

**Birkdale Community Association, Inc.**  
**Violation Complaint and Due Process Resolution**

ADOPTED March 24, 2009

WHEREAS, Section 55-513(A) of Chapter 26 of Title 55 of the Code of Virginia (The Property Owners' Association Act, or "Act") empowers a Board of Directors to establish, adopt and enforce rules and regulations respecting use of common areas and other areas of responsibility assigned to the Association by the Association's declaration; and,

WHEREAS, Article III, Section 3.4 of the Master Protections, A Declaration of Covenants, Easements and Restrictions, dated November 17, 1988 and recorded on December 6, 1988 in the Clerk's Office of the Circuit Court of the County of Chesterfield, Virginia, in Deed Book 1990 at Page 237, et. seq., as amended and/or supplemented ("Declaration"), and Article III, Section 2(f) of the Bylaws of Birkdale Community Association, Inc. ("Bylaws") authorize the Board of Directors of the Association to enact and amend rules for the use of the Common Areas and Recreation Area; and

WHEREAS, pursuant to Section 55-515(A) of the Act and the Declaration, all Lot Owners and all those entitled to occupy a Lot in the Birkdale community (collectively "Lot Owners") shall comply with the Declaration, Bylaws and Rules and Regulations, and Architectural Standards and Guidelines, as amended;

WHEREAS, Article II of the Amended and Restated Articles of Incorporation of Birkdale Community Association, Inc., provides that the Association will exercise all of the powers and privileges and perform all duties and obligations of the Association as set forth in the Declaration; and

WHEREAS, in accordance with Section 55-513(B) of the Act and Article III, Section 3.4, Article IV, Section 4.3, and Article IX, Section 9.1 of the Declaration, the Association has the authority to assess charges against any Lot Owner and/or suspend the right to vote and/or suspend the right to use any Common Area or Recreation Area for any violation of the Declaration, Bylaws, Rules and Regulations, and Architectural Standards and Guidelines; and

WHEREAS, in accordance with Section 55-513(B) of the Act, the Association, by duly adopted resolution, has the authority to "suspend a member'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

WHEREAS, it is the intent of the Board of Directors, by virtue of this Resolution, to bring its enforcement policies and procedures provided by Article III, Section 3.4, Article IV, Section 4.3, and Article IX, Section 9.1 of the Declaration and Article III, Section 2(f) of the Bylaws into compliance with the enforcement authority established by Section 55-513(B) of the Act; and

WHEREAS, it is the intent of the Board of Directors, pursuant to Section 55-513(B) of

the Act, to adopt by Resolution the authority to assess charges for violations of the Act, Declaration, Bylaws, Rules and Regulations and Architectural Standards and Guidelines and to suspend Lot Owners' use of facilities or services, including utility services, provided directly through the Association for the nonpayment of assessments which are more than sixty days past due, for which the lot owner is responsible; and

WHEREAS, Section 55-513(B) of the Act further provides that certain procedures must be followed before such charges may be assessed and such suspensions may be imposed; and

WHEREAS, it is the intent of the Board of Directors to enforce the Declaration, Bylaws, duly adopted Rules and Regulations, and Architectural Standards and Guidelines for the benefit and protection of the Association's Lot Owners, by establishing procedures which ensure due process and consistency of enforcement;

NOW THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors of the Birkdale Community Association, by the Act, the Declaration, Bylaws and this Resolution, hereby adopts and establishes a procedure by which the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and Architectural Standards and Guidelines can be enforced, and, further, that the Board of Directors establishes a procedure by which facts and information pertaining to an alleged violation, are brought to the attention of the responsible Owner and that Owner be given a chance to rectify an identified violation, and, further, that if no such remedy is made, the Board of Directors, or a committee appointed by the Board of Directors, on behalf of the association, called, from now and this point forward, the Covenants Committee, can investigate and review related facts and information, report to the Board of Directors, and attempt to resolve the matter, prior to the Covenants Committee or the Board imposing any sanctions provided herein and/or bringing any legal action.

IT IS HEREBY FURTHER RESOLVED THAT the Board of Directors is adopting the ability for the Covenants Committee, on behalf of the Board of Directors, to assess charges for any violation of the Act or the Declaration, Bylaws, Rules and Regulations or Architectural Standards and Guidelines and to suspend a lot owner's right to use property owned by the Association, facilities or services, including utility services, provided directly through the Association for nonpayment of assessments which are more than sixty days past due, for which the Lot Owner is responsible pursuant to Section 55-513(B) of the Act, which will be assessed and/or suspended only after the following procedures have been followed:

1. It is encouraged that Lot Owners aware of a violation should first advise the violating Lot Owner of the violation and request that the alleged violating resident comply with the appropriate governing documents.
2. Notwithstanding Paragraph 1, above, any Association Member, Lot Owner, tenant, Managing Agent, employee or Board member who believes that a Member or a Lot is in violation of the Act, Declaration, Bylaws, Rules and Regulations or Architectural Standards and Guidelines may report a violation to the Covenants Committee and/or the Managing Agent, and shall do so by completing, dating and signing a Complaint in a form similar to and containing the information contained on Exhibit "A" hereto or by providing similar information via a telephone call, email, or in a letter to the Covenants Committee Chair, the Managing Agent or to Project Care

[birkdale.project.care@verizon.net](mailto:birkdale.project.care@verizon.net)). Project Care is a general email account provided by the association and is used as an avenue to relay information about the association to the appropriate members of the Board of Directors, the Covenants Committee or other committees appointed by the board. If the complaint is in regard to a suspected violation, the person bringing about the complaint must provide full details of the matter. All verbal or written reports of suspected violations will be confidential and held in the Association files kept by the Managing Agent for the Association.

3. Upon receipt of the complaint, the Covenants Committee shall investigate the matter. The Covenants Committee Chair will utilize the Complaint Form, attached as Exhibit "A" as a way of logging each step taken from the time that a possible violation was noted until resolved without a hearing or a hearing was held in accordance with this Resolution. This file is to be used only by the Covenants Committee Chair and the members of the Covenants Committee to correctly ascertain the time line of the event. After a resolution is reached between the Covenants Committee, the Association and the violating Lot Owner/Member, the file of record should be placed into the Lot Owner's file located with the Managing Agent as custodian in perpetuity.
4. Upon receipt of a written complaint, a conference, either via email or phone call, should take place between the Covenants Committee Chair and the Managing Agent to review the matter. With the Managing Agent and Covenants Committee Chair's authority, a First Notice of Violation and Demand, which may be in a form similar to Exhibit "B" hereto, shall be sent by first class mail or shall be hand-delivered to the lot owner at the address which the owner has provided the Association or at the Lot's address if no other address has been provided. A copy may be sent to the tenant if there is a tenant. The First Notice of Violation and demand shall specify the alleged violation, the action required to abate the violation and a date usually not less than ten (10) days after the date of the demand letter by which the alleged violation must be remedied. Provided, 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.
5. The Covenants Committee Chair shall monitor the situation and if no remedy is made within the specified time noted in the First Notice of Violation letter, the Covenants Committee shall mail a Second Notice of Violation and Demand, which may be in the form similar to Exhibit "C" hereto, shall state that if the violation is not remedied by a specified date, the alleged violator must make a written request for a hearing before the Board of Directors to avoid imposition of charges. The Second Notice of Violation and Demand shall also state that if no hearing is requested by the date specified in the Second Notice of Violation and Demand, the owner will be deemed to have waived the opportunity for a hearing and rules violation charges may be assessed. If the alleged violation is not remedied within the date or time specified in the Second Notice of Violation and Demand and the Lot Owner requests a hearing or if the Board of Directors or Covenants Committee determines a hearing is necessary, a hearing before the Covenants Committee shall be scheduled at a reasonable time and place in the discretion of the Board of Directors or Covenants Committee, and notice of hearing shall be sent. Notice of a hearing shall be hand delivered or mailed by registered or certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, or within such other time as may be required by the

Act, to the Lot Owner at the address which the lot owner is required to provide to the Association. Service by mailing shall be deemed effective two (2) days after the notice has been mailed in a regular depository of the United States mail. The notice of hearing may be similar to Exhibit "D" attached hereto and shall specify:

a) The time, date and place of the hearing of the Covenants Committee.

b) That the lot owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel before the Covenants Committee.

c) The alleged violation, citing provisions of the Declaration, Bylaws, Rules and Regulations, and Architectural Standards and Guidelines, which allegedly have been violated.

d) That charges for violation of the Declaration, Bylaws and Rules and Regulations may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners' Association Act, and that the Association may also suspend a lot owner's right to use facilities or services, including utility services, offered by the Association until the offense is cured and/or ceased.

6. At the violation hearing, the Managing Agent or Covenants Committee Chair will present the facts and other information relating to the alleged violation and will review each of the notices mailed to the suspected violating Member/Lot Owner. The alleged violating Member will be entitled to present facts, and other information related to the matter. The alleged violating Member may also be represented by an attorney. Furthermore, some, but not all, alleged violations might require the presence of the ARC Chairperson, to discuss the issue as it relates to the Architectural Standards and Guidelines of the community. It will be the discretion of the Covenants Committee to decide whether the ARC Chair is to be present at the hearing.

7. Because the Covenants Committee hears matters regarding violations of the governing documents, the hearing shall be conducted in private, pursuant to Section 55-510(E) of the Act, at the discretion of the Covenants Committee and further provided that the chairman of the hearing body 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 Covenants Committee, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

After proper notice has been given, if the Lot Owner fails to appear at the hearing or if no hearing is requested, the hearing or meeting may continue as scheduled and the Covenants Committee may assess charges from the final compliance date of the Second Notice of Violation and Demand or take such other action as may be authorized by the Declaration, Bylaws or Rules and Regulations or by law.

If the alleged violator acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Covenants Committee may, in its discretion, dispense with a

hearing after having afforded the alleged violator with an opportunity for a hearing.

8. After the facts have been presented and all discussions have ended regarding the noted violation, the Covenants Committee will excuse all parties and proceed into an executive session, consisting only of the Covenants Committee members. At which point, the Covenants Committee will review all of the facts and information presented during the hearing and make a determination of what, if any, further action is to be taken, including, but not limited to, levying charges for violation of the Declaration, Bylaws and Rules and Regulations, which may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners' Association Act, and/or suspension of the Lot Owner's right to use facilities or services, including utility services, offered by the Association until the offense is cured and/or ceased.

Minutes of each hearing or meeting shall be kept and a form similar to that attached hereto as Exhibit "E" shall be completed and placed in the Lot Owner's file and appropriate Association files.

9. In accordance with Section 55-513(B) of the Act, within seven (7) days of the violation hearing, the Covenants Committee shall notify, in writing, the alleged violator of its decision by hand-delivery or mailing by registered or certified mail, return receipt requested to the violator's address of record with the Association, and the assessment of any charges and the date which those assessments shall accrue from and be due, which shall not be earlier than the date set forth in the demand letter by which the violation must cease, and whether or not it is suspending the owner's right to use the common areas and facilities.

10. This resolution shall not be deemed to require a hearing prior to assessment of violation charges if a hearing is not requested, prior to the use of other remedies, or to prevent the Association from exercising any other remedies authorized or available under the Act, the Association's governing documents or by law. Suspension of use rights and/or assessment of charges shall not constitute an election of remedies. Remedies may be cumulative and include, without limitation:

(a) suspension of voting rights of an Owner for any period during which an assessment against his Lot remains delinquent as authorized by Article IV, Section 4.3 of the Declaration; and

(b) suspension of a Lot Owner's right to use the Association's Common Area or Recreational Area during any period in which an assessment against his Lot remains delinquent in accordance with Article III Section 3.4(ii) of the Declaration; and for a period not to exceed sixty (60) days for an infraction of the Declaration or rules and regulations as authorized by Article III, Section 3.4(iii) of the Declaration; and

(c) assessment of interest and late charges as authorized by Article V of the Declaration; and

(d) the right of access to lots to correct a noncompliance with the Declaration after notice and after judicial proceedings are initiated as authorized by Article IX, Section 9.1 of the Declaration; and

(e) suit for damages or injunctive relief, including attorneys' fees, as authorized by Section 55-515(A) of the Act and Article IX of the Declaration.

11. This resolution shall become effective on the 24<sup>th</sup> day of March, 2009 and shall supersede all previous resolutions regarding due process procedures.

**EXHIBIT "A" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES**

**BIRKDALE COMMUNITY ASSOCIATION, INC.**

Rules Violation Complaint

Date: \_\_\_\_\_

1. Name of person(s) violating rules: \_\_\_\_\_
  
2. Address of person(s) violating rules: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Are the person(s) named in question 1 tenants or owners? \_\_\_\_\_  
\_\_\_\_\_
  
4. Describe in detail how and where the rules were violated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. When did the violation(s) occur? \_\_\_\_\_
  
6. Have you personally requested the lot owner or tenant to cease the rules violation?  
\_\_\_ Yes, \_\_\_ No, \_\_\_ Verbally, \_\_\_ By written request. When?  
\_\_\_\_\_  
\_\_\_\_\_
  
7. Name and address of person(s) making complaint: \_\_\_\_\_  
\_\_\_\_\_
  
8. Signature(s): \_\_\_\_\_

**FOR ASSOCIATION USE ONLY**

9. Owner: \_\_\_\_\_ Tenant: \_\_\_\_\_

10. Provision(s) of the Declaration, Bylaws or Rule(s) violated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Registered Name(s) of lot owner(s) and address of lot: \_\_\_\_\_  
\_\_\_\_\_

12. Owner's address if non-resident: \_\_\_\_\_  
\_\_\_\_\_

13. Registered name(s) of tenant(s) and address of lot: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Date demand letter sent to lot owner: \_\_\_\_\_

16. Owner/Tenant \_\_\_ does/\_\_\_ does not request a hearing.

Date request received: \_\_\_\_\_

17. Referred to Covenants Committee on \_\_\_\_\_, 20\_\_.

18. Date notice of hearing sent: \_\_\_\_\_, 20\_\_.

cc: Lot Owner File (optional-record may be closed)  
Rules Violation File

**EXHIBIT "B" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES**

**BIRKDALE COMMUNITY ASSOCIATION, INC.**

FIRST NOTICE OF VIOLATION AND DEMAND

(DATE)

(Owner) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

You are hereby notified that a complaint has been made against you (or your tenants) for the alleged violation of the following rules and regulations of the Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are requested to immediately cease and correct any of the above violations within ten (10) days from the date of this letter. If you cease and correct the violation within ten (10) days, please send a copy of this letter to the Covenants Committee in care of the managing agent noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day for a continuing violation or up to Fifty Dollars (\$50.00) for each single violation without further notice. The Association may also suspend your right to use facilities or services, including utility services, provided directly through the Association until the violation has ceased and/or been corrected.

Sincerely,

Covenants Committee Chair, or Managing Agent

cc: Lot owner file (Tenant)

**EXHIBIT "C" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES**

**BIRKDALE COMMUNITY ASSOCIATION, INC.**

SECOND NOTICE OF VIOLATION AND DEMAND

(DATE)

(Owner)

You are hereby notified that a complaint has been made against you (or your tenants) for the alleged violation of the following rules and regulations of the Association:

---

This is the Second Notice to you regarding the above-referenced violation(s). You are requested to immediately cease and correct any of the above violations within ten (10) days from the date of this letter. If you wish to contest the alleged violation and avoid imposition of charges you must request a hearing before the Covenants Committee in writing within ten (10) days from the date of this letter. If you request a hearing, complete the bottom portion of this letter and return a copy. The Association's managing agent or the Covenants Committee Chair will send you a certified return receipt notice stating the hearing time and place. Alternatively, if you elect to cease and correct the violation within ten (10) days, please send a copy of this letter to the Covenants Committee in care of the managing agent noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day for a continuing violation or up to Fifty Dollars (\$50.00) for each single violation without further notice. The Association may also suspend your right to use facilities or services, including utility services, provided directly through the Association until the violation has ceased and/or been corrected.

Sincerely,

Managing Agent or Covenants Committee Chair

cc: Lot owner file (Tenant)

Return to: **Community Manager**

Name: \_\_\_\_\_ Address \_\_\_\_\_

I hereby request a hearing before the Covenants Committee to contest the violation.

I have ceased and/or corrected the violation and will refrain from further violations.

\_\_\_\_\_  
Signature

**EXHIBIT "D" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES  
BIRKDALE COMMUNITY ASSOCIATION, INC.**

(Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Fourteen (14) Day Notice of Rules Violation Hearing

Dear [lot owner] :

You are hereby notified that a hearing will be held before the Covenants Committee of the Birkdale Community Association, Inc. at \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, at \_\_\_ .m., pursuant to Section 55-513(B) of the Virginia Property Owners' Association Act and the Association's Declaration, Bylaws and duly adopted Rules and Regulations and Architectural Standards and Guidelines for your tenant's or your alleged violation of the following rules of the Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and you will be given full opportunity to examine and cross-examine all witnesses. You are entitled to request the attendance of witnesses.

Please be advised that if the Covenants Committee determines that you are in violation of the Association's Instruments and rules and regulations, charges of up to Fifty Dollars (\$50.00) for a one-time violation or Ten Dollars (\$10.00) per day for a continuing violation may be assessed against you and your lot. The Association may also suspend your right to use facilities or services, including utility services, provided directly through the Association until the violation is ceased and/or corrected. In addition to this hearing, the Covenants Committee, or the Board of Directors, may elect such other remedies as are authorized by the Virginia Property Owners' Association Act, the Association's governing documents and by law.

If you have any questions or wish to communicate with the Covenants Committee regarding this matter, please call or write to: \_\_\_\_\_.

Sincerely,

Covenants Committee or Managing Agent

cc: Lot Owner File  
Rules Violation File (Tenant)

**EXHIBIT "E" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES  
BIRKDALE COMMUNITY ASSOCIATION, INC.**

RECORD OF HEARING

Hearing Date and Time: \_\_\_\_\_

Lot Owner(s): \_\_\_\_\_

Address: \_\_\_\_\_

Address if other than lot: \_\_\_\_\_

Alleged Violation(s): \_\_\_\_\_  
\_\_\_\_\_

Provisions of the Association's Instruments Violated: \_\_\_\_\_  
\_\_\_\_\_

Persons in Attendance: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Decision of Board of Directors and Reasoning: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Charges Imposed (date commencing): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Sanctions Imposed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## RESOLUTIONS ACTION RECORD

Resolution Type: Regulatory

Pertaining to: Due Process Procedures

Duly adopted at a meeting of the Board of Directors held March 24, 2009.

Motion by: Matt Jones Seconded by: James Adams

DIRECTOR:	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>Matthew</u>	✓			
<u>Barbara Dow</u>	✓			
<u>Dennis Lygal</u>	✓			
<u>James Adams</u>	✓			
<u>Dani Fink</u>				✓
_____				
_____				

ATTEST:

Barbara Dow  
Secretary  
Vice-President

3-24-09  
Date

Resolution effective: March 24, 2009.