

**WINDSOR PLAZA CONDOMINIUM UNIT OWNERS ASSOCIATION
POLICY RESOLUTION NO. 4
SPECIAL RESOLUTIONS**

relating to due process procedures

GIVEN THAT Article 3, Section 3.1 of the Bylaws provides in applicable part that, "The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are not by the Condominium Act or the Condominium instruments required to be exercised and done by the Association"; and

GIVEN THAT, 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 the provisions of the Governing Documents, thereby attempting to minimize the necessity of seeking action in or through a court of law or equity; and

GIVEN THAT, Article 3, Section 3.13 of the Bylaws, allows the creation of a Covenants Committee which, in addition to the Board, will monitor appearance and use of the Property, enforce the Governing Documents, issue cease and desist requests, impose reasonable charges, and provide interpretations of the Governing Documents subject to the provisions of the Bylaws and Administrative Resolution No. 4; and

GIVEN THAT, it is the intent of the Board to establish procedures for the Board or the Covenants Committee where either must take action relative to questions of compliance by an individual with the provisions of the Governing Documents or where the Covenants Committee is called upon to issue an interpretive ruling;

NOW, THEREFORE, the Board resolves that the following procedures for Special Resolutions be, and hereby are, adopted:

I. VIOLATIONS OF THE GOVERNING DOCUMENTS

A. Actions Prior to Initiation of Formal Special Resolutions Process.

Any Member, Board Member or Officer, or Agent of the Association has the authority to request that a Member cease or correct any act or omission which appears to be in violation of any provision of the Governing Documents. Such informal requests shall generally be made before the formal process will be initiated.

The Association may make initial attempts to secure compliance through correspondence to the Member 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 may be sent to counsel for the Association.

B. Written Complaint. If the actions described above prove unsuccessful, the Special Resolutions Process shall be initiated upon the filing of a written Complaint by any member, officer, director or agent of the Association with the Covenants Committee (if one has been established) or the Board of Directors or its designee (if no Covenants Committee has been established). 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 Member is charged, so that the Member can prepare a defense. The Complaint shall specify the specific provisions of the Governing Documents which the Member is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts. The Complaint shall be as specific as possible as to time(s), date(s), place(s), and person(s) involved. The Covenants Committee shall assure that the Complaint addresses the above items before proceeding.

C. Preliminary Investigation. Upon receipt and consideration of the written Complaint, the Board or Covenants Committee may request one of its members to make a preliminary investigation as to the validity of the complaint and promptly report the findings to the Board or Covenants Committee. If conditions have been corrected since the Complaint was made, or if the Complaint is for any reason no longer valid, the Board or Covenants Committee shall determine the appropriate disposition of the matter and respond in writing to the complainant.

D. Service of Complaint. If preliminary investigation indicates further action is necessary, the Covenants Committee shall serve a copy of the Complaint on the Member so charged by either of the following means: (1) personal service or (2) certified mail, return receipt requested, and addressed to the Member at the address appearing on the books of the Association. Service by mailing shall be deemed effecting two (2) days after such mailing in a regular depository of the United States mail. The Complaint shall be accompanied by a postcard or other written form as described in Section F below entitled "Notice of Defense". No action adversely affecting the rights of the Member may be taken in any case, unless the Member has been served in this manner.

E. Notice of Hearing. Along with service of the Complaint, the Covenants Committee shall serve a Notice of Hearing, as provided in this section, on all parties at least fifteen (15) days prior to the hearing. The Notice of Hearing shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Covenants Committee at _____ (location) on the ____ day of _____, 19__, at the hour of ____ __, regarding the charges made in the attached Complaint. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence in your own defense, and you will be given full opportunity to question any persons testifying against you. You are entitled to request the attendance of witnesses and the production of documents or written materials 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 set date and indicate alternate dates and times they would be available, the Covenants Committee may reset the time and date.

F. Notice of Defense. The Complaint and Notice of Hearing shall be accompanied by a Notice of Defense. The Notice of Defense shall state that the Member charged may:

1. Attend the hearing before the Covenants Committee as provided in this Resolution;
2. Object to the Complaint on the grounds that it does not state the acts or omissions upon which the Covenants Committee may proceed;
3. Object to the Complaint on the grounds that it is so indefinite or uncertain that the Member cannot identify the violating behavior or prepare a proper defense; or
4. Admit to the Complaint in whole or in part. In such a case, the Covenants Committee shall determine the appropriate action and/or penalty, if any.

Any objections to the form or substance of the Complaint shall be considered by the Covenants Committee within ten (10) days of their receipt. The Covenants Committee shall make its determination and notify all parties within ten (10) days of receipt of such objection. If the Complaint is found insufficient, the complaining party shall have seven (7) days within which to amend the Complaint to make it sufficient. The same procedure as set forth above shall be followed with regard to any amended or supplemental Complaint. If it is determined by the Covenants Committee that the Complaint is still insufficient, then the Covenants Committee may dismiss the matter.

G. Cease and Desist Request. The Covenants Committee may, at its own discretion, issue a Cease and Desist Request along with the Complaint, Notice of Hearing, and Notice of Defense. The Cease and Desist Request shall be substantially in the following form:

"The Covenants Committee has received the attached Complaint."

"By authority of Administrative Resolution No. 3 Article 3, Section 3.13 of the Bylaws, the Covenants Committee hereby requests that you CEASE AND DESIST such actions until such time, if any, as a ruling of the Covenants Committee, Board of Directors, or court of law permits".

"Failure to comply with this request may result in the imposition of a 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 Covenants Committee may file or permit the filing of an amended or supplemental Complaint. All parties shall be notified of the amended or supplemental Complaint in the same manner as that for the initial Complaint. If the amended or supplemental Complaint presents new charges, the Covenants Committee shall give the member a reasonable opportunity to prepare a proper defense to those new charges.

I. Discovery. Upon written request to other party, made prior to the hearing and within ten (10) days after service of the Complaint by the Covenants Committee or within ten (10) 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 relative 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 an attorney's work product. Any party claiming his request for discovery has not been complied with shall submit a written request for discovery to the Board. The Board shall make a determination and issue a written order setting for the matters or parts thereof which the petitioner is entitled to discover.

J. Written Statements. At any time ten (10) or more days prior to the hearing or a continued hearing, any party shall mail or deliver to the opposing party(ies) a copy of any sworn statement that party proposes to introduce in evidence. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to question the statement's

author, his right to question such author is waived and the sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to question the statement's author is not afforded after a request for such is made, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

K. Constraints on the Covenants Committee. Each member of the Covenants Committee shall make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before the Covenants Committee. Any member incapable of such objective consideration of the case shall disclose such to the Committee and shall become inactive during the proceedings and have it so recorded in the minutes. The Board President shall appoint a temporary replacement to serve for the duration of consideration of the case before the Covenants Committee. Any member of the Covenants Committee has the right to challenge any other member as to whether they have a conflict of interest in the matter.

Prior to the hearing, the complainant or Member charged may challenge any member of the Covenants Committee for cause. In the event of such a challenge, the Board shall meet within fifteen (15) days to determine the sufficiency of the challenge. If the Board sustains the challenge, the Board president shall at that time appoint another person to replace the challenged member of the Covenants Committee. All decisions of the Board in this regard shall be final.

I. Hearing.

1. The Covenants Committee shall select a person to serve as hearing officer and preside over the hearing. Such hearing officer need not be a Member or a member of the Covenants Committee. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Covenants Committee may determine the specific manner in which the hearing will be conducted, so long as the rights set forth in this section 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 matters regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. 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. The complainant must attend the hearing. At the request of either complainant or the Member charged, the Covenants Committee may agree to conduct the hearing in private session.

3. Both the complainant and the Member charged shall have a right to, but may waive, any of the following:

- a. make an opening statement
- b. introduce evidence, testimony, and witnesses
- c. question opposing witnesses
- d. make a closing statement

Even if the complainant or the Member charged elects not to make a statement or present any testimony, each may still be called and questioned by the other, the hearing officer or a Covenants Committee member.

4. If the Covenants Committee has commenced the hearing process and a member of the Covenants Committee withdraws for any reason prior to a final determination, the remaining members shall continue to hear the case and the Board president shall name a replacement for the withdrawing member.

M. Covenants Committee Decision. The Covenants Committee decision may be issued orally at the conclusion of the hearing or any time within ten (10) days from the conclusion of the hearing. In any event, a written decision shall be issued within the ten (10) day period. The decision shall summarize the issue(s), summarize the arguments presented (including referencing any evidence or testimony deemed pertinent by the Covenants Committee and useful as a guide to future decisions), identify the provisions of the Governing Documents considered by the Covenants Committee in reaching its decision, and state the decision with supporting statements or citations from the Governing Documents. **The decision may require that a violation be ceased or corrected and may impose a charge for the cost to the Association of enforcing the provision or of restoring the property to its condition prior to the violation, or a charge for the violation, in accordance with Article 9 of the Bylaws.** If the decision is not unanimous, a written minority report may also be prepared. Copies of the decision shall be issued to the parties involved and included in Part III of the Book of Resolutions. A summary of the decision, without identifying names and addresses, shall be included in the Association newsletter or otherwise distributed to the Members.

N. Suspension of Privileges. Disciplinary action imposed by the Covenants Committee may include suspending or conditioning the Member's right to vote or use the recreational facilities. For any non-continuing infraction, such suspension shall not exceed ninety (90) 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. INTERPRETIVE RULINGS

A. Purpose of Rulings. Rulings of the Covenants Committee may serve to (1) clarify the intent of the provisions of the Governing Documents or (2) determine whether a policy or rule was duly adopted. The purpose is not to amend, expand, or limit the provisions of the Governing Documents, although the Covenants Committee may, in the statements accompanying the ruling, propose such amendments, expansions, or limits.

B. Petitions.

1. Any Member, officer, director or agent of the Association may petition the Covenants Committee for an interpretive ruling by filing a petition directed to the Covenants Committee at the address specified by the Board. The Covenants Committee may also issue an interpretive ruling on its own initiative as part of a decision on a case before it.

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

"The party(ies) below request the Covenants Committee to issue an interpretive ruling on the following provisions of the Governing Documents of the Association":

The issue in question is: _____

Response should be sent to: _____

3. If the Covenants Committee is not established when the petition is received, the Board shall issue the ruling.

C. **Decisions.** To be effective a decision of the Covenants Committee shall be a majority vote. The written decision shall be issued within forty-five (45) days of receipt of the request unless the ruling is requested as part of consideration of a case before the Covenants Committee, in which case the ruling shall be issued within ten (10) days after the request has been received. The decision shall be written and accompanied by both the majority and minority opinions, if any. Copies of the decision shall be distributed to the party(ies) who requested the ruling and included in Part III of the Book of Resolutions. The decision shall state the Covenants Committee's authority to make a ruling and the basis of the decision. A summary of the decision shall be included in the Association newsletter or otherwise distributed to the Members.

III. APPEALS

A. **Rights of Members.** The complainant or Member charged, or applicant, as appropriate, may appeal a decision of the Covenants Committee to the Board, provided that all subordinate avenues of resolution as provided in this Resolution have been pursued. The Board may make a preliminary review of the circumstances and materials relative to the case and make a determination as to whether it will hear the appeal. The Board may, on the basis of that preliminary review, elect not to hear the appeal, in which case the Board will so inform the appealing party in writing and the Covenants Committee decision will stand.

In the case of Covenants Committee design review functions, no applicant may appeal a design decision unless and until applicant has re-submitted an application for reconsideration in accordance with the requirements of Policy Resolution No. 5, "Design Review Guidelines and Procedures" and been denied on reconsideration.

B. Appeals Petitions. Appeal petitions must be legibly written and 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 on (Application) (Case) No. _____. (I) (We) further understand that, within the Association, the decision of the Board of Directors on this issue is final."

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

D. Procedures. All of the rights and procedures enabled in Part I of this Resolution shall apply to appeals with the substitution of the words "Board of Directors" wherever the words "Covenants Committee" appear.

E. Effect of Decision. The Board may uphold the Covenants Committee decision in its entirety, or may modify, or reverse such decision.

F. Further Action. A Member must exhaust all available remedies of the Association prescribed by this Resolution before that Member may resort to a court of law or equity for relief with respect to any alleged violation of the Governing Documents. This limitation pertaining to exhausting administrative remedies shall not apply to the Board.

IV. CONSTRUCTION

This Resolution is intended to serve as a protection to Members to assure that their due process rights are protected in an adversary proceeding, and to serve as a guide for the Covenants Committee and the Board as those bodies carry out their duties to enforce the Governing Documents.

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

Any inadvertent omission or failure to conduct an adversary proceeding in exact conformance with this Resolution shall not invalidate the results of that proceeding, so long as a prudent and reasonable attempt has been made to assure due process according to the general steps set for in this Resolution.

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

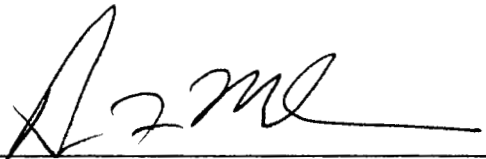
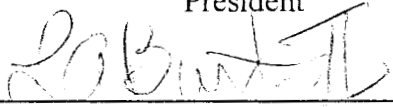
- A. The charges shall be provided in writing to the Member charged.
- B. A hearing shall be held at which the complainant, the Member charged, and witnesses may appear and be cross-examined and at which evidence may be introduced.
- C. An opportunity to appeal shall be available.
- D. Basic principles of fairness shall be applied.

**WINDSOR PLAZA CONDOMINIUM UNIT OWNERS ASSOCIATION
RESOLUTIONS ACTION RECORD**

This Resolution, Policy Resolution No. 4, was adopted at a (regular) ~~(special)~~ meeting of the Board held on DECEMBER 13, 1994, with the directors voting as indicated below:

<u>BURTON</u>	✓	Yes	_____	No
<u>DIGGES</u>	✓	Yes	_____	No
<u>MOREHOUSE</u>	✓	Yes	_____	No

ATTEST:

 _____ President	<u>2-21-95</u> _____ Date
 _____ Secretary	<u>2-21-95</u> _____ Date

Effective date of resolution: 12-13-94

Expiration date: _____

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