

REGULATION #1: VIOLATIONS OF DECLARATION, BY-LAWS, & RULES AND REGULATIONS:

[COMMENT: The Association, is required by law to oversee the owner's common area and to manage the operation of the subdivision. The Board of Directors is required by North Carolina law to undertake those duties. In these efforts, the Association may suspend the right of an Owner to use facilities located on the common areas (pool, tennis courts, boat ramp, club house) for a period determined by the Board of Directors, and may impose fines and penalties for infractions or violations of the Declaration, By-laws, or Rules and Regulations of the Association, following notice and the opportunity to be heard in accordance with the procedures set forth in this regulation. The applicable statute governing this procedure is 47F-3-107.1 and appears below as part of this Rule. It is the intent of this rule to comply with the statute as it presently exists.]

Section 1: Association Remedies. In the event of an act, omission, occurrence or continuation of the same which is a violation of the Declaration, By-laws, or any Rules and Regulations adopted by the Board of Directors, the Association may undertake the following actions:

(1) The Association shall have the right to remove, at owners expense, signs, equipment, mailboxes or other items of similar size which are in violation of the Declaration, By-laws, or Rules and Regulations, and the Association may remove, tow or relocate any equipment, vehicle or structure which is located within the common areas, streets or sidewalks in violation of the Declaration and the Association's Rules and Regulations following reasonable notice to the owner or occupant of the same.

(2) If an owner fails to maintain a lot, allows or permits the accumulation of trash or rubbish on a lot, or otherwise allows or causes the lot or structure to be in violation of the Declaration, By-laws, or Association Rules and Regulations, the Association upon compliance with the notice and hearing provisions specified herein, shall have the right to remedy the violation and asses the cost of remedying the same against the offending owner and lot as a special assessment.

(3) For non-payment of any general or special assessments and upon compliance with the notice and hearing provisions specified herein, the Association shall have the right to suspend the offending owner's use of any common areas as well as suspend the owner's voting rights.

(4) Upon compliance with the notice and hearing provisions specified herein, and in accordance with the By-laws, the Association shall have the right to impose a fine or penalty accumulating daily, in such amount as determined by the Board as allowed by law, for each violation or continuation thereof, as well as suspend the offending owner's use of common areas or suspend the voting rights of the offending owner upon nonpayment of any such fines or penalties or failure to cure any continuing violation.

Section 2. Notice and Hearing Procedures. In the event this Declaration, By-laws or a rule or restriction adopted by the Association is violated (including non-payment of assessments, fines or penalties), the Association Board of Directors or the Executive Committee if so designated by the

Board of Directors, shall serve the violator and/or owner with written notice personally delivered or sent by mail to the violator and the owner at the lot address, last known address, or at the address the owner may have designated to the Association in writing. Said notice shall specify the nature of the alleged violation, the proposed or possible sanction under consideration, the statement that the violator and owner may contest the alleged violation or the proposed sanction, the address and name of the person to be notified in order to challenge the proposed action, the time period and requirements for challenging the proposed action in writing, the date of the proposed action by the Association Board of Directors, and the time period for the owner or violator to challenge the action by giving notification in writing which shall not be less than ten (10) days from the date of the notice unless the violation presents an ongoing health hazard, nuisance or other danger or risk, in which case the time period shall be as reasonable as possible.

If the alleged violator or owner challenges the proposed action within the time period allowed, the Board of Directors shall conduct a hearing in executive session giving the alleged violator and owner a reasonable opportunity to be heard, which hearing shall be set and notice of the time and date given to the alleged violator not less than ten (10) days from the date of action by the Board of Directors unless the violation constitutes an ongoing health hazard, nuisance or other danger or risk. At said hearing the Board and the alleged violator or owner may consider statements, evidence and witnesses as to the alleged violation, and at the conclusion of the hearing or consideration by the Board, a decision shall be rendered as to the alleged violation.

If the Board determines that the violation has occurred, such determination shall be forwarded by regular mail to the violator or owner to include the results of the hearing and the sanction or sanctions imposed.

Any sanction which imposes a special assessment against the lot and an owner or suspends the voting privileges of an owner shall require a two-thirds affirmative vote of the Directors or the Executive Board present and voting.

If the violator or owner is given written notice of the alleged violation and fails to file a written challenge, then the Board may proceed with the determination as to the alleged violation and the appropriate sanctions and shall give notice thereof to the owner.

Comment: The following statutory regulation applies to the Hearing Procedure adopted by the Board as a Rule.

§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive

board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27; 1998-199, s. 1; 2005-422, s. 4.)

DATA\HOA\RULES\HEARING PROCEDURE