

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

**POLICY RESOLUTION NO. 2009-01**

**(Revising and Amending Policy Resolution 98-01)**

**USE RESTRICTIONS / RULE VIOLATIONS: COMPLAINT AND DUE  
PROCESS PROCEDURES**

**WHEREAS**, Article III, Section 2 (f) and (i), Article X, Section 1 (h) and (i) of the Bylaws of the Unit Owners Association of The Crossing Condominium (hereinafter the "Association") grant the Board of Directors the power to adopt, amend, and enforce rules and regulations governing the use of the Condominium and the conduct of the Association members and their guests, and invitees therein;

**WHEREAS**, Section 55-79.53 of the Virginia Condominium Act, Code of Virginia (1950, as amended) (the "Act"), Article XXI, Section 2 of the Declaration and Article 1, Section 2 of the Bylaws charge all unit owners and their tenants, guests, and invitees with compliance with the Declaration, Bylaws, Rules and Regulations (the "Condominium Instruments") of the Association as amended;

**WHEREAS**, Article IV, Section 4 of the Bylaws grants the President the power to appoint committees, subject to confirmation by the Board of Directors;

**WHEREAS**, Section 55.79.80:2 of the Act, as amended, and Article X, Section 1, of the Bylaws provide the Association through its Board of Directors with the power to assess charges against unit owners for violations of the Condominium Instruments and the rules and regulations, for which the unit owner or his employees, tenants, guests or other invitees are responsible and to suspend services for nonpayment of such charges;

**WHEREAS**, Section 55.79.80:2 of the Act further provides that certain procedures must be followed before such charges may be assessed;

**WHEREAS**, it is the intent of the Board of Directors to enforce the Condominium Instruments for the benefit and protection of the Association's unit owners employees and invitees by establishing procedures which ensure due process and consistency of enforcement;

**NOW THEREFORE, IT IS HEREBY RESOLVED** that the Board of Directors and its due process, rules enforcement or covenant committee, by whatever name it may be called, (hereinafter "Committee"), by the Act, the Condominium Instruments and this Resolution are hereby empowered to assess charges and suspend services and facility use pursuant to Section 55.79.80:2 of the Act and shall assess such charges for any violation of the Condominium Instruments or rules or suspend services for nonpayment of charges only after the following procedures have been followed:

## **I. Complaint.**

A. Any unit owner, tenant, managing agent, employee or Board member who requests that the Board take action to enforce the condominium instruments and rules shall complete, date and sign a complaint in a form similar to and containing the information contained on Exhibit "A" hereto.

B. The complaint shall be submitted to the Board of Directors for a determination as to whether it appears that a rule or provision of the condominium instruments allegedly has been violated.

C. The Board of Directors shall then take appropriate action, such as directing that a demand letter be sent or that it be referred to counsel or governmental authorities. The Board may, within its discretion, choose to utilize these dispute resolution procedures, or resort legal action or referral to appropriate governmental authorities.

## **II. Demand.**

A. If determined appropriate, a written demand letter 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 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. A copy may be sent to the tenant if there is a tenant.

B. The demand letter 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. 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. The Board may also seek immediate injunctive relief from a court, or intervention by appropriate governmental authorities.

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, services, or privileges. The letter shall also state that if no hearing is requested, the owner shall be deemed to have waived the opportunity for a hearing and rules violation charges or suspensions may be assessed. The demand letter may be combined with the notice of hearing referenced in Section III if the violation is of a serious nature or if previous notices of violation have been sent to the owner.

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

A. If the alleged violation is not remedied within the date or time specified in the demand letter referenced in Section II **and** the owner requests a hearing, or if the Board, within its discretion, determines a hearing is necessary, a notice of hearing shall be sent. Notice of a hearing shall be hand delivered or mailed by 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 unit owner at the address of record with 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 demand letter referenced in Section II. B may be combined with the notice of hearing.

B. The notice of hearing may be similar to Exhibit "C" attached hereto and shall specify:

- 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 (at the unit owner's expense) before the Board.
- 3) The alleged violation, citing provisions of the condominium instruments or rules which allegedly have been violated.
- 4) That charges for violation of the condominium instruments and rules 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 for a period not to exceed ninety (90) days or such greater amounts as may be authorized by the Virginia Condominium Act.
- 5) That the alleged violation may result in the suspension of services, facilities use or voting rights or other privileges, such as pet ownership.

#### **IV. Hearing.**

A. The hearing shall be scheduled at a reasonable and convenient time and place within the Board of Directors' discretion.

B. The Board, within its discretion, may grant a continuance. If the unit owner for which the hearing is scheduled requests a continuance to a different time or date, no further notice shall be required.

C. The hearing is not to be conducted according to technical rules of evidence or procedure applied in a court of law. Rather, the purpose of the hearing shall be to provide the unit owner with an opportunity to be heard and to be represented by counsel (if desired), within reasonable time limits imposed by the Board of Directors.

D. The hearing shall be conducted in private executive session unless the unit owner requests that the hearing be open to owners and residents. The presiding officer of the hearing will be selected by the Board, within its discretion. If the hearing is conducted in open session, 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 Board, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

E. After proper notice has been given, if the unit owner fails to appear at the hearing or if

no hearing is requested, the hearing or meeting may continue as scheduled and the Board may assess charges from the final compliance date of the letter, suspend use rights or services or take such other action as may be authorized by the condominium instruments 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 with an opportunity for a hearing.

H. Within seven (7) days of the hearing, or within seven (7) days of the Board's decision in the absence of a hearing, 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 (see Exhibit E attached hereto).

#### **V. Records.**

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. A record of each hearing or meeting shall be kept in a summarized format similar to that attached hereto as Exhibit "D" shall be completed and placed in the unit owner's file and appropriate Association files.

#### **VI. Assessment of Charges.**

Pursuant to Section 55-79.80:2 of the Act, any charges assessed for violation of rules after notice and hearing shall be in amounts authorized by the Act and shall be treated as an assessment against the owner's unit for the purpose of Section 55-79.84 of the Act regarding liens. Such amounts shall also be the personal obligation of the owner.

#### **VII. Other Remedies.**

This Resolution shall not be interpreted to require a hearing prior to assessment of rules violation charges if a hearing is not requested, or to prevent the Association from exercising any other remedies authorized or available under the Act, the condominium instruments or by law, and shall not constitute an election of remedies.

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

**Exhibit "A" to the  
Resolution on Due Process Procedures**

Covenant / Rule Violation Complaint

Date:

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

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**FOR ASSOCIATION USE ONLY**

9. Owner: \_\_\_\_\_ Tenant:
10. Provision(s) of condominium instruments or rule(s) violated:
11. Registered Name(s) of unit owner(s):
12. Owner's address if non-resident:
13. Registered name(s) of tenant(s):

14. Comment:

15. Date demand letter sent to unit owner:

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

17. Referred to Board on \_\_\_\_\_, 20\_\_.

18. Date notice of hearing sent:

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

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

**EXHIBIT "B" TO THE  
RESOLUTION ON DUE PROCESS PROCEDURES  
DEMAND TO CEASE AND CORRECT**

(Owner)

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

Perhaps you were not aware of the condominium's use restrictions and/or the Association's rules, or perhaps you do not believe you are in violation. However, the restrictions and rules are enforced for the benefit of all residents and to maintain property values throughout the community. You are requested to immediately cease and correct all of the above violations. If the noted violation involves a condition in your unit which requires your action, such condition must be corrected within ten (10) days from the date of this letter. If you need more time, you must request additional time and notify the Board in writing as to when the repairs or other remedial action will be done.

If you wish to contest the alleged violation and avoid imposition of charges or suspension of use rights or services, you must request a hearing before the Board of Directors 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 to the Board of Directors, c/o the Community Manager (ProCAM, LLC, Attn: Nikki Coughlin, 1422 Portner Road, Suite 5, Alexandria, Virginia 22314). The Board of Directors or its agent will send you a notice by certified mail, return receipt requested, stating the hearing time and place. Alternatively, if you elect to cease and correct the violation, please send a copy of this letter to the Board of Directors noting that the violation has been stopped or corrected. If you fail to respond to this letter and the violation persists, you will be deemed to have waived your hearing right and you may be assessed rules violation charges of up to Ten Dollars (\$10.00) per day for a continuing violation for a period of up to ninety (90) days or up to Fifty Dollars (\$50.00) for each single violation without further notice. The Board may also take other legal action against you.

Sincerely,  
The Board of Directors

cc: Unit owner file

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**TO BE COMPLETED BY UNIT OWNER**

Name \_\_\_\_\_ Unit# \_\_\_\_\_  
Signature \_\_\_\_\_

\_\_\_ I hereby request a hearing before the Board to contest the violation.

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

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

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

\_\_\_\_\_ **CERTIFIED MAIL RETURN RECEIPT  
REQUESTED NO.**

**Re: Notice of Restriction/Rules Violation Hearing**

Dear \_\_\_\_\_:

You are hereby notified that a hearing will be held before the Board of Directors of the Unit Owners Association of The Crossing Condominium at (location) on the \_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_ .m., pursuant to Section 55-79.80:2 of the Virginia Condominium Act and the condominium instruments for you or your tenant's alleged violation of the following restriction or rule of the Association:

You may be present at the hearing. You may, but need not, be represented by counsel at your expense. You may present any relevant material. You may request the attendance of witnesses.

Please be advised that if the Board determines that you are in violation of the condominium instruments or the 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 period of up to ninety (90) days for a continuing violation may be assessed against you and your unit and your right to services and facilities use, including parking on the condominium property, may be suspended. In addition to this hearing, the Board may elect such other remedies as are authorized by the Virginia Condominium Act, the condominium instruments, and by law.

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

Sincerely,

cc: Unit Owner File  
Rules Violation File

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

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

**RECORD OF HEARING**

Hearing Date and Time:  
Unit Owner(s):  
Unit #:  
Address if other than lot:

Alleged Violation:

Provisions of Governing Documents Violated:

Persons in Attendance:

Decision of Board:

Charges Imposed (date commencing):

Other Sanctions Imposed:

Comments:

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

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

**CERTIFIED MAIL RETURN RECEIPT  
REQUESTED NO.**

**Re: Notice of Restriction/Rules Violation Hearing Result**

Dear \_\_\_\_\_:

As you were advised by a hearing notice dated \_\_\_\_\_, 200\_\_, the Board of Directors met on \_\_\_\_\_, 200\_\_ to discuss the covenant/rule violations alleged against you. You were present / not present for the hearing.

The Board of Directors determined that you / your unit were / was / is in violation of the relevant restriction or rule \_\_\_\_\_,  
(cite restriction or rule here)

Accordingly, the Board of Directors decided to impose the following sanctions (check applicable sanctions):

\_\_\_\_\_ The Board of Directors hereby warns you of the violation and requests your cooperation to avoid future violations.

\_\_\_\_\_ The Board of Directors imposed a one-time violation charge of \$ \_\_\_\_\_ (not to exceed a maximum of \$50.00), which shall be deemed an assessment against your unit and your personal obligation.

\_\_\_\_\_ The Board of Directors imposed an ongoing violation charge of \$ \_\_\_\_\_ per day (not to exceed \$10.00 per day and not to exceed 90 days in duration), which charges shall be deemed an assessment against your unit and your personal obligation.

\_\_\_\_\_ The Board of Directors suspended your use of the following facilities or services of the condominium: \_\_\_\_\_, which suspension shall remain in effect until you correct the noted violation.

\_\_\_\_\_ The Board of Directors decided to refer the matter to the Association's counsel and to instruct counsel to prepare a lawsuit.

If the sanction imposed above is continuing in nature, **please note that it is your responsibility to correct the violation and notify the Board or the management agent that you have done so.** The ongoing sanction shall continue until the abatement of the violation can be independently verified by the Board or management agent.

Failure by you to bring your unit or your conduct into compliance with the restrictive covenants of record will result in the filing of a lawsuit in equity against you. The lawsuit would seek injunctive relief and all costs and fees incurred by the Association.

Your prompt compliance will be appreciated.

Sincerely,

cc: Unit Owner File  
Rules Violation File

**THE UNIT OWNERS ASSOCIATION OF THE CROSSING CONDOMINIUM**

**RESOLUTION ACTION RECORD**

Resolution Type: Policy No. 2009-01

Pertaining to: Due Process Procedures (Revising and Amending Policy Resolution 98-01)

Duly adopted at a meeting of the Board of Directors held August 18, 2009.

Motion by: Linda Buczek Seconded by: Alicia Prieto

VOTE: 3-YES 0-NO 0-ABSTAIN 1-ABSENT

Alicia Prieto 3  
Director

Linda Buczek 3  
Director

Barry R. Neal 3  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

ATTEST:  
Linda Buczek  
Secretary

10-21-09  
Date

FILE:

Book of Minutes - 2009  
Book of Resolutions:

	Book No.	Page No.
<b>Policy</b>		
Regulatory		
Special		
General		

Revised Resolution effective: August 18, 2009