



**NEW MARK COMMONS
HOMES ASSOCIATION, INC.**
C/O ABARIS REALTY INC.
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www.newmarkcommons.org

February 23, 2025

Dear New Mark Commons Homeowners,

As you may already know, the Board of Directors is considering adopting a new due process and enforcement procedure. On behalf of the Board, we previously distributed the draft resolution for homeowners' review and feedback.

Preliminarily, the Board thanks you for your comments and proposed changes. The Board reviewed each of your responses along with legal counsel to ensure that the due process and enforcement procedure not only makes practical sense but also complies with the governing documents and the Maryland Homeowners Association Act.

One of the most raised concerns was with respect to imposing attorney fees incurred as part of the due process procedure. In light of the feedback from homeowners, that language has since been removed from the resolution.

Enclosed for your review is the revised due process and enforcement procedure. This resolution was prepared in conjunction with legal counsel and complies with the governing documents, the Maryland Homeowners Association Act, and best practices.

Please be advised that the Board of Directors will vote on adopting the enclosed resolution at its next regularly scheduled meeting on Thursday, April 3, 2025 at 7:00 p.m. Homeowners may participate in the meeting using the following ZOOM link or call instructions:

Link: <https://abarisrealty.zoom.us/j/9144800786?pwd=EeNIFVtGZyAhfhx13R4iVD0zopo8h2.1>

Dial In: 301-715-8592
Meeting ID: 914 480 0786
Passcode: 151661

Homeowners may submit comments on the resolution either before the Board meeting or at the meeting itself. If adopted, the resolution will go into effect immediately. The final approved due process and enforcement procedure will be sent to all homeowners after it has been formally adopted by the Board. On behalf of the Board, I thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kaitlyn Ambush".

Kaitlyn Ambush, CMCA
Community Manager

**THE NEW MARK COMMONS HOMES ASSOCIATION, INC.
DUE PROCESS & ENFORCEMENT PROCEDURE**

WHEREAS, Article IV, Section 1(f) and Article XIV, Section 3 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions (“Declaration”) for The New Mark Commons Homes Association, Inc. (“Association”) empowers the Board of Directors (“Board”) to levy fines for violations of the Declaration, Articles of Incorporation, Bylaws, and any rules and regulations, policies, procedures, notices, or codes of conduct (collectively, the “Governing Documents”);

WHEREAS, Section 11B-111.10 of the Maryland Homeowners Association Act (“Act”) sets forth the dispute settlement mechanism and due process procedure that must be followed before any charges (fines) or sanctions for violations of the Governing Documents are imposed; and,

WHEREAS, the Board has determined that the implementation of a standard mechanism to address and enforce violations occurring by an Owner, their family members, guests, invitees, contractors, and/or tenants is appropriate.

NOW, THEREFORE, BE IT RESOLVED that any other previously adopted rule, policy, or resolution regarding the enforcement of violations is hereby rescinded, and the Board hereby resolves to promulgate the following resolution for the enforcement of violations in accordance with the Governing Documents and the Act (“Resolution”):

A. Methods for Communicating Rules Violations & Grievances.

1. When an Owner, renter, or other resident has a particular complaint or grievance with another Owner, renter, guest, visitor, or other resident, the preferred method of resolution is for the parties concerned to make a good faith effort to discuss the grievance in an attempt to reach an amicable understanding or resolution.
2. If the attempted resolution between the parties is unsuccessful, or if the party with a complaint or grievance does not believe it would be worthwhile to attempt a resolution directly with the other party, the matter can be called to the attention of the Board by notifying the management agent or other person that may be designated by the Board from time to time, in writing.
3. Before formal enforcement proceedings are initiated, the management agent and/or Board may, to the extent practicable, conduct an initial investigation to determine whether a violation of the Governing Documents has occurred, or is occurring, and, if so, attempt to obtain an informal resolution to the violation between the parties.
4. In cases involving complaints brought by an Owner or a resident involving another Owner or resident where informal resolution is not possible, or in the case of chronic violations, formal enforcement action may be initiated. Except as provided in Sections A.5 and A.6 below, before any action may be taken by the Board, a written, legible, signed report or complaint must be received by the Board from a resident or Owner. The report or complaint must contain:

- a. The name, address, home, and, if applicable, office telephone numbers and/or e-mail address of the complaining party;
- b. If available, the name, address, home, and, if applicable, office telephone numbers of the offending Owner(s), renter(s), and/or resident(s);
- c. The time and date of the occurrence that is the subject of the complaint;
- d. Any witness(es) to the occurrence that is the subject of the complaint; and,
- e. The nature of the complaint and/or grievance.

The written complaint shall be delivered to the Board at its meeting or through such other mechanism established by the Board.

5. The Board may, in exercising their discretion, act on any information relating to a grievance or violation of the Governing Documents that comes to their attention, even absent a formal complaint.
6. Notwithstanding the foregoing, the Board may initiate action on their own, even without a written complaint, if they believe such action is warranted.

B. Action by the Board.

1. Formal Written Cease and Desist Notice. If the initial communication of a complaint does not result in an appropriate resolution of the matter, or when the Board determines appropriate, the Board, directly or through the management agent, may send a written demand to cease and desist. If the alleged violator is not an Owner, notice shall be sent to the Owner associated with the address of the alleged violator. A copy shall be sent to the alleged violator as well. The notice shall specify:
 - a. The nature of the alleged violation;
 - b. The action required to abate the violation; and,
 - c. If the violation is a continuing one, a time period of not less than fifteen (15) days during which the violation may be abated without further sanction(s); or, if the violation is not a continuing one, a statement that any further violation of the same rule may result in the imposition of sanction(s), including a fine or penalty, after notice and opportunity for a hearing.
2. Written Notice of Violator's Right to Request a Hearing. Within twelve (12) months of the demand to cease and desist, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is violated subsequently, the Board shall provide the Owner and the alleged violator with

written notice of the alleged violator's right to request a hearing to be held by the Board in executive session. The notice shall specify:

- a. The nature of the alleged violation;
 - b. The procedures for requesting a hearing at which the alleged violator may produce any statement, evidence, or witnesses on behalf of the alleged violator;
 - c. The period of time for requesting a hearing, which may not be less than ten (10) days from the giving of the notice; and,
 - d. The proposed sanction(s) to be imposed.
3. Hearing Request and Procedures. If the alleged violator requests a hearing within the period of time specified in the notice, the Board shall provide the alleged violator with written notice of the time and place of the hearing, which time may not be less than ten (10) days after the date the request for a hearing was provided.
- a. Any hearing by the Board in connection with the alleged violation and/or complaint must be held before a quorum of the Board members.
 - b. At the hearing before the Board, the alleged violator has the right to present evidence and present and cross-examine any witnesses. The alleged violator may also be represented by counsel, at their own expense.
 - c. The hearing shall be held in executive session and shall afford the alleged violator a reasonable opportunity to be heard.
 - d. Prior to the taking effect of any sanction hereunder, proof of notice shall be entered in the minutes of the meeting, which shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of providing the notice, is entered in the minutes by the officer or director who provided the notice, or the alleged violator appears at the meeting.
 - e. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.
4. Failure to Request Hearing. If the alleged violator does not request a hearing within the period of time specified in the notice, the Board, at the next meeting, shall deliberate as to whether the violation occurred and decide whether a sanction is appropriate for the violation.
5. Decision. The alleged violator and/or Owner will be given written notice of the Board's decision, including any sanction(s) that the Board has decided to impose. The notice of the Board's decision must include the following statement, to the extent required by law:

Upon receipt of the notice of Board of Director's decision, pursuant to Section 10B-9(d) of the Montgomery County Code, the appropriate Owner/resident may file a complaint with the Montgomery County Commission on Common Ownership Communities appealing the Board of Director's decision.

6. Appeal to the Courts of Maryland. A final decision made in accordance with these procedures shall be appealable to the courts of Maryland.

C. Liability for Damages.

If any Owner or violator fails to comply with the Governing Documents or a decision of the Board rendered pursuant to these procedures, the Association may seek enforcement by suing for damages or injunctive relief, or both, that is caused by the Owner or violator's failure to comply.

D. Effect of Failure to Enforce Provision.

The failure of the Association to enforce a provision of the Governing Documents on any occasion shall not be considered a waiver of the right to enforce said provisions on any other occasion.

E. Penalties.

1. It is the responsibility of each Owner, tenant, and any other resident to be familiar with the Governing Documents and to inform all family members, guests, invitees, contractors, and/or tenants of the same. Ignorance of their content will not be accepted as justification for their violation. Owners shall be accountable for violations caused by themselves, any co-owner of their Lot, their family members, guests, invitees, contractors, and/or tenants visiting, residing, or who is invited to the property by them or another person acting for them.
2. If the Board finds that a violation, or violations, has occurred, it may impose fines for each violation. The Board shall impose fines as follows:

First offense: not more than \$500.00 per violation
Second offense: not more than \$1,000.00 per violation
Third or more offenses: not more than \$1,000.00 per violation

The Board may impose fines in an amount and frequency outside the above fine schedule at its discretion and as it determines appropriate on a case-by-case basis.

Each day that a violation reoccurs or continues uncorrected, after notice is given, shall constitute a separate violation subject to an additional fine without the need to hold any subsequent hearings. Fines shall be treated as an assessment against the Owner's Lot.

3. In addition to or in lieu of the imposition of fines, the Board may impose additional sanctions as permitted by the Act and the Governing Documents, including the suspension of the right to vote in the Association and the right to use the Community Facilities and Common Areas, in accordance with Article IV, Section 1(e) of the Declaration.
4. The procedures outlined in this Resolution may be applied to all violations of the Governing Documents, but do not preclude the Association from exercising other enforcement procedures and remedies authorized by the Governing Documents, including, but not limited to, the initiation of suit or self-help remedies. In the event that a lawsuit is initiated, the Association will seek recovery of all of its legal fees.
5. Notwithstanding the foregoing, the Association may forego any of the enforcement procedures set forth herein and proceed directly with legal action through the courts, or otherwise as may be permitted by law.

F. Miscellaneous.

1. The use of the masculine gender includes the feminine and neutral genders, and the use of the singular includes the plural and vice versa, whenever the context so requires.
2. Certain capitalized terms used in this Resolution, unless otherwise defined herein, have the meanings specified for such terms in the Declaration.

This Resolution was adopted this the ____ day of _____, 2025, and shall be effective immediately upon adoption.

Witness: _____
 _____, President

Attest: _____
 _____, Secretary