

THE VISTAS COMMUNITY ASSOCIATION

**PROCEDURES FOR APPEALING DESIGN REVIEW COMMITTEE DECISIONS
AND FOR PROCESSING ALLEGED VIOLATIONS OF THE
GOVERNING DOCUMENTS OF THE ASSOCIATION**

WHEREAS, pursuant to Article 10 of the Declaration of Covenants, Conditions and Restrictions (“Declaration”) for The Vistas Community Association, the Board of Directors is authorized to promulgate as Community Codes, rules, regulations, standards and guidelines governing the Community.

WHEREAS, Article 10 of the Declaration provides that Community Codes shall have the same force and effect and binding nature as the covenants, conditions, easements and restrictions contained within the Declaration and applicable to all Property within the Community.

WHEREAS, the Board of Directors desires to establish procedures for processing cases of alleged violations of the Governing Documents of the Association.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby adopts the Procedures for Appealing Design Review Committee Decisions and for Processing Alleged Violations of the Governing Documents of the Association attached to and made a part hereof as Exhibit “A”. Such procedures, as may be modified or amended from time to time, shall be binding on all parties having any right, title or interest in all or any portion of the Community, their respective heirs, personal representatives, successors, transferees and assigns, as well as occupants, guests and invitees, and shall inure to the benefit of each Owner thereof.

Unless otherwise defined herein, capitalized terms used herein shall have the same meanings as are set forth for them in the Declaration.

IN WITNESS WHEREOF, the undersigned, being an officer under the Declaration, has caused this Community Code to be adopted this _____ day of _____ 2011.

By: _____

Name: _____

Title: _____

THE VISTAS COMMUNITY ASSOCIATION

PROCEDURES FOR APPEALING DESIGN REVIEW COMMITTEE DECISIONS AND FOR PROCESSING ALLEGED VIOLATIONS OF THE GOVERNING DOCUMENTS OF THE ASSOCIATION

This document is intended to replace Community Code No. 2, adopted October 12, 2000 and amended on August 17, 2009. This document is not intended to set forth or supercede procedures for the collection of funds due to The Vistas Community Association.

I. NOTIFICATION AND HEARING PROCEDURES

1. Any Owner, resident of the Community (“Resident”), Association director or officer, member of the Covenants Committee or the Design Review Committee or the community manager (hereinafter referred to collectively as “Complainant”) has the authority to notify the Association of any act or omission which appears to be in violation of the Governing Documents.
2. Unless such act or omission can be verified through a visual inspection, all complaints must be submitted in writing to the Covenants Committee of The Vistas Community Association (“Association”), to the attention of the community manager at the Association’s address of record. In the absence of a Covenants Committee, the procedures outlined below will be addressed by the Board of Directors. The complaint shall be as specific as possible as to times, dates, places and persons involved and shall contain any supporting facts that are available.
3. When the Covenants Committee or its agents shall become aware of an alleged violation of the Declaration, By-Laws, or Rules and Regulations of the Association, a letter shall be sent to the owner of the lot involved (“Respondent”) via first class mail, providing notice thereof and giving a fifteen (15) calendar day period from the date of the letter to cure the violation. The letter may request that the owner notify the Board, in writing, that the violation has been corrected.
4. If the violation has not been corrected within the fifteen (15) calendar day period, it shall result in the issuance of a second letter, to be known as a “Final Notice”. Any Final Notice to be issued by the Association shall notify the Respondent that the violation has continued for longer than fifteen (15) calendar days and shall advise the Respondent of the action necessary to correct or otherwise abate the violation within fifteen (15) calendar days. The Final Notice shall be sent via first class mail to the Respondent at his address of record and shall identify the enforcement actions that can be taken pursuant to the Declaration, By-Laws, and this Rule if the violation is not corrected or continues. If the violation is abated within the fifteen (15) calendar day period identified in the Final Notice, no further action shall be required and the matter shall be deemed to have been resolved.
5. The Final Notice shall also include notice to the Respondent of the right to request, in writing within fifteen (15) calendar days of the date of the Final Notice, a hearing with the Covenants Committee. If a hearing is requested, the Covenants Committee shall schedule the hearing as soon as reasonably practicable and shall notify the Respondent, in writing, via first class mail, at least ten (10) calendar days in advance of the date of the hearing, providing the time and place of the meeting. The letter shall also advise the Respondent of the opportunity to present

evidence and witnesses in support of his position. No fines shall be imposed pending the outcome of the hearing.

6. 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 thereof in the same manner as provided above for the Final Notice. If the amended or supplemental complaint presents new charges, the Covenants Committee shall afford the respondent a reasonable opportunity to prepare proper defense thereto, and may extend the hearing date as determined by the Covenants Committee in its discretion.
7. At the hearing, the Respondent shall have the right to present evidence and witnesses and to cross-examine witnesses. The Covenants Committee may impose reasonable time limits. The Respondent and/or Complainant may be required to file a pre-hearing statement indicating the number of witnesses and the estimated amount of time he/she shall require to present the dispute. The Covenants Committee may meet in closed session, if otherwise permitted by applicable law, to prepare its recommendations. Within forty-five (45) calendar days of the conclusion of the hearing, the Covenants Committee shall render a decision based on the evidence presented and forward such decision, via first class mail, to the owner. If the Covenants Committee finds against the owner, the owner shall have ten (10) calendar days from the date of the notice of the decision to permanently correct the violation or to file an appeal with the Board of Directors. If the violation is not corrected within ten (10) calendar days, the Association may levy fines as outlined below. If a hearing with the Board of Directors is requested, no fines shall be imposed pending the outcome of the hearing.
8. If a hearing is not requested within fifteen (15) calendar days of the date of the Final Notice, enforcement action will proceed as described below.
9. The Covenants Committee may, at its own discretion, issue a cease and desist request along with the Final Notice. Such cease and desist request shall be substantially in the following form:

The Covenants Committee hereby requests that you CEASE AND DESIST such acts or action until such time as this order is abrogated by a ruling of the Covenants Committee, the Board of Directors or a court of law.

Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation.
10. The Association and the Complainant and/or Respondent may agree to a settlement or compromise of the dispute at any time during the process.

II. APPEAL OF DESIGN REVIEW COMMITTEE DECISIONS

1. If an application for change is denied by the DRC, the applicant may file an appeal of the DRC's decision to the Covenants Committee (if any). All appeals must be submitted, in writing, to the Association's management agent within fifteen (15) days of the date of the denial letter. Should an appeal be filed, the notification, hearing and appeal procedures outlined herein will be applicable.

The applicant may not commence construction of the proposed modification until a decision has been made by the Covenants Committee or, upon further appeal, the Board of Directors.

2. The Covenants Committee will not have the authority to overturn any written DRC decision on any application for change/improvement, including any change decision being appealed by an applicant to the Covenants Committee, except in cases where it is determined that the DRC acted in an unfair or biased manner or where procedural issues are identified (see paragraph 3 below).
3. The Covenants Committee will evaluate whether the DRC violated any procedure in Article 7 of the Declaration of Covenants, Conditions and Restrictions for The Vistas and/or treated the applicant in an unfair or biased manner. If the Committee notes any violation or unfair treatment, the DRC will be required to reevaluate the request at its next regularly scheduled meeting, correcting any procedural or fairness issue identified in the Covenants Committee's decision. If the Covenants Committee determines that the applicant has no grounds for complaint, no further action will be taken, and the DRC ruling on the change application will stand as written. The Covenants Committee may also recommend that the appeal be heard by the Board of Directors under those circumstances where the approval or denial of the appealed improvement has broad implications for the community.
4. The applicant may appeal the Covenants Committee's decision to the Board of Directors using the procedures outlined below.

III. APPEAL OF COVENANTS COMMITTEE DECISION

1. Final decisions of the Covenants Committee may be appealed to the Board of Directors by either the Complainant or the Respondent. Appeal petitions must be written and must be submitted to the Board of Directors via the community manager at the Association's address of record within ten (10) days of the issuance of a decision of the Covenants Committee.
2. The Board of Directors may conduct a preliminary review of the case and make a determination as to whether it will hear the appeal. The Board of Directors may, on the basis of the preliminary review, elect to not hear the appeal, in which case the Board of Directors will so inform the appealing party in writing. In such cases, the decision of the Covenants Committee will stand.
3. If the Board determines that the matter should be set for a hearing, it shall schedule the hearing as soon as reasonably practicable and notify the owner, in writing, via first class mail, at least ten (10) calendar days in advance of the date of the hearing, providing the time and place of the meeting. The letter shall also advise the owner of the opportunity to present evidence and witnesses in support of his/her position.
4. All of the rights and procedures established in Section I, Paragraph 7 above shall apply to appeals.
5. The Board of Directors may modify, reverse or uphold the decision of the Covenants Committee in whole or in part.
6. If the Board of Directors finds against the Respondent, the Respondent shall have ten (10) calendar days from the date of the decision to permanently correct the violation. If the violation is not corrected, the Association may levy fines as outlined below.

IV. ENFORCEMENT

1. In the event that corrective action has not been taken by the owner within ten (10) calendar days from the date of the Covenants Committee's (or upon appeal, the Board of Director's) decision, the Association may impose an initial fine of up to two hundred and fifty dollars (\$250.00) per violation and additional fines of two hundred and fifty dollars (\$250.00) per violation for every 90 days that the violation remains unresolved (for continuing infractions) or two hundred and fifty dollars (\$250.00) per occurrence (for each future occurrence).
2. Disciplinary action imposed by the Covenants Committee or Board of Directors may include suspending or conditioning the Respondent's right to use any Community Property. For a noncontinuing infraction, suspension of the right to use any or all Community Property shall be for a period of not more than sixty (60) days. For a continuing infraction, suspension may be imposed for so long as the violation continues.
3. All fines shall be considered an assessment against the Living Unit owned by the Respondent, and shall be subject to collection action in accordance with the legal documents of the Association and all rules and regulations governing the collection of assessments.
4. The Board of Directors may file suit for collection of any fines levied and any damages which may be incurred as a result of the failure to comply. A fine shall be assessed against the lot connected directly or indirectly with the violation, whether or not the violator is an owner of that lot.
5. Any imposition of a fine shall not be considered an election of remedies, and accordingly, the Board of Directors may take any and all actions against the violator and/or the owner as available to the Association by law or equity. This action may include, but not be limited to, self-help, Court action, or referring the violation to the appropriate government agencies for follow-up action.
6. Notwithstanding any provision herein to the contrary, the Covenants Committee and/or Board of Directors, in its sole discretion, and at any time, may impose a fine and/or sanctions without a hearing as long as the Respondent is notified, in writing via first class mail, that he/she has a right to a hearing. If a hearing is requested in writing by the Respondent within ten (10) calendar days of any Final Notice or any other Notice imposing a fine and/or sanction in which there has not already been a hearing on the matter, the collection of the fine and/or sanction shall be held in abeyance until there is a hearing called on the matter and a decision of the Covenants Committee and/or Board of Directors is made.
7. Enforcement action as described herein shall continue until the violation has been permanently corrected or has not recurred for a period of six months from the date of the initial notice. Should a violation be corrected, but then occur again within six months of the date of the initial notice of violation, enforcement procedures as outlined herein shall continue with no further right to notice or hearing.

8. The failure to act by the Board of Directors shall not constitute a waiver of the right to enforce such provision in the future. The Association shall be entitled to reimbursement for attorney's fees and costs in connection with enforcing any provisions of its governing documents.
9. Any party who has a dispute with The Vistas Community Association (which is separate or different than the dispute initiated or conducted by The Vistas Community Association) shall file a written description or notice of the dispute, including the relief requested, with the Board of Directors, to the attention of its community manager. At present, such notice shall be sent, via certified mail, to The Management Group Associates, 20440 Century Boulevard, Suite 100, Germantown, Maryland 20874-7115. If a Notice of Dispute is filed by a party, the procedures herein, including a right to hearing, shall be followed.
10. Any inadvertent omission or failure to conduct proceedings in exact conformity with these procedures shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to ensure due process according to the general steps set forth herein.
11. An owner or resident must exhaust all available remedies of the Association prescribed herein before resorting to a court of law or the Commission on Common Ownership for relief with respect to any alleged violation of any provision of the Governing Documents. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board of Directors.
12. Any owner or resident who disputes a decision of the Board of Directors or Covenants Committee has the right to file a complaint with the Montgomery County Commission on Common Ownership Communities.

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