedly offending member or resident (hereinafter

referred to as respondent) is charged to the end that the respondent will be able to prepare his defense. The Statement of Charges shall specify the specific provisions of the Documents or adopted Resolutions which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

Section 3. Service of Statement of Charges. Upon preparation of the written Statement of Charges, the Association Manager shall serve a copy thereof on the respondent by any of the following means: (1) personal delivery or (2) by registered or certified mail, return receipt requested, and addressed to respondent, at the address appearing on the Books of the Association. Service by mailing shall be deemed delivered and effective three (3) days after such mailing in a regular depository of the United States mail. No order adversely affecting the rights of the respondent shall be made in any case, unless the respondent shall have been served as provided herein.

Section 4. Appointment of Hearing Committee. The Board of Directors shall appoint a Hearing Committee composed of three (3) owners, at least one (1) of whom shall be members of the Board of Directors, for the purpose of conducting due process hearings regarding alleged violations of the Covenants or Rules and Regulations. Vacancies shall be filled as they occur. Any appointee may be removed at the discretion of the Board at any time by written notice. The Committee shall adhere to all procedures set forth in this Resolution or in the Association documents.

Section 5. Notice of Hearing. Along with service of the written Statement of Charges, the Board shall serve a notice of hearing, as provided herein, on all parties at least

fourteen (14) days prior to the hearing. The notice to the respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Hearing Committee at _____ on the ____ day of _____, 20____, at the hour of _____, upon the charges made in the complaint served upon you. You may, but need not be, present at the hearing. You may, but need not be, represented by counsel. You may present any relevant evidence and you will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board. If you elect not to attend, you shall be deemed to have admitted the violation alleged."

Section 6. Notice to Respondent Regarding Options Available. Service of the written Statement of Charges shall be accompanied by a Notice of Hearing which shall state the date and place of the hearing and that the respondent may:

- (1) Attend a hearing before the Hearing Committee as hereinafter provided;
- (2) Object to a charge upon the ground that it does not state the acts or omissions upon which the Hearing Committee may proceed;
- (3) Object to the form of the charges on the ground that it is so indefinite or uncertain that the respondent cannot identify the violating behavior or prepare his defense; or

(4) Admit to the charge in whole or in part. In such event, the Hearing Committee may make a determination as to whether it will waive hearing and simply impose penalty, if any, or it will conduct a hearing to determine appropriate penalty.

Any objections to the form or substance of the written Statement of Charges must be received by the Hearing Committee within ten (10) days of its receipt by Respondent. The Hearing Committee shall make its determination and notify all parties within ten (10) days of receipt of an objection. If the written Statement of Charges is insufficient, the Association Manager or any member of the Board of Directors shall have seven (7) days within which to amend the written Statement of Charges to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the Hearing Committee that the written Statement of Charges is still insufficient, then the matter shall be dismissed by the Hearing Committee.

Section 7. Amended or Supplemental Written Statement of Charges Before Submission. At any time prior to the hearing date, the Hearing Committee may file or permit the filing of an amended or supplemental written Statement of Charges. All parties shall be notified thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the Hearing Committee shall afford the respondent a reasonable opportunity to prepare his defense thereto.

Section 8. Constraints on the Hearing Committee. It shall be incumbent upon each member of the Hearing Committee to make a determination as to whether he or

she is able to function in a disinterested and objective manner in consideration of the case. Any member incapable of objective consideration of the case shall disclose such to the Hearing Committee and remove himself from the proceedings, and have it so recorded in the minutes.

In any event, the respondent may challenge any member of the Hearing Committee for cause, where a fair and impartial hearing cannot be afforded at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the Committee shall meet to determine the sufficiency of the challenge. If a majority of the Committee sustains the challenge, the chairperson shall appoint another owner to replace the challenged member of the Hearing Committee. All decisions of the Hearing Committee in this regard shall be final.

Section 9. Hearing.

(a) Failure of the Respondent to appear at a hearing shall constitute an admission of the violation. If a Respondent requests a postponement for good and reasonable cause, such postponement shall be granted if Respondent notifies the Association Manager within forty-eight (48) hours of the Hearing date and is prepared to agree to a new date and time. Further postponement shall be in the sole discretion of the Hearing Committee. The Hearing Committee may postpone the Hearing on its own motion for any good cause.

(b) Whenever the Hearing Committee has commenced to hear the matter and a member of the Hearing Committee is forced to withdraw prior to a final

determination, the remaining members shall continue to hear the case and the chairperson shall select another person to replace the withdrawing person. Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association.

(c) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; and to rebut the evidence against him. Even if respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(d) 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 improper the admission of such evidence over objection in civil actions.

(e) Neither the accusing party nor the respondent must be in attendance at the hearing; however, such failure to appear by the respondent shall constitute an admission of the violation. At the discretion of the Chairperson, the hearing may be conducted in executive session.

(f) At the beginning of the hearing a member of the Hearing Committee shall explain the rules and procedures by which the hearing is to be conducted. Generally, each principal is entitled to make an opening statement, starting with the accusing person. Then each party is entitled to produce evidence, witnesses, and testimony and to

cross-examine the witnesses and opposing party. Then each party is entitled to make a closing statement. Any party may waive the right to exercise any part of this process, and the Board of Directors is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted.

Section 10. Decision. After all testimony and documentary evidence has been presented to the Hearing Committee, the principals and all other witnesses shall be excused and the Hearing Committee shall consider the evidence. The Hearing Committee shall make its determination in accordance with this resolution. The decision may be made at the conclusion of the hearing or may be postponed to no later than seven (7) days hence with a majority of the entire Hearing Committee controlling. The Hearing Committee will prepare written findings of fact. A copy of the findings and recommendations of the Hearing Committee, including majority and minority opinions, if any, shall be served by the Manager or Secretary of the Association on the Respondent in the matter and his attorney, if any. A summary of the decision, excluding names of persons involved and addressing only the issue and the Hearing Committee decision as regards the issue, shall be included in the Minute Book. The decision of the Hearing Committee shall become effective ten (10) days after it is served upon the respondent, unless otherwise ordered in writing by the Hearing Committee.

II. CHARGES TO BE ASSESSED:

Charges may be assessed in accordance with the Association documents, that is: \$10.00 per day for an offense of a continuing nature; \$50.00 per occurrence for all other offenses. Other actions authorized by said documents may be taken by the Committee.

III. APPEALS

There shall be a right of appeal to the Board of Directors. If a Respondent desires to appeal a decision of the Hearing Committee, he shall file a written notice of such desire with the Association Manager within ten (10) days of the date of the written Decision. Failure to file timely will constitute a waiver of all appeal rights. If an appeal is timely filed, a hearing on the appeal shall be held by at least three (3) members of the Board of Directors (none of whom shall be members of the Hearing Committee) within thirty (30) days. Failure of the Respondent to appear shall constitute a waiver of any further appeal rights and shall allow the decision of the Hearing Committee to stand. Evidence presented in the initial hearing shall be reviewed, including the record and/or transcript of the hearing. No additional evidence may be presented unless the Board of Directors believes, in its sole discretion, that the rights of the Respondent will be substantially affected by the lack of such evidence.

This Resolution is adopted this 15th day of APRIL, 2003, by the Board of Directors.

[Signature]
Director

Vernon P. Auchman
Director

Carl B. [Signature]
Director

Amette Barbaise
Director

Director

Director

COMMONWEALTH OF VIRGINIA

CITY OF Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this 29th day of May, 2003, by Jay Burdon, President of Bay Breeze Point Homeowners Association, inc., who did state that the requisite number of members of the Board of Directors ratified the aforesaid Resolution.

Tenise S. Smith
Notary Public

My commission expires: 11/30/03