

D-2065-012

95-63590

**ROLLING HILLS CONDOMINIUM ASSOCIATION, INC.**

**POLICY RESOLUTION NO. 95-2**

**RELATING TO DUE PROCESS PROCEDURES**

**WHEREAS**, Section 46:8B-13d of the Condominium Act of New Jersey provides that the By-Laws of an Association may provide a method for the "enforcement of reasonable administrative rules and regulations relating to the operation, use, maintenance and enjoyment of the Units and of the common elements including limited common elements"; and

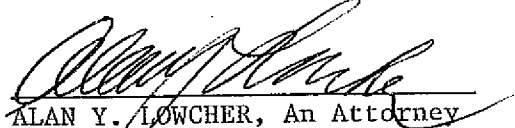
**WHEREAS**, Administrative Resolution No. 4 of the Rolling Hills Condominium Association, Inc. and the By-Laws provides that the Governing Board may establish a Judiciary Committee to investigate and conduct hearings on violations of the Governing Documents; to regulate the appearance and use of the units and common elements; to issue, cease and desist requests; and to issue interpretive rulings of the Governing Documents; and

**WHEREAS**, it is the intent of the Governing Board to establish procedures consistent with the principles of due process in the event the Board or Judiciary Committee must take action to enforce the provisions of the Governing Documents;

**NOW, THEREFORE BE IT RESOLVED** that the following resolutions process be adopted to provide for due process:

**I. DEFINITIONS:**

The Book of Resolutions will incorporate by reference all definitions contained in the enabling statutes, applicable rules and regulations promulgated by the New Jersey Department of

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ALAN Y. LOWCHER, An Attorney  
at Law of New Jersey

Community Affairs, and the Governing Documents, as the case may be. The terms defined below will also be used in the Book of Resolutions:

A. "Board" means the Board of Directors or Trustees.

B. "Association" means the Association provided for by the Declaration or Master Deed which shall be responsible for the administration and management of the property, including but limited to the conduct of all activities of common interest to the Owners. The Association may be an entity recognized by the law of New Jersey, including but not limited to, a business corporation or a nonprofit corporation.

C. The term "Owner" or "Unit Owner" means the owner or owners of a unit, his family members, guests, tenants, employees and invitees, unless the context expressly indicates otherwise.

D. "Act" means any applicable statutory enactment or rule or regulation promulgated thereunder.

E. "Governing Documents" means the Declaration of Covenants, Easements and Restrictions, Articles of Incorporation, By-Laws, Rules and Regulations and Book of Resolutions, collectively, as from time to time amended.

II. PROCEDURES TO RESOLVE QUESTIONS OF COMPLIANCE WITH THE GOVERNING DOCUMENTS

A. Informal Actions. Before any formal process is initiated against an Owner to enforce compliance with the Governing

Documents, an informal request may, but need not, be made by any Owner, officer, or agent of the Association so that the Owner may have an opportunity to cease or correct the act or omission which appears to be in violation of the Governing Documents and a copy of the request shall be sent to the Judiciary Committee.

B. Written Complaint. If informal action is not taken or proves unsuccessful, any Owner, officer, trustee, or agent of the Association may set forth a written complaint with the Judiciary Committee. The complaint must be set forth in clear and concise language the acts or omissions with which the respondent is charged and must be as specific as possible as to times, dates, places, and person involved. The complaint should specify the provisions of the Governing Documents which the respondent is alleged to have violated.

C. Preliminary Investigation. Upon receipt of a written complaint, the Judiciary Committee may request the managing agent of the Association (the "Managing Agent") or a member of the Judiciary Committee to make a preliminary investigation and promptly report the results of the same to the Judiciary Committee. If a resolution of the alleged violation has been reached, the Judiciary Committee shall request that the complaint be withdrawn.

D. Service of the Complaint. The Judiciary Committee shall

serve a copy of the complaint to the respondent at least 15 days prior to any hearing on the matter before the Judiciary Committee either (1) by personal service or (2) by registered or certified mail, return receipt requested, addressed to respondent at the address appearing on the books of the Association. Service by mail will be deemed effective three (3) days after posting in a regular depository of the United States mail. The complaint must be served with a Notice of Hearing. The Judiciary Committee may take no action unless the respondent has been served as provided in this paragraph.

E. Contents of the Complaint. The complaint must contain in clear and concise language the specific allegations of acts or omissions with which respondent is charged, setting forth the times, dates, places and person involved, and the specific provisions of the Governing Documents which respondent is alleged to have violated. The complaint should also request the respondent to cease and desist the alleged violation.

F. Commission of the Hearing. The Notice of Hearing must set forth the time, place and date of hearing; may be represented counsel; may present any relevant evidence and be given full opportunity to cross-examine all witnesses testifying against the respondent; and is entitled to request the attendance of witnesses and the production of books, documents, or other items by applying

to the Board or Managing Agent.

The Notice of Hearing shall also advise the respondent to answer the allegations in the complaint at least three days prior to the hearing date either by filing a written answer, or by notifying the Judiciary Committee in writing that respondent will appear at the hearing. The failure to file a written answer to the complaint or to notify the Judiciary Committee in writing in advance of the hearing will be deemed a default.

G. Amended or Supplemental Complaints. At any time prior to the hearing date, the Judiciary Committee may file or permit filing of an amended or supplemental complaint. All parties must be notified in the same manner as required for a complaint, and a new hearing date shall be established at least 15 days after the new notification. If new allegations are presented, the respondent may file a supplemental answer provided for in paragraph II (F).

H. Discovery. At any time after service of the complaint and prior to the hearing date, either party may request the Board or the Managing Agent to provide the names and addresses of witnesses to be called, and copies of any statements, writings, and investigative reports to be introduced at the hearing.

I. Challenges to the Judiciary Committee. Each member of the Judiciary Committee must be able to perform in a disinterested and objective manner in consideration of the case before the Judiciary

Committee, or must disqualify himself and have it so recorded in the minutes of the Judiciary Committee. Any member of the Judiciary Committee may be challenged by any other member or by the complainant or the respondent for cause. The Board shall decide the challenge and all decisions of the Board, in this regard, are final.

J. Default by Failure to Answer. Respondent must answer the allegations in the complaint at least three days prior to the hearing date on the matter either by filing a written answer or by notifying the Judiciary Committee in writing that respondent will appear at the hearing. The failure to file a written answer to the complaint or to notify the Judiciary Committee in writing in advance of the hearing will be deemed a default. In the event of a default, the Judiciary Committee will render its decision on the allegations on the complaint and on the facts before it. The respondent may appeal the entry of a default to the Board within thirty days after receipt of notice thereof.

K. The Hearing.

1. The Judiciary Committee shall select a person, who need not be an Owner or a member of the Judiciary Committee, to preside as hearing officer over the hearing. It is the duty of the hearing officer over the hearing. It is the duty of the hearing officer to explain the rules and procedures by which the hearing is to be

conducted. Generally, any relevant or evidence may be admitted and hearsay evidence may be used to supplement or explain other evidence, but will not be sufficient in itself to support a decision. Counsel for the Association may be present at all hearings and may serve as hearing officer.

2. At the request of either complainant or respondent, or on its own motion, the Judiciary Committee may conduct the hearing in private session.

3. Each party has the right to:

- a. make a statement;
- b. introduce evidence, testimony, and witnesses;
- c. cross-examine opposing parties and witnesses; and
- d. rebut evidence and testimony.

4. Technical rules of evidence or procedures may be relaxed by the hearing officer who, nevertheless, may reserve the right to exclude all irrelevant, immaterial, or repetitious evidence. The hearing officer also has the discretion to impose reasonable limits on the time allowed to testify and the number of witnesses.

5. If the complainant does not appear at the hearing, the complaint will be dismissed with prejudice.

6. Oral evidence may be taken only on oath or affirmation administered by the hearing officer.

7. Whenever the Judiciary Committee has commenced to hear a

matter, and a member of the Judiciary Committee withdraws before a decision, the remaining members will continue to hear the case and the president of the Judiciary Committee shall make his decision from the existing record.

L. Decisions. After a hearing on any matter, the Judiciary Committee must issue a written decision on the matter within 45 days. To be effective, a decision of the Judiciary Committee must be a majority vote. Copies of the decision must be delivered to parties in the same manner as required in paragraph II (d), promptly after the decision is issued. A summary of the decision may also be published in a Newsletter of the Association, or by similar notice, as soon after the decision is issued as is practicable, at the discretion of the Board of Trustees.

M. Penalties After Decision. Disciplinary action imposed by the Judiciary Committee may include the imposition of a fine or the suspension of the respondent's rights to vote or use the recreational facilities until the infraction is corrected. For any noncontinuing may be for a period of not more than 90 days. For a continuing infraction, including, but not limited to, a non-payment of any assessment after it becomes delinquent, suspension may be imposed for as long as the infraction continues. To be effective, any penalty imposed by the Judiciary Committee must be a majority vote. Copies of the decision must be delivered to the



parties in the same manner as required in paragraph II (d). A summary of the penalty may also be published in a Newsletter of the Association, or by similar notice, as soon after the decision is issued as practicable, at the discretion of the Board of Trustees.

**III. INTERPRETIVE RULINGS.**

**A. Petitions.**

1. Any owner, officer, trustee, or agent of the Association may petition the Judiciary Committee at the Association office.

2. The petition must be legibly written and set forth the language of the provision in question, and the reference to that language in the Governing Documents, the issue to be resolved by such a ruling, and the name and address of the petitioner.

**B. Decisions.**

1. The Judiciary Committee will act on any petition at its next monthly meeting following receipt of the petition on the Association office, provided that the petition is received one week in advance of the Judiciary Committee's scheduled monthly meeting. Petitions received within one week of the scheduled monthly meeting may, in the discretion of the Judiciary Committee, be acted on at the meeting or carried to the second monthly meeting following receipt of the petition.

2. The Judiciary Committee shall issue a written interpretive ruling within 45 days after the meeting on the petition. To be

effective, an interpretive ruling of the Judiciary must be a majority vote. Copies of the ruling must be delivered to the petitioner in the same manner as required in paragraph II (D). A summary of the ruling may be published in the Newsletter of the Association, or similar notice, as soon after the ruling is issued as practicable, at the discretion of the Board of Trustees.

#### IV. APPEALS

1. Any decision or ruling of the Judiciary Committee may be appealed by the respondent to the Board.
2. All appeal petitions must be submitted to the Board within 30 days after receipt of a copy of the written decision or ruling from the Judiciary Committee. In the event that an appeal is not filed within the 30 day period, the decision or ruling of the Judiciary Committee is final; however, for good cause shown, the Board has the power to extend appeal period on an individual case basis for any time it deems appropriate under the circumstances.
3. All the rights and procedures set forth in Parts (II and III of this Policy Resolution apply to appeal petitions before the Board.
4. Owners must exhaust all remedies provided by this Policy Resolution before resorting to a court of law for relief.

#### V. CONSTRUCTION

- A. "Due Process", as used in this Resolution, refers to the

following basic rights:

1. Respondent will be notified of the alleged violations;
2. Respondent will have an opportunity to be heard at a hearing at which witnesses may appear and may be cross-examined and at which evidence may be introduced;
3. An opportunity to appeal will be available; and
4. Basic principles of fairness will govern;

B. Any inadvertent omission or failure to follow the procedures for due process in this Policy Resolution will not invalidate the results of any decision or ruling, as long as a prudent and reasonable attempt was made to assure the above basic due process rights.

**IV. REFERENCE OF PRONOUNS**

All pronouns refer to the masculine, feminine, neuter, singular and plural as the identity of the entities may require.

Adopted at a regular meeting of the Board of Trustees held on the 13 day of Feb. 1995.

  
MICHAEL BELLERO, President

ATTEST:

  
~~JOSEPH MOLON~~ Secretary

BY: Michael Beller  
Michael Beller, President

ATTEST:

BY: John Mateychick  
John Mateychick, Secretary

STATE OF NEW JERSEY )  
COUNTY OF SUSSEX ) SS:

I CERTIFY that on February 13, 1995, John Mateychick personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of Rolling Hills Condominium Association, Inc., the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate office who is Michael Beller the President of the corporation.
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Trustees;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

John Mateychick  
John Mateychick, Secretary

Signed and sworn to before me on February 13, 1995.

Alan Y. Lowcher Esq.  
NOTARY PUBLIC

Record and return to:  
Alan Y. Lowcher, Esq.  
40 West Washington Avenue  
Washington, New Jersey 07882

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