

Fernbrook Home Owners Association
Policy Memorandum No. 2

AUTHORITY TO ENFORCE LEGAL RESTRICTIONS THROUGH IMPOSITION OF
MONETARY CHARGES

Adopted by the Board

WHEREAS, the Virginia Property Owners' Association Act provided boards of directors of community associations with the power to enforce the regulations of the Association by assessing monetary charges against those members who are responsible for violations of the regulations.

WHEREAS, boards of directors must formally adopt and publish a written resolution to enact the statutory power to assess monetary charges against members for violations of the associations regulations and

WHEREAS, for the benefit and protection of all of the members of the Association, the Board of Directors deems it desirable to formally adopt a resolution to enact the statutory power to assess monetary charges and to establish a procedure for enforcement of the community association's regulations which are consistent with principles of due process and Virginia law,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. ENFORCEMENT STEPS

- A. On behalf of the Association, the Board of Directors may undertake enforcement action upon its own detection of a violation of the Association's regulations or upon its confirmation of a violation reported by any source. At the discretion of the Board of Directors, initial enforcement action may take the form of verbal or informal written notification to the offending member.
- B. When informal notification is not elected or proves unsuccessful, the Board of Directors shall issue a formal notice in writing. The formal notice shall be delivered by hand or mailed by registered or certified mail, return receipt requested, to the member at the member's address listed on the records of the Association, and to the property address, if different. **NOTIFICATION WILL BE DEEMED EFFECTIVE IF ANY MEMBER FAILS OR REFUSES TO SIGN FOR ANY REGISTERED OR CERTIFIED MAILING FROM THE ASSOCIATION.**
- C. Formal written notice to the member will generally advise the member of the nature of the offense, the citation of the specific provision within the Association's regulations which has allegedly been violated, the specific remedy required, and the number of days when corrective action must be completed in order to preclude the possible imposition of a monetary charge.

D. When formal written notice proves unsuccessful, the Board of Directors may impose monetary charges against the offending member. The decision shall be made by the Board of Directors at a duly convened meeting, and the decision shall be recorded in the minutes.

II. NOTICE AND HEARING GUIDELINES

Before the monetary charge may be made legally effective, the member shall be informed in writing of their right to request a hearing to contest the monetary charge. The following guidelines apply to the notice and hearing procedure:

A. A written notice delivered by hand or mailed by registered certified mail, return receipt requested from the Board of Directors to the member shall advise the member of his/her/their right to contest the monetary charge at a hearing before the Board of Directors. Such notice will request the member to confirm in writing by a certain date his/her/their desire for a hearing to contest the monetary charge. The Board of Directors shall set the hearing date at its discretion.

B. WHEN NO RESPONSE IS RECEIVED FROM THE MEMBER BY THE HEARING CONFIRMATION DATE, OR WHERE THE MEMBER REQUESTS A HEARING BUT FAILS TO ATTEND THE HEARING WITHOUT PROVIDING REASONABLE AND SATISFACTORY EXPLANATION, THE MEMBER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO SUCH HEARING AND MONETARY CHARGES SHALL BECOME EFFECTIVE AS IF THE HEARING HAD BEEN COMPLETED WITH A JUDGMENT UNFAVORABLE TO THE MEMBER. THE BOARD OF DIRECTORS SHALL NOT BE REQUIRED TO CONDUCT A HEARING UNLESS THE MEMBER CONFIRMS THE INTENTION TO ATTEND THE HEARING IN WRITING.

C. When hearings are conducted, the Board will provide the member with a reasonable amount of time to present any and all defenses or mitigation to the alleged citation.

D. Following such hearing, the Board will meet in executive session to determine whether satisfactory proof of the alleged citation exists, and, if so, whether monetary charges shall be levied.

III. ENFORCEMENT REMEDIES

When the judgment is unfavorable to the member, the Board of Directors will undertake the administrative actions required to effect an assessment against the member's lot. Monetary charges may not exceed \$50.00 for a single offense or \$10.00 per day for any offense of a continuing nature.

The Board of Directors shall use the following definitions:

A. *Single offense*: An act or omission by a member (or his family, tenant, guest or invitee) determined by the Board of Directors to constitute a violation of any

provision of the Association's regulations. Members shall be legally responsible to ensure that their tenants, guests, or invitees comply with the Association's regulations.

B. *Continuing Offense*: The failure of a member (or his family, tenant, guest or invitee) to rectify an act or omission determined by the Board of Directors to constitute a violation of any provision of the Associations regulations for more than one day after receipt of any written notice from the Board of Directors, or the recurrence of a single offense within six months of the date of the receipt of the written notice of the imposition of monetary charges for the single offense. Daily charges for continuing offenses may accrue up to the date when the member notifies the Board of Directors in writing that correction of the violation has occurred (subject to later confirmation by the Board of Directors). In no case may daily charges exceed a total of 60 days without another formal vote of the Board of Directors.

C. *Applicability*: The procedures outlined in this Resolution may be applied to all offenses of legal restrictions of the Association, but do not preclude the Association from exercising other enforcement procedures and remedies authorized by the Association's legal documents, including, but not limited to, initiation of suit or self help remedies.

* * * * *