

**THE AMBERLEA AT SOUTH RIDING CONDOMINIUM**  
**REGULATORY RESOLUTION R2015-1**  
(Amended January 11, 2017)

**Rule Violations: Complaint and Due Process Procedures**

**WHEREAS**, Section 55-79.53 of the Virginia Condominium Act, Code of Virginia (1950, as amended) (“Act”) and Article 9, Section 9.1 of the Bylaws (“Bylaws”) of The Amberlea at South Riding Condominium Unit Owners Association (“Association”) charge all owners and all those entitled to occupy a Unit with compliance with the Declaration for The Amberlea at South Riding Condominium (“Declaration”) and Bylaws of the Association, as well as any duly promulgated rules and regulations; and

**WHEREAS**, Article 4, Section 4.4(b) of the Declaration and Article 3, Section 3.1(f) of the Bylaws grants the authority to the Board of Directors (“Board”) to adopt and amend any rules and regulations restricting and regulating the use and enjoyment of the property or any portion thereof and the actions of the owners and occupants affecting the property as long as they are not inconsistent with the provisions of the Condominium Act, Association’s Declaration, Bylaws and Board-adopted rules and regulations (“Governing Documents”); and

**WHEREAS**, Article 5, Section 5.8(b) of the Bylaws provides that the dwellings shall be occupied and used in compliance with the rules and regulations adopted by the Board; and

**WHEREAS**, Section 55-79.80:2 of the Act and Article 9, Section 9.1(g) of the Bylaws allows the Board to levy reasonable charges against Unit Owners for violations of the Governing Documents after notice, reasonable opportunity to cure and opportunity to be heard have been offered; and

**WHEREAS**, Article 9, Section 9.1(a)-(f) and (h) of the Bylaws authorize the Association to undertake specific actions to abate violations of the Governing Documents, assess violation charges, take legal action, and note the conditions under which an owner has additional liability to the Association or another owner; and

**WHEREAS**, Article 5, Section 5.1(c)(1) of the Bylaws states that Limited Common Expenses can be assessed against each unit owner benefited in proportion to the relative Common Element Interest of such units inter se, or in accordance with use of the services, as appropriate; and

**WHEREAS**, Article 4, Section 4.4(d) of the Declaration grant the Board the right to suspend the right to use Common Facilities for failure to comply with the Governing Documents; and

**WHEREAS**, it is the intent of the Board to enforce the Governing Documents for the benefit and protection of the Association's Unit Owners and residents by establishing procedures that provide for due process and consistency of enforcement.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT** the Board, by the Condominium Act, the Governing Documents and this Resolution, is hereby empowered to assess charges, suspend use rights, and issue cease and desist requests, respectively, for any violation of the Governing Documents in most cases only after the following procedures have been followed:

**I. Complaint**

- A. Any Unit Owner, tenant, Association managing agent, employee, or Board member who requests that the Board take action to enforce the Governing Documents shall submit a written complaint that includes the date, specific complaint and signature of complainant.
- B. The complaint shall be submitted to the Board for a determination as to whether a rule or provision of the Governing Documents has been violated.
- C. If a violation is found, the Board shall then take appropriate action, including but not limited to: (1) referring the matter to counsel; (2) referring the matter to local authorities; and/or (3) directing that a Notice of Violation be sent to the Unit Owner.
- D. Nothing herein shall be construed to mean that management cannot, on behalf of the Association, send a Notice of Violation to a Unit Owner based upon clear violations of the Governing Documents upon discovery of said violation.

**II. Notice of Violation**

- A. If determined appropriate, a written Notice of Violation letter shall be sent by first class mail or shall be hand-delivered to the unit owner at the address which the owner has provided to the Association or at the unit address, if no other address has been provided. While the Board may copy such notices to any tenants involved, if there is a tenant, the owner bears the primary obligation to so notify the involved tenants and any failure of the Association to notify the tenants shall not affect the suspension or imposition of monetary charges.
- B. The demand letter shall specify the alleged violation, the action required to abate the violation and grant a reasonable amount of time that the alleged violation must be remedied. However, when the violation may constitute a health, safety or fire hazard, demand may be made to remedy the violation within twenty-four (24) hours.
- C. The demand letter shall state that if the violation is not remedied, the unit owner must request in writing a hearing before the Board to avoid imposition of charges or suspension of rights or services. **The Notice of Violation may be combined with the Notice of Hearing Opportunity referenced in Section III of this Resolution if the violation is of a serious nature or if previous notices of violation have been sent to the owner.**
- D. At its discretion the Association may forgo the reminder letter outlined in this Section and instead send the Notice of Hearing Opportunity as outlined in Section III hereof as a first contact with an alleged violator. However, unless the violation is of a serious nature, a reasonable opportunity to correct the alleged violation must be offered.

### **III. Notice of Hearing Opportunity**

- A. If the alleged violation has not been cured in response to the Notice of Violation, or if otherwise determined appropriate, a Notice of Hearing Opportunity shall be issued in writing and be sent by first class mail (or by certified mail if deemed appropriate) or shall be hand delivered to the Unit Owner at the address which the owner has provided to the Association or at the lot address, if no other address has been provided. A copy may be sent to the tenant if there is a tenant.
- B. The Notice of Hearing Opportunity shall specify the alleged violation(s) and state that the unit owner is hereby given the opportunity to request in writing a hearing before the Board to contest assessment of charges or suspension of use of facilities or services. The notice shall also state that if no hearing is requested, the right is thereby waived and rules violation charges of up to fifty dollars (\$50.00) per violation or ten dollars (\$10.00) per day for up to ninety (90) days, or such greater amounts as may be authorized by the Virginia Condominium Act for violations of a continuing nature may be assessed without further notice, as well as the suspension of right to use facilities, including the common element parking may be imposed until the violation is remedied and any/all assessed violation charges have been paid, such violation charges to be treated as regular assessments against the unit and the owner.
- C. If applicable, the Notice of Hearing Opportunity shall also state that failure to correct the violation by the compliance date stated on the letter, the Association may correct the condition at the expense of the Unit Owner and the Unit Owner shall be assessed the costs of performing the corrective work.
- D. If no request for a hearing is received within fourteen (14) days of the date of the Notice of Hearing Opportunity, then the opportunity for a hearing is thereby waived and the Board may make a decision to impose monetary charges or suspend privileges or services in its discretion as if the owner were present at a hearing.

### **IV. Notice of Hearing**

- A. If the alleged violation is not remedied within the time specified in the Notice of Hearing Opportunity referenced in Section III and the unit owner requests a hearing, or if the Board determines a hearing is necessary, a Notice of Hearing shall be sent. A Notice of Hearing shall be hand delivered or mailed by registered or certified United States mail, return receipt requested, at least fourteen (14) days in advance of the hearing, or within such other time as may be required by the Condominium Act, to the Unit Owner at the address which the Unit Owner is required to provide to the Association. Service by mailing shall be deemed effective three (3) days after the notice has been mailed in a regular depository of the United States mail. The Notice of Violation may be combined with the Notice of Hearing.
- B. The Notice of Hearing shall specify the following:

- 1) The time, date and place of the hearing.
- 2) That the Unit Owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel before the Board.
- 3) The alleged violation, citing provisions of the Governing Documents or rules and regulations which allegedly have been violated.
- 4) That charges for violation of the Governing Documents may include an assessment of up to fifty dollars (\$50.00) for a single offense or ten dollars (\$10.00) per day for up to ninety (90) days for any offense of a continuing nature or such other amounts as may be authorized by the Condominium Act.
- 5) That the alleged violation may result in the suspension of right to use facilities, rights to use of common element parking and/or voting rights.
- 6) That the Association has the right to enter the unit and abate the violation, if applicable.

**V. Hearing**

- A. The hearing shall be scheduled at a reasonable and convenient time and place within the Board's discretion.
- B. The Board, within its discretion, may grant a continuance. If either the Association or the Unit Owner for whom the hearing is scheduled requests a continuance to a different time or date, written notice to the other party shall be required unless waived by both parties. Once a new hearing date or time has been established the Association shall give written notice of such date and time, which notice need not necessarily be fourteen (14) days in advance of such rescheduled hearing, and need not be sent via certified mail.
- C. The hearing need not be conducted according to technical rules of evidence applied in a court of law. The hearing shall provide the Unit Owner with an opportunity to be heard and to be represented by counsel.
- D. The management agent, Association staff, Unit Owner, tenant, any person lodging a complaint, and members of the hearing panel, as appointed by the Board or in absence of such appointment, the Board shall have the right (1) to call, examine, and cross-examine witnesses, (2) to introduce testimony and evidence, and (3) to rebut testimony and evidence, all within reasonable time limits imposed by the Board. The formal rules of evidence are not applicable.
- E. The hearing shall be conducted in private executive session unless the Unit Owner requests that the hearing be open to owners and residents and further provided that the chairman of the hearing panel, as appointed by the Board, may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. During the course of any

hearing held, the Board, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

- F. After proper notice has been given, if the Unit Owner fails to appear at the hearing or if no hearing is requested, the hearing may proceed as scheduled, and the Board may assess charges from the date of the Hearing Opportunity as long as a reasonable opportunity to correct the alleged violation has been offered, or take such other action as may be authorized by the Governing Documents or by law.
- G. If the Unit Owner acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Board may, in its discretion, dispense with a hearing after having afforded the Unit Owner an opportunity for a hearing.
- H. **Within seven (7) days of either the hearing or of the Board's action on the matter if no hearing was requested**, the Board shall, by hand-delivery or certified mail, return receipt requested, notify the unit owner of its decision, any suspension of use rights and/or the assessment of any charges and the date from which those assessments shall accrue and be due. Said notification shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the owner at the address of record with the Association.
- I. The decision of the Board of Directors shall be final.

#### **VI. Repeat Offenders**

- A. If the Unit Owner is found to be in violation for a second time within the same calendar year, the Association, at its discretion, shall forgo the Notice of Violation and instead issue a Notice of Hearing Opportunity as a first contact with the Unit Owner.
- B. If applicable, the Unit Owner shall be assessed all the costs of any corrective action required to be taken by the Association to remedy the violation(s) and will be assessed additional charges in the amounts permitted under the Condominium Act, as amended and all privileges afforded a member in good standing will be revoked.

#### **VII. Failure or Refusal to Accept Delivery**

- A. Failure or refusal to accept delivery of any Association notice shall not defeat these notice requirements.

#### **VIII. Photographs**

- A. The Association may take photographs of any violations for which it deems appropriate. Photographs need not be included in the Notices sent to Unit Owners but may be put in the Unit Owner's file.
- B. Prior to the Association taking corrective action, the management staff, or other authorized person, may take pictures of the violation(s) for the Unit Owner's file.

## **IX. Records**

- A. The Board or the Management Agent shall keep copies of all correspondence related to rules violations in the Unit Owner's file or in a separate file on rules violations.

## **X. Other Remedies**

- A. **This Resolution shall not be interpreted to require a hearing prior to assessment of rules violation charges if a hearing is not requested**, nor shall it be interpreted to prevent the Association from exercising any other remedies authorized or available under the Act, the Declaration, the Bylaws or this Resolution, and shall not constitute an election of remedies.
- B. This resolution shall not be construed to prevent the Association from immediately abating violations when the condition constitutes an emergency and requires immediate action, as contemplated by the Governing Documents or as otherwise required or justified by law. An emergency shall include, but not be limited to, any condition within in Unit which threatens the health or safety of any person, any Unit, or the Common Elements.
- C. If applicable, the Unit Owner shall be assessed a fifty dollar (\$50) re-inspection and processing fee to remedy the violation(s) if a Notice of Hearing Opportunity is sent, which shall reflect and offset the actual costs incurred by the Association, due to management agent's fee related to the processing, inspection and management of a request to lease.
- D. The Board may apply procedures outlined in this Resolution to all violations of the Governing Documents, and it is not precluded from exercising other enforcement procedures and remedies authorized by the Governing Documents, including but not limited to, the initiation of a lawsuit.
- E. This Resolution shall not be construed to prevent the acting management company from exercising the same rights as held by the Board of Directors per the Governing Documents and current management contract.

This Resolution shall supersede any other previous resolutions and be effective May 1, 2017.

**THE AMBERLEA AT SOUTH RIDING CONDOMINIUM**  
**REGULATORY RESOLUTION R2015-1**  
(Amended January 11, 2017)

**RESOLUTION ACTION RECORD**

Resolution Type: Regulatory No. **R2015-1**

Pertaining to: Complaint and Due Process Procedures

Duly adopted at a meeting of the Board of Directors held January 11, 2017.

Motion by: Steve Sebestyen Seconded by: Danys Kanferman

VOTE:

YES NO ABSTAIN ABSENT

X — — —

X — — —

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— — — —

Steve Sebestyen

Director

Danys Kanferman

Director

Director

Director

Director

ATTEST:

Danys Kanferman

Secretary

11 Jan 2017

Date

FILE:

Book of Resolutions:

Resolution effective: May 1, 2017.