

ORANGE HUNT SQUARE HOMEOWNERS ASSOCIATION, INC.
POLICY RESOLUTION NO. 5
SPECIAL RESOLUTIONS

Relating to due process procedures

WHEREAS, Article VII, Section 1 of the Bylaws states that "The Board of Directors shall have all of the powers necessary for the administration of the affairs of the Association" and

WHEREAS, Article XII, Section 1 of the Declaration of Covenants, Conditions and Restrictions establishes procedures and requirements whereby the Association may take appropriate action(s) to enforce the provisions of the Governing Documents; and

WHEREAS, Article IX of the Bylaws stipulates that the Board of Directors shall establish a Architectural Control Committee, which Committees' responsibilities shall include the enforcement of the Association's Governing Documents; and

WHEREAS, for the benefit and protection of the Association and of the individual Members, the Board deems it necessary and desirable to establish and operate by a procedure to assure due process in cases where there is a question of compliance by a Member with provisions of the Code of Virginia, the Founding Documents, or the Book of Resolutions, thereby attempting to minimize the necessity of seeking action in or through a court of law;

NOW, THEREFORE, BE IT RESOLVED THAT Special Resolutions dealing with enforcement of provisions of the Code of Virginia, the Founding Documents and the Book of Resolutions shall be adopted in accordance with the following procedures:

**I VIOLATIONS OF THE FOUNDING DOCUMENTS
OR THE BOOK OF RESOLUTIONS**

- A. Actions Prior to Initiation of Formal Special Resolutions Process. Any Member, Tenant, officer, or management agent of the Association has the authority to request that a Member or Tenant cease or correct any act or omission which appears to be in violation of the aforementioned documents. Such informal requests should be made before the formal process is initiated.

Other than alleged covenant violations or alleged violations of the Design Guidelines, disputes between owners regarding activities within the private lots or living units or the appurtenant common areas, the Association will generally not become involved in the disputes or act on a complaint unless two or more persons have complained in writing.

The Managing Agent, if any, may suspend the right of a Member to use any facility which is part of the Common Areas if such Member's use of the facility is in violation of the rules and may endanger life, limb or property or equity of the Association, and a verbal request to cease or correct the violation has not been heeded.

The Association may make initial attempts to secure compliance through correspondence to the offending parties 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. If the offending party is a Tenant, the record owner of the Unit shall also be notified at this time. Copies of such correspondence shall be maintained in the Association files, and a copy shall be sent to counsel for the Association.

- B.** Written Complaint. If the actions described in Section A prove unsuccessful, the Enforcement Procedures shall be initiated upon the filing of a written complaint by any Member, tenant, officer, director or management agent of the Association (the Complainant) with a Board member or, if any, the Managing Agent who shall forward the Complaint to the Architectural Control Committee. The complaint shall include a written statement of charges which shall set forth in clear and concise language the acts or omissions with which the offending party (the Respondent) is charged, to the end that the Respondent will be able to prepare a defense. The complaint shall specify the specific provisions of the Governing Documents which the respondent is alleged to have violated and shall contain supporting facts. The complaint must be as specific as possible as to times, dates, places and persons involved.
- C.** Preliminary Investigation. Upon receipt and consideration of the written complaint, the Architectural Control Committee may request the Managing Agent, if any, or a member of the Architectural Control Committee to make a preliminary investigation as to the validity of the complaint and promptly report the findings to the committee. If the condition has been corrected or the complaint is invalid for any reason, the committee shall determine the appropriate disposition of the matter and respond in writing to the Complainant. If preliminary investigation indicates the need for further action, the Architectural Control Committee may proceed as appropriate with the steps set forth below.
- D.** Service of Complaint. If preliminary investigation indicates further action is necessary, the Architectural Control Committee shall serve a copy of the complaint on the Respondent by either of the following means: (1) personal services, or (2) by certified mail, return receipt requested, and addressed to the Respondent at the address appearing on the books of the Association. Service by mailing shall be deemed effective two days after such mailing in a regular depository of the United States mail. The complaint shall be accompanied with a postcard or other written form as described in Section F below entitled "Notice of Defense" which constitutes a notice of defense hereunder. No order adversely affecting the rights of the

Respondent may be made in any case, unless the Respondent has been served as provided herein. If the Respondent is a Tenant, a copy of the complaint and accompanying notices provided for below, shall also be sent to the record owner of the Unit.

- E.** Notice of Hearing. Along with service of the complaint, the Architectural Control Committee shall serve a Notice of Hearing on all parties at least fifteen days prior to the hearing. The Notice of Hearing sent to the parties shall be substantially in the following form but may include other information.

"You are hereby notified that a hearing will be held before the Architectural Control Committee at _____ on _____ 19 _____ at the hour of _____, upon the charges made in the complaint served upon you. You may be present at the hearing and may, but need not be, represented by counsel, may present any relevant evidence, and will be given full opportunity to examine and cross-examine all witnesses. You are entitled to request the attendance of witnesses and the production of books, documents, or other items by applying to the Board of Directors of the Association."

If any parties can promptly show good cause as to why they cannot attend the hearing on the scheduled date and indicate times and dates on which they would be available, the Committee may reschedule the hearing and promptly deliver notice of the new hearing date.

- F.** Notice of Defense. Service of the Notice of Hearing and complaint shall be accompanied by a Notice of Defense.

The Notice of Defense shall state that the Respondent may:

1. Attend the hearing before the Architectural Control Committee;
2. Object to the complaint on the grounds that it does not state the acts or omissions upon which the Architectural Control Committee may proceed;
3. Object to the form of the complaint on the grounds that it is so indefinite or uncertain that the Respondent cannot identify the violating behavior or prepare proper defense; or
4. Admit to the complaint in whole or in part. In such event, the Architectural Control Committee shall meet to determine appropriate action or penalty, if any.

Any objections to the complaint based on paragraphs 2 or 3 above shall be provided in writing to a member of the Architectural Control Committee or the Managing

Agent, if any, within five days of service of the complaint. The Architectural Control Committee shall consider the objection and make its determination within ten days of its receipt of the objection. The Architectural Control Committee shall make its determination and notify all parties within such ten-day period. If the complaint is found insufficient, the Complainant shall have ten days within which to amend the complaint 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 Board of Directors that the complaint is still insufficient, then the matter shall be dismissed by the Board.

- G.** Cease and Desist Request. The Architectural Control Committee may, at its own discretion, issue a Cease and Desist request along with the complaint, Notice of Hearing and Notice of Defense. Such cease and desist request shall be subsequently in the following form:

The Architectural Control Committee has received the attached complaint.

The Architectural Control Committee hereby requests that you CEASE AND DESIST such acts or actions until such time as this order is abrogated by a ruling of the Architectural Control Committee, Board of Directors or a court of law.

Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation.

- H.** Amended or Supplemental Complaints. At any time prior to the hearing date, the Architectural Control Committee may file or permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner provided herein. If the amended or supplemental complaint presents new charges, the Board of Directors shall afford the respondent a reasonable opportunity to prepare proper defense thereto.

- I.** Discovery. Upon written request to the other party, made prior to the hearing and within fifteen days after service of the complaint by the Architectural Control Committee or ten days after service of any amended or supplemental complaint, either party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party and (2) inspect and make a copy of any statements, writings and investigative reports relevant to the subject matter of the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product. Any party claiming a request for discovery has not been complied with shall submit a petition to request discovery to the Architectural Control Committee. The Architectural Control

Committee shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

- J.** Statements. Sworn statements may be introduced into evidence by a party if a copy of the statement is mailed or delivered to the opposing party at least seven days prior to the introduction of the statement. The sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally unless the opposing party, within five days after receipt of the statement, mails or delivers to the party seeking to introduce the statement a request to cross-examine the statement's author. If an opportunity to cross-examine the statement's author is not afforded after request is made as herein provided, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.
- K.** Constraints on the Architectural Control Committee. It shall be incumbent upon each member of the Architectural Control Committee to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of objective consideration of the case shall disclose this fact to the Committee and shall not participate in the proceedings. (Any member of the Committee has the right to challenge any other member if such member believes they are unable to function in a disinterested and objective manner.)

Prior to the hearing, the Complainant and the Respondent may challenge any member of the Architectural Control Committee for cause. In the event of such a challenge, the Board shall meet within ten days to determine the sufficiency of the challenge. If the Board sustains the challenge, the President shall, at that time, require the challenged Board member to refrain from participation. All decisions of the Board in this regard shall be final.

- L.** Hearing. Hearings shall be held before all members of the Architectural Control Committee:
1. The Architectural Control Committee shall select one of its members to serve as hearing officer and preside over the hearing. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Architectural Control 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 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 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.

2. It is not required that a Complainant or Respondent be in attendance at the hearing. At the request of either the Complainant or the Respondent, the Architectural Control Committee may agree to conduct the hearing in private session.

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

- (a) make an opening statement;
- (b) introduce evidence, testimony and witnesses;
- (c) cross-examine opposing witnesses;
- (d) rebut evidence and testimony;
- (e) make a closing statement.

Even if a Complainant and/or the Respondent does not testify in his own behalf, each may still be called and questioned; however, if a party wishes to take advantage of this provision, the opposing party to be called must be notified at least five days in advance.

4. Whenever the Architectural Control Committee has commenced to hear the matter and a member of the Board withdraws prior to a final determination, the remaining members shall continue to hear the case.

5. The Architectural Control Committee may rule upon the complaint at the time of the hearing, including the levy of a charge or other actions authorized in Article XII of the Declaration. In any event, the Architectural Control Committee shall prepare a written decision disposing of the matters raised in the complaint, and shall serve a copy of the decision upon the Complainant and Respondent within ten days of the hearing, by either of the following means: (1) personal service, or (2) certified mail, return receipt requested.

- M.** Suspension of Privileges and Levying of Charges. Disciplinary action imposed by the Architectural Control Committee or Board of Directors may include suspending or conditioning the respondent's right to use any recreational facilities or imposing a charge not to exceed one hundred dollars (\$100.00) for any one violation. A violation which continues after the provision of written notice shall be treated as a continuing violation and shall result in a charge of ten dollars (\$10.00) per day until the violation ceases. Such charges shall be considered as an assessment against the lot owned by the member in violation. Such charges shall not be imposed for the nonpayment of assessments. For any non-continuing infraction, suspension of the right to use any or all recreational facilities shall be for a period of not more than sixty (60) days. For a continuing infraction (including nonpayment of any assessment after the same becomes delinquent), suspension may be imposed for so long as the violation continues.

II INTERPRETATIVE RULINGS

A. Purpose of Rulings. Rulings of the Architectural Control Committee may serve to: (1) clarify the intent of provisions of the Founding Documents, Rules and Regulations or Book of Resolutions, (2) decide on the consistency of any such provisions with the other provisions of the Founding Documents, Rules and Regulations or the Book of Resolutions or (3) decide whether or not Resolutions and Rules and Regulations were duly adopted. The purpose is not to amend, expand or limit the provisions of the Governing Documents, although the Architectural Control Committee may propose such amendments, expansions or limits in the statements accompanying a ruling.

B. Petitions.

1. Any Owner, Tenant, Officer, Director or Agent of the Association may petition the Architectural Control Committee for an interpretative ruling by filing a petition directed to the Architectural Control Committee.

2. The petition must be legibly written in substantially the following form:

The undersigned requests the Architectural Control Committee to issue an interpretative ruling on the following provisions of the [indicate document] _____ . The issue in questions is: _____ .

Response should be sent to _____

C. Decisions. To be effective, a decision of the Architectural Control Committee shall be by majority vote. The Architectural Control Committee shall have forty-five days from receipt of such petition to issue an interpretive ruling. This time period may be extended by the Architectural Control Committee at its discretion, by providing notice of the extension and the reasons to the party submitting the petition. Copies of the ruling shall be distributed to the parties and shall be included in the Book of Resolutions. A summary of the ruling will be placed in the Association newsletter. All rulings shall state the authority for such ruling and the basis of the decision.

III ACTION OF THE BOARD OF DIRECTORS

A. No Architectural Control Committee. If the Board of Directors has not appointed an Architectural Control Committee then the Board shall perform the duties of the Architectural Control Committee in accordance with the procedures set forth herein.

B. Appeals

1. Rights of Owners. Final decisions of the Architectural Control Committee may be appealed by any party. The Board may make a preliminary review of the case 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 Architectural Control Committee decision stands.

2. Appeals Petitions. Appeals petitions must be written and be submitted to the Board within ten days of receipt of the Architectural Control Committee's decision, in substantially the following form:

(I)(We) , hereby petition the Board of Directors to hear an appeal of the decision of the Architectural Control Committee (Application) (Case) No. ____ . (I)(We) further understand that within the Association, the decision of the Board of Directors on this issue is final.

3. Notice of Hearing. Notice of Hearing shall be as in Section I-E of this Resolution except that it is served by the Board.

4. Procedures. All of the rights and procedures established in Part I of this Resolution shall apply to appeals.

5. Effect of Decision. The Board may modify, reverse or uphold the Committee's decision in its entirety.

6. Further Action. An individual must exhaust all available remedies of the Association prescribed by this resolution before resorting to a court of law for relief with respect to an alleged violation by another Owner of any provision of the Governing Documents. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board.

IV INTERPRETATION

This resolution is intended to ensure that due process is provided to Owners and Tenants in proceedings before the Architectural Control Committee and Board of Directors.

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

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 ensure due process according to the general steps set forth in this resolution.

"Due process," as used in this resolution, refers to the following basic rights:

- (a) The charges shall be provided to the Respondents.
- (b) A hearing shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced.
- (c) Basic principles of fairness shall be applied.

V MISCELLANEOUS

The use of the masculine gender includes the feminine and neuter genders and the use of the singular includes the plural and vice versa, whenever the context so requires.

ORANGE HUNT SQUARE HOMEOWNERS ASSOCIATION, INC.

RESOLUTIONS ACTION RECORD

Resolution Type Policy No. 5

Pertaining to: Special Resolutions relating to due process procedures

Duly adopted at a meeting of the Board of Directors of Orange Hunt Square Homeowners Association, held October 6, 1992

Motion by: Mike Bryan Seconded by: Mary James

OFFICER	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>Mike Bryan</u> , President	X	___	___	___
_____ , Vice President	___	___	___	___
<u>Mary James</u> , Secretary	X	___	___	___
<u>Charlie Riley</u> , Director	X	___	___	___
<u>Mary Straub</u> , Director	X	___	___	___

ATTEST:

Mary C. James
Secretary

6 Oct 1992
Date

FILE:

Book of Minutes – 1992

Resolution Effective, Immediately