

NEWINGTON FOREST COMMUNITY ASSOCIATION, INC.

POLICY RESOLUTION NO. 11

(Rules and Regulations Imposing Sanctions for Violations)
(4/16/19)

WHEREAS, pursuant to Article IV, Section 4.01 of the Newington Forest Community Association's ("Association") Bylaws, the Board of Directors is authorized to exercise all powers and duties necessary for the proper administration of the affairs of the Association except those powers that are reserved to the members by the laws of Virginia, the Articles of Incorporation, the Declaration and the Bylaws; and

WHEREAS, Article II, Section 2.01 of the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements ("Declaration") for the Association permits the Association to adopt, promulgate and enforce reasonable rules and regulations pertaining to the use of the Community Facilities and to suspend the right of any Owner or Resident to use all or any portion of the Community Facilities for a period not to exceed 60 days for a violation of the Declaration or an infraction of the rules and regulations; and

WHEREAS, Article VI, Section 6.12 of the Declaration requires each Owner of a lot to maintain the lot in a neat and sanitary condition and to perform all mowing and pruning as is consistent with good property management; and

WHEREAS, Article VI, Section 6.13 of the Declaration provides that the Covenants Committee or its agent, during normal business hours, shall have the right (after 10 days' notice) to the Owner or Resident to enter upon a Lot and perform any and all maintenance work reasonably necessary to restore the Lot to a neat and orderly appearance at the Lot Owner's expense (hereinafter referred to as "self-help"); and

WHEREAS, Article VI, Section 6.05 of the Declaration requires each Owner to screen from public view all trash, debris, and trash and recycling containers except after dark the night before or on the designated collection day; and

WHEREAS, Section 55-513 of the Virginia Property Owners' Association Act ("Act") provides the Board of Directors of the Association with the power, to the extent the Declaration or rules and regulations duly adopted pursuant thereto provide, to suspend a member's right to use facilities or services for any violation of the Declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible upon notice and an opportunity for a hearing; and

WHEREAS, the Board of Directors of the Association has determined that it is in the best interest of the Association to adopt a policy resolution to enable the Association, through its Board of Directors, to suspend privileges, and to establish a procedure for enforcement of the

regulations of the Association which are consistent with principles of due process and Virginia law; and

WHEREAS, the Board of Directors, has also determined that an expedited process for the enforcement of maintenance standards for lawns and the disposal of trash in the Association is warranted due to the potential impact on health and safety that such violations may pose to the community.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors duly adopts the following due process procedures:

A. Ordinary Violations

1. The Association may issue a citation (Citation Notice) to any Owner whose behavior, maintenance, or use of property does not conform to the Articles of Incorporation, Declaration, Bylaws, and Book of Regulations (collectively “the Governing Documents”). Such citation shall be in writing and delivered personally or ordinary first class mail to the Owner at his/her address listed in the Association’s records, and to the property address, if the Owner’s listed address is different from the property address. The first notice of citation shall generally advise the Owner of the nature of the offense(s), cite the specific provision within the Association’s regulations which has allegedly been violated, specify the remedy required, and state the number of days within which the Owner must complete corrective action and/or provide a plan to remedy the situation(s), if the violation is of a nature that can be corrected.
2. If the Owner does not contact the Association office with a plan to remedy or has not corrected the offense(s) within the number of days requested in the first notice of citation, or the offense is of a nature that it cannot be corrected, the Association shall issue a second Citation Notice, which follows the basic form of the first notice of citation, and includes any additional information deemed important by the Association concerning the offense. The Association may also issue a second Citation Notice if the plan offered by the Owner does not address the offense(s) in a reasonable period of time, or the Owner fails to complete his/her plan’s remedy with the time period that was identified by the Owner in the response to the first Citation Notice.
3. If the Owner does not contact the Association office with an acceptable plan to remedy or has not corrected the offense(s) within the number of days requested in the second Citation Notice, the Association shall issue a Board Notice of Hearing letter to the Owner, which sets forth the date, time and location of the hearing, a description of the alleged violation, and the action that may be taken by the Board in the event a violation is unresolved; including the Association’s power to suspend privileges for offenses of the Association’s regulations, to use the self-help provisions of the Declaration, and/or to seek a court order to enforce the Governing Documents. For violations of a continuing nature, the Board shall notify the Owner of the date by which the violation

must be corrected to avoid further action, such as self-help, the suspension of privileges, or court action.

4. The Association shall deliver the Board Notice of Hearing letter to the Owner by hand delivery or registered or certified mail, return receipt requested, to the Owner at the address of record with the Association at least fourteen (14) days prior to the hearing. The Association may also send via first class mail, postage pre-paid, to the Owner at the property address, if the Owner's listed address is different from the property address. Notification will be deemed effective if any Owner fails or refuses to sign for any certified mailing from the Association.
5. The Board of Directors shall set the time, date, and place of the hearing at its discretion. At the hearing, the Board of Directors shall provide the Owner with a reasonable amount of time to present any and all defenses to the citation. The Owner may have counsel present at the hearing. The Board may accommodate an Owner's request to postpone or continue a hearing, which is entirely within the Board's discretion. Any such requests must be made well in advance of the hearing date and must be submitted in writing. The Board of Directors reserves the right to ask the Owner to confirm their intent to be represented by legal counsel prior to the hearing date so that the Association may consider asking its counsel to participate in the hearing.
6. In the interest of conducting fair hearings and to be considerate of all present at the hearing, the following procedures will be observed in conducting the hearing:
 - a. For the purpose of allowing a reasonable amount of time to present their defense (as mentioned in paragraph #5, above), the Owner shall not exceed five (5) minutes to present their defense to the citation.
 - b. A timer displaying the amount of time remaining shall be placed on the table used by the Board members and shall be visible to the Owner (to aid them in presenting their case). If additional time is granted (according to the procedures specified below), the timer shall be reset accordingly to assist the Owner as stated previously.
 - c. Upon expiration of the allotted five (5) minutes, the Owner may request additional amounts of time (in increments of five (5) minutes) to present their case. If the Owner does not make such a request, the President (or other Board member presiding in the absence of the President) shall ask if the Owner needs an additional amount of time; in any case, at least one (1) member of the Board of Directors who is present at the hearing must concur for an extension to be granted. (This includes the President or other presiding officer.) If none of the Board members present concur, the request shall be denied.
 - d. If during the presentation of the Owner's case, the Owner is asked to respond to questions put to them by any member of the Board (or the Association's counsel,

if present) and this substantially takes away from the time allotted to the Owner, the President (or other Board member presiding in the absence of the President) may in his/her sole discretion allow such additional time as may be needed by the Owner to present their case.

7. Following the hearing, the Board of Directors may meet in executive session to discuss whether satisfactory proof of the alleged violation(s) was presented and, if so, what penalty(ies) shall be imposed. The Board of Directors shall then hold a vote in open session on whether satisfactory proof of the alleged violation was presented and, if so, what action(s) shall be taken.
8. When the Board's judgment is unfavorable to the Owner, the Board may suspend the Owner's Association privileges, use the self-help provisions of the Declaration, and/or seek a court order to enforce the Governing Documents. An offense of a continuing nature is defined as a violation of the Association's Governing Documents which, by its nature, remains a violation continuously for more than twenty-four (24) hours unless corrected by the Owner, such as parking a recreational or commercial vehicle on a driveway that exceeds the time limits set by the Governing Documents or policy resolutions. For violations of a continuing nature, the Board shall notify the member of the date by which the violation must be corrected to avoid further action, such as self-help, court action, or the suspension of privileges.
9. The Board shall furnish the Owner with a written notice of its decision (a Hearing Results letter) within seven (7) days from the date of the hearing, sent via hand delivery, or mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association.
10. The Board of Directors shall treat any costs incurred using the self-help provisions of the Declaration pursued to abate a violation on a Lot or associated with obtaining a court order (costs approved by a court) as an assessment against the Owner's lot for the purpose of Virginia Code § 55-516.

B. Expedited Enforcement Procedures for Certain Violations

1. Upon its own detection or confirmation of a complaint that any lot within the Association has (a) a lawn or yard that requires some form of remedial measure to curb excessive growth (a grass/weed height of 6" or more) or (b) trash, trash cans, and/or recycle containers placed for collection that fails to comply in all respects with the Association's Declaration, the Association shall issue a Citation Notice of the offense. A re-inspection will be conducted ten (10) days after the date of the Citation Notice and if the offense is still outstanding, a Board Notice of Hearing letter will be issued. Proceeding directly to a Board Notice is required due to the health and safety concerns such violations pose. Cutting the grass or putting the trash and/or containers away after the ten (10) day period has expired is not grounds for ceasing further enforcement action.

2. The Board Notice of Hearing letter shall advise the Owner that the Board may suspend the Owner's Association privileges, use the self-help provisions of the Declaration, and/or seek a court order to enforce the Governing Documents. If self-help is elected as a remedy by the Board, all costs incurred by the Association in connection with the violation will be treated as an assessment against the Owner's lot for the purposes of Virginia Code § 55-516. The Board Notice of Hearing letter and decision shall follow the fourteen (14) and seven (7) day notice/ mailing requirements identified above in Section A.
3. The placement of trash, trash cans, and/or recycle containers placed for collection on the common ground of the Association that fails to comply with the Governing Documents shall also be subject to enforcement actions including, but not limited to, Citation Notices, Board Hearings, and the suspension of the Owner's Association privileges following the above-identified process. Trash and containers placed on the common area may be searched by the Association to determine the Owner/lot that placed the items on the common area improperly.

C. Additional Information

Nothing herein shall preclude the Board from the use of other remedies, laws, or sanctions available to the Association that are either currently available or may be passed by Federal, state or local authorities in order to ensure that an Owner's lot is brought into compliance with the Association's Governing Documents.

The above provisions shall be applied to and enforced against all tenants, residents, guests or other individuals who occupy an Owner's property.

All Association Board Notice Hearing and Hearing Results letters will be reviewed and signed by the President or Vice President of the Board prior to being sent to an Owner. Citation Notices may be signed by the Association staff.

I hereby certify that this policy resolution was adopted by the Board of Directors at a regular meeting on April 16, 2019. The effective date of this resolution shall be April 16, 2019.

NEWINGTON FOREST COMMUNITY
ASSOCIATION, INC.

By: _____
Clayton A. Vieg, President