

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION

POLICY RESOLUTION NO. 98-2

DUE PROCESS PROCEDURE

***Establishing procedures for the review of alleged violations of the
Condominium Instruments and the determination of remedies to address violations.***

WHEREAS, Section 3.1 of the Bylaws of Encore of McLean, a Condominium Unit Owners Association ("Bylaws") provides the Board of Directors ("Board") with all of the powers and duties necessary for the administration of the affairs of Encore of McLean, a Condominium Unit Owners Association ("Association");

WHEREAS, Section 3.1(f) of the Bylaws provides that the Board, on behalf of the Association may adopt and amend any rules and regulations, provided the rules and regulations do not conflict with the Virginia Condominium Act ("Act") or the condominium instruments;

WHEREAS, Section 3.1(i) of the Bylaws provides that the Board, on behalf of the Association may enforce by legal means the provisions of the Declaration for Encore of McLean, a Condominium, Bylaws (collectively "Condominium Instruments") and rules and regulations;

WHEREAS, Section 3.18(a) of the Bylaws provides that the Board of Directors shall establish a Covenants Committee;

WHEREAS, Section 3.18(b) of the Bylaws provides that the Covenants Committee will regulate the external design, appearance, use and maintenance of the common elements and have the power to impose reasonable assessments ("charges") upon, and issue a cease and desist request to, a unit owner, his guest, invitees, or lessees whose actions are inconsistent with the provisions of the Act Condominium Instruments, the rules and regulations or resolutions of the Board;

WHEREAS, Section 3.18(b) of the Bylaws also provides that any action, ruling or decision of the Covenants Committee may be appealed to the Board by any party and the Board may modify or reverse any such action, ruling or decision;

WHEREAS, Section 9.1(g) of the Bylaws provides that in accordance with Section 55-79.80:2 of the Act, the Board and the Covenants Committee may levy reasonable charges against unit owners for violations of the Act, the Condominium Instruments or the rules and regulations by the unit owner, the members of such unit owner's family, or such unit owner's guests, invitees tenants, agents or employees;

WHEREAS, Section 55-79.80:2.A of the Act provides the Association with the power, to the extent provided in the Condominium Instruments or rules and regulations adopted pursuant thereto, to suspend a unit owner's right to use facilities or services, including utility services, provided directly through the Association for nonpayment of assessments which are more than

sixty days past due and assess charges against any unit owner for any violation of the Condominium Instruments or of the rules and regulations for which such unit owner or his family members, tenants, guests or other invitees are responsible;

WHEREAS, Section 55-79.80:2.B of the Act provides that certain procedures must be followed before such rights may be suspended and monetary charges imposed;

WHEREAS, for the benefit and protection of the Association and its members, the Board deems it necessary and desirable to establish a procedure to assure due process in cases where there is a question of compliance by a unit owner or occupant of a unit with provisions of the Act or the Condominium Instruments, 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 where action must be taken relative to questions of compliance by an individual with the provisions of the Act or the Condominium Instruments.

NOW, THEREFORE, BE IT RESOLVED THAT that the Board hereby adopts the following Due Process Procedures.

ARTICLE 1
VIOLATIONS OF THE ACT AND
ASSOCIATION GOVERNING DOCUMENTS

Section 1.1 Actions prior to Initiation of Formal Due Process Procedure

(a) Any unit owner, Director of the Association or the General Manager has the authority to request that a unit owner or occupant cease or correct any act or omission which appears to be in violation of the Act or the Condominium Instruments. Such informal requests should be made before the formal Due Process Procedure is initiated.

(b) The General Manager will make an initial attempt to secure compliance through written correspondence to the unit owner 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. Copies of such correspondence shall be maintained in the Association files and a copy shall be sent to the chair of the Covenants Committee.

(c) In the case of disputes between unit owners regarding activities within units or appurtenant limited common elements, the Association will generally not become involved in the dispute or act on a complaint, unless two or more unit owners have complained in writing.

Section 1.2 Written Complaint

(a) If the actions described in Section 1.1 prove unsuccessful, the formal Due Process Procedure shall be initiated upon the filing of a written complaint by any unit owner, tenant, officer or director of the Association or the General Manager (hereafter referred to as "Complainant") with the Covenants Committee.

(b) The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the unit owner or tenant (hereafter referred to as "Respondent") is charged, so that the Respondent is able to prepare the Respondent's defense. The Complaint may be submitted by completion of a Complaint form similar to and containing the information contained in Exhibit A to this Resolution.

(c) The Complaint shall identify the specific provisions of the Act or Condominium Instruments which the Respondent is alleged to have violated and shall contain supporting facts. Where possible and appropriate, supporting documentation showing the date and a description of the violation shall be provided.

(d) The Complaint must be as specific as possible as to times, dates, places, acts or omissions and persons involved. If the violation involves a pet, the Complainant should identify the pet, if possible.

Section 1.3 Notice of Violation

(a) Upon receipt and consideration of the written Complaint, the Covenants Committee may request the General Manager or a member of the Covenants Committee make a preliminary investigation to determine the validity of the Complaint and promptly report the findings to the Covenants Committee.

(b) If the General Manager or member of the Covenants Committee determines the Complaint identifies a violation of the Condominium Instruments, the General Manager will notify the Respondent that a violation has been noted ("Notice of Violation"). The Notice of Violation will include the time, date, place and nature of the violation, the stipulated correction time frame and the proposed sanction to be imposed. The Notice of Violation shall be substantially in the form attached hereto as Exhibit B. The Notice of Violation shall be sent by first class mail or shall be hand-delivered to the Respondent at the address which the Respondent has provided to the Association or at the unit address, if no other address has been provided. Copies of the Notice of Violation will be maintained in the Association files.

(c) If the violation has been corrected or the Complaint is invalid for any reason, the Committee will determine the appropriate disposition of the Complaint and respond in writing to the Complainant.

(d) If the violation is not remedied to the satisfaction of the Covenants Committee within the stipulated correction time frame of the Notice of Violation or if the Respondent

requests, in writing, a hearing on the violation, the General Manager will schedule a hearing on the violation at the next meeting of the Covenants Committee scheduled fourteen days or more from the end of the stipulated period.

Section 1.4 Notice of Hearing

(a) The Covenants Committee shall serve a Notice of Hearing on all parties at least fourteen days prior to the hearing by either hand-delivery or registered or certified mail, return receipt requested, addressed to the parties at the address appearing on the books of the Association. Service by mailing shall be deemed effective five days after such mailing in a regular depository of the United States mail. The Notice of Hearing sent to the parties shall be substantially in the form attached as Exhibit C, and may include sanctions that may be imposed by the Covenants Committee and other information as appropriate.

(b) If the Respondent fails to attend the hearing without providing reasonable and satisfactory explanation, the Respondent shall be deemed to have waived the right to such hearing, and sanctions may be imposed by the Covenants Committee.

Section 1.5 Service of Complaint.

The Covenants Committee shall serve a copy of the written Complaint, if any, on the Respondent along with the Notice of Hearing.

Section 1.6 Cease and Desist Request.

The Covenants Committee may, in its discretion, issue a Cease and Desist Request along with the Complaint and Notice of Hearing. Such Cease and Desist Request shall be substantially in the form attached as Exhibit D to this Resolution.

Section 1.7 Amended and Supplemental Complaints

At any time prior to the hearing date, the Covenants Committee may file or permit the filing of an amended and supplemental Complaint. All parties shall be notified thereof in the manner provided herein. If the amended and supplemental Complaint presents new charges, the Covenants Committee shall afford the Respondent a reasonable opportunity to prepare a proper defense.

Section 1.8 Statements

(a) Written statements may be introduced by either party provided a copy of the statement is mailed or delivered to the opposing party prior to the hearing.

(b) The statement, if introduced in evidence, shall be given the same effect as if the author had testified orally.

Section 1.9 Constraints on the Covenants Committee

It shall be incumbent upon each member of the Covenants Committee to make a determination of whether that member is able to function in a disinterested and objective manner in consideration of the violation before the Covenants Committee. Any member incapable of objective consideration of the violation will not participate in the proceedings.

Section 1.10 Hearing

(a) The Covenants Committee chair shall serve as hearing officer and preside over the hearing, unless otherwise determined by the Covenants Committee. Association legal counsel may attend the hearing at the request of the Board. The Respondent may, but is not required to be represented by counsel.

(b) At the beginning of the hearing, the hearing officer shall explain the rules and procedure by which the hearing is to be conducted. The Covenants Committee may determine the manner in which the hearing will be conducted, so long as the rights set forth in this Resolution 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 of 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.

(c) Neither the Complainant nor the Respondent need be in attendance to conduct the hearing. At the request of either the Complainant or the Respondent, the Covenants Committee may agree to conduct the hearing in private session.

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

- (1) Make an opening statement;
- (2) Introduce evidence, testimony and witnesses;
- (3) Cross-examine opposing witnesses;
- (4) Rebut evidence and testimony; and
- (5) Make a closing statement.

The Complainant and the Respondent may be called and questioned regardless of whether either party testifies in their own behalf.

Section 1.11 Decisions

To be effective, a decision of the Covenants Committee shall be by a majority vote. The hearing result and sanction, if imposed, shall be delivered by hand-delivery or registered or certified mail, return receipt requested, to the Respondent within seven days of the conclusion of the hearing. The decision shall be written and accompanied by both the majority and minority opinions, if any.

ARTICLE 2
APPEALS

Section 2.1 Rights of Owners

Final decisions of the Covenants Committee may be appealed by any party to the Board of Directors. The Board may make a preliminary review of the circumstances and materials relative to the matter and make a determination as to whether it will hear the appeal. The Board may, on the basis of the preliminary review, elect not to hear the appeal, in which case the Board will so inform the appealing party in writing and the decision of the Covenants Committee will stand.

Section 2.2 Appeal Petitions

Appeal Petitions must be legibly written and be submitted to the Board in substantially the following form:

(I)(We), _____, hereby petition the Board of Directors to hear an appeal of the decision of the Covenants Committee (Application (Case) No. __. (I) (We) further understand that the decision of the Board on this issue is final.

Section 2.3 Notice of Appeal Hearing

Notice of Appeal Hearing will be delivered in the same manner as set forth in Section 1.4 of this Resolution, except that the Notice of Appeal Hearing is served by the Board.

Section 2.4 Procedures

All the rights and procedure enabled in Article 1 of this Resolution shall apply to appeals with the substitution of the term "Board" wherever the term "Covenants Committee" appears.

Section 2.5 Effect of Decision

The Board may uphold the Covenants Committee's decision in its entirety, modify or reverse such decision.

ARTICLE 3
TENANTS

Section 3.1 Notice to Owner

If the person charged with a violation of the Act or the Condominium Instruments is a tenant, the owner of the unit in which the tenant resides shall be considered the Respondent and as a party to the action shall receive certified copies of all correspondence or other documents sent to the tenant or occupant pursuant to this Resolution.

Section 3.2 Owner Rights

The Owner shall have all rights provided in Article 1, including the right to appeal.

ARTICLE 4
SANCTIONS

Section 4.1 Disciplinary Options

Disciplinary action imposed by the Covenants Committee may include, but is not limited to, the following:

- (a) Assessing monetary charges against the Respondent in accordance with Section 55-79.80.2 of the Act and Section 9.1(g) of the Bylaws;
- (b) Issuing a Cease and Desist Request in accordance with Section 1.6 of this Resolution;
- (c) Initiating self-help remedies when appropriate and authorized by the Bylaws;
- (d) Assessing expenses incurred during self-help remedies to the Respondent;
- (e) Authorizing Association legal counsel to file legal action for damages or injunctive relief as authorized by Bylaws; or
- (f) Referral to appropriate County or government authorities.

ARTICLE 5
CONSTRUCTION

Section 1.5 Proceedings

This Resolution is intended to assure that due process is provided to unit owners and tenants in proceedings before the Covenants Committee and the Board to enforce the Act and the Condominium Instruments, and to serve as a guideline for such proceedings.

Section 5.2 Implementation

The Covenants Committee or the Board, as appropriate, may determine the specific manner in which the provisions of this Resolution are to be implemented, provided that due process is protected.

Section 5.3 Severability

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

Section 5.4 Due Process Defined

“Due Process,” as used in this resolution, refers to the following basic rights:

- (a) The charges shall be provided to the owner and also to the tenant, if applicable;
- (b) A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced;
- (c) An opportunity to appeal shall be available; and
- (d) Basic principles of fairness shall be applied.

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION

Rules Violation Complaint

Date: _____

1. Name of person(s) charged with violation: _____

2. Address of person(s): _____

3. Is the person(s) a tenant or unit owner? _____

4. Describe in detail how and where the violation occurred: _____

5. Describe in detail the provisions of the Condominium Instruments that appear to have been violated: _____

6. When did the violation(s) occur? _____

7. Have you personally requested the unit owner and/or occupant to cease the rules violation?
___ Yes ___ No ___ verbally ___ by written request. When? _____

8. Name and contact information of person(s) filing the complaint: _____

Email: _____

9. Signature(s) _____

Use additional sheets of paper if necessary and include additional documentation, if appropriate.

For Association Use Only

10. Unit Owner: _____ Tenant: _____

11. Provision(s) of Condominium Instruments or rule(s) violated: _____

12. Owner address, if non-resident: _____

13. Comment: _____

14. Date Notice of Violation sent to unit owner: _____

15. Referred to Covenants Committee on _____, 20_____
16. Date Notice of Violation sent: _____
17. Date Notice of Hearing sent: _____
- cc: Owner file

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION

[Date]

REGULAR MAIL

(Unit Owner)

Re: Encore of McLean, a Condominium Unit Owners Association --
Notice of Violation

Dear (Unit Owner/ Resident):

Pursuant to the Due Process Resolution of Encore of McLean, a Condominium Unit Owners Association this is to serve as notification that according to information provided to the Association, a condition of your unit has been noted as a violation of:

The specific action/ condition has been described as follows:

Before proceeding forward under the Due Process Procedure, we encourage you to address this condition. Please take action to correct all above noted violations within ___ days from the date of this letter. If you need more time to make repairs, you must request additional time and notify the Covenants Committee in writing as to when the repairs will be completed. Please advise our office of the action you have taken to address this matter. If you fail to take corrective action, the matter will be scheduled for a hearing before the Covenants Committee and sanctions may be imposed, including the imposition of monetary charges.

Thank you for your prompt attention to this matter and your cooperation. If you have questions, please contact _____ at _____.

Sincerely,

General Manager

cc: Owner file

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION

[DATE]

**VIA CERTIFIED MAIL
RETURNED RECEIPT REQUESTED
and REGULAR MAIL WITH PROOF OF MAILING**

Unit Owner/Resident
Encore of McLean, a Condominium

McLean, Virginia 22102

RE: Encore of McLean, a Condominium Unit Owners Association --
Notice of Hearing Before Covenants Committee

Dear Unit Owner/Resident:

Pursuant to the Due Process Resolution of Encore of McLean, a Condominium Unit Owners Association, this is to serve as notification that according to information provided to the Association, you are in violation of _____

The specific allegations are set forth in the enclosed Complaint.

You are hereby notified that a hearing will be held before the Covenants Committee in the Library of the Encore of McLean on _____, 20__ at _____ a.m./p.m. upon the charges set forth in the Complaint. You may be present at the hearing, may be, but need not be represented by Counsel and may present any relevant information including witnesses concerning the Complaint. You will be given a full opportunity to examine and cross-examine all witnesses.

Please confirm your attendance by calling _____ immediately at _____ or if you have a reason why you cannot attend the hearing on the scheduled date, so that an alternative date may be scheduled. You will be entitled to only one rescheduling.

Please keep in mind that if no response is received from you, or if you confirm attendance but fail to attend without providing a satisfactory explanation, you will be deemed to have waived the right to the hearing.

If you have questions, please contact _____.

Sincerely,

Covenants Committee

By: _____

Name:

Title: Chair

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION

**VIA CERTIFIED MAIL
RETURNED RECEIPT REQUESTED
And REGULAR MAIL
WITH PROOF OF MAILING**

Unit Owner/Resident
Encore of McLean Condominium

McLean, Virginia 22102

RE: Encore of McLean, a Condominium Unit Owners Association --
Cease and Desist Request

Dear Unit Owner/Resident:

Pursuant to the Due Process Resolution of Encore of McLean, a Condominium Unit Owners Association, the Covenants Committee hereby orders you to CEASE AND DESIST the following acts or actions in violation of the Condominium Instruments:

This order will remain in effect until it is lifted by the Covenants Committee, the Board of Directors or a court of law. Your immediate attention to these matters is requested.

Sincerely,

Covenants Committee

By: _____
Name:
Title: Chair

ENCORE OF MCLEAN, A CONDOMINIUM UNIT OWNERS ASSOCIATION


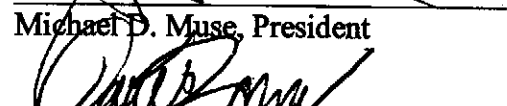
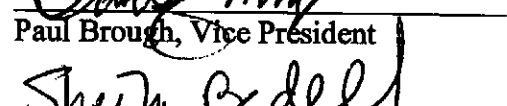
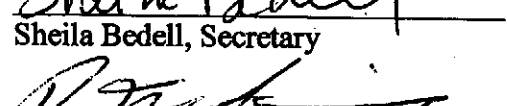
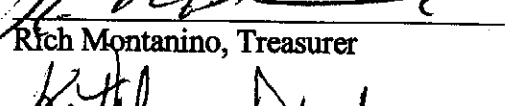
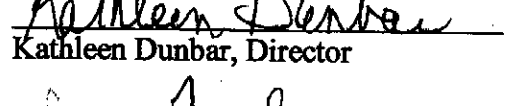
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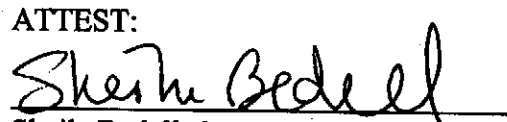
Resolution Type: _____ No. 98-2

Pertaining to: Due Process Procedures

Duly adopted at a meeting of the Board of Directors held September 20, 2012

Motion by: Fischer Seconded by: Montanino

VOTE:	YES	NO	ABSTAIN	ABSENT
 Michael D. Muse, President	X			
 Paul Brough, Vice President	X			
 Sheila Bedell, Secretary	X			
 Rich Montanino, Treasurer	X			
 Kathleen Dunbar, Director	X			
 Ben Fischer, Director				
_____ Director				

ATTEST:

Sheila Bedell, Secretary

Date

Resolution effective: September 20, _____, 2012