

PREPARED BY:


Michael S. Karpoff, Esq.

**REGULATION OF THE
WYNDMOOR AT THE HIGHLANDS ASSOCIATION, INC.**

THIS REGULATION is made this 28th day of August, 2013 by the Wyndmoor at the Highlands Association, Inc., a New Jersey nonprofit corporation, having its offices at 200 Portland Road, Borough of Highlands Monmouth County, State of New Jersey (hereinafter referred to as "the Association").

The Wyndmoor at the Highlands Association, Inc. hereby adds this Regulation pursuant to its Master Deed and By-Laws dated July 22, 1981 and recorded in the Clerk's Office of Monmouth County in Deed Book 4309, at Page 1, et seq., on July 24, 1981. This Regulation shall supersede any previously adopted rules or regulations with regard to dispute resolution to the extent they are inconsistent with the following.

Record and Return to:
Michael S. Karpoff, Esq.
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**WYNDMOOR AT THE HIGHLANDS ASSOCIATION, INC.
RESOLUTION ADOPTING DISPUTE RESOLUTION PROCEDURE**

WHEREAS, in accordance with Article IV, Section 1 of the By-Laws of the Wyndmoor at the Highlands Association, Inc., the affairs of the Association are governed by the Board of Trustees; and

WHEREAS, Article IV, Section 2, paragraph (e) and Article VI, Section 13 of the By-Laws authorize the Board to adopt rules and regulations regarding the operation, occupancy and use of the Wyndmoor at the Highlands Condominium property; and

WHEREAS, the New Jersey Condominium Act requires that each condominium association make available to its members a fair and efficient dispute resolution process as an alternative to litigation; and

WHEREAS, the Board wishes to establish an alternative dispute resolution process as set forth herein,

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the following Regulation to create a dispute resolution process:

I. PURPOSE

Pursuant to the New Jersey Condominium Act, each Condominium Association is obligated to provide a readily available mechanism for unit owners to request alternative dispute resolution as a means to avoid litigation. The Board of Trustees of the Wyndmoor at the Highlands Association has determined to create a Dispute Resolution Committee authorized to review and resolve disputes between the Association and its members and between unit owners. The Committee will have final decision making authority for matters it is requested to decide. This regulation establishes the Committee and sets up procedures for resolving disputes. The regulation also provides for an alternative of mediation if parties to the dispute

agree to that alternative.

II. CREATION AND AUTHORIZATION OF DISPUTE RESOLUTION COMMITTEE

A. Membership. The Dispute Resolution Committee shall consist of three (3) members appointed by the Board of Trustees. The Board also may appoint up to two (2) alternate members. Each member and alternate member shall serve for a term of one year and may be reappointed.

B. Chairman. The chairman of the Committee shall be chosen by a vote of the Committee members and shall serve for a term of one year. The chairman must be a resident owner of the Condominium. A chairman may not serve more than two consecutive terms as chairman.

C. Quorum. A quorum of the Committee shall consist of two (2) members of the Committee. If enough members are not available to make a quorum, the alternate members may serve in order to make the quorum. No member of the Committee may serve with respect to a particular dispute in which that member has an interest or is related to a person who has an interest, and in such event, an alternate member shall serve in place of the disqualified member.

D. Training. The Association's Board of Trustees may require members and alternate members to complete basic mediation and alternative dispute resolution training, conducted by a recognized professional organization and provided by the Association.

E. Removal. A Committee member may not be removed by the Board of Trustees during his or her term except for cause. In the event that the Board of Trustees proposes to remove a Committee member for cause, such member shall be provided with notice of the reason for removal and shall be entitled to a hearing before the Board.

F. Community Manager's Responsibilities. The community manager shall provide access to a meeting place for the Committee. In addition, the manager shall provide to the Committee any requested files, archive material, records or other material necessary for

completion of Committee business. The Committee secretary and the chairman shall have complete and full access to the manager to insure timely completion of business, subject to the reasonable discretion of the Board of Trustees. In addition, the manager will coordinate with the Committee secretary to provide in a timely manner secretarial support to assure that board members receive timely notification of Committee business.

G. Communications with Board of Trustees. A copy of the Committee minutes and decisions shall be forwarded to the Board of Trustees within five (5) days after approval by the Committee. In addition, at any time, the chairman of the Committee or the Committee as a whole may request and shall be granted as expeditiously as possible a meeting with the Board of Trustees or a designated liaison member of the Board of Trustees. In addition, the Board shall refer as expeditiously as possible any requests by the Committee for legal guidance to a duly licensed attorney of the Board's choosing.

H. Confidentiality. Committee members shall respect and protect any confidential information and any information which may, if disclosed, unduly invade the privacy of unit owners and tenants.

I. Jurisdiction.

(1) Where a unit owner has been informed of a potential violation and requested to cease and desist if he or she is in fact committing such violation, the matter shall not be referred to the Committee.

(2) However, the Committee shall hear and decide matters between the Association and a unit owner where the unit owner has actually been charged by the Association with a violation of the Master Deed, the By-Laws or an Association regulation and the Association seeks sanctions or an order to cease and desist or correct a violation.

(3) The Committee also shall hear and decide disputes between unit owners

if requested to do so by any unit owner involved in such dispute.

(4) Notwithstanding its jurisdiction, the Committee shall not involve itself in disputes involving the violation of any statutory law, any claim of a unit owner disputing his or her common expense assessment or any claim which is derivative in nature, that is, is actually on behalf of the entire Association, such as, but not limited to, election or voting procedures or a claim that the Board of Trustees is acting unlawfully or exceeding its authority, unless the Board of Trustees authorizes or requests it to conduct a hearing in such matter. In any such case where alternative dispute resolution is requested, the Board of Trustees may offer a different dispute resolution process appropriate to the issue.

J. Decision. Where the Committee decides a matter, it shall provide to the parties a written decision, containing findings of fact, reasons and the disposition. Such written decision shall be provided to the parties within 30 days after conclusion of the hearing.

K. Binding Effect, Right to Appeal. A decision by the Committee shall be binding on all parties to the dispute, and may be enforced by any party in the Superior Court of New Jersey. Appeals from decisions of the Committee shall be to the Superior Court of New Jersey.

L. Ancillary Authority. The Committee is granted authority to conduct interviews, investigations, and engage in legal consultation with an attorney selected by the Board of Trustees. All costs incurred by the Committee shall be common expenses and shall be paid by the Association. The Committee may not incur any expenses other than consultation with legal counsel as specified herein and use of management staff services as specified herein without the written authorization of the Board of Trustees.

III. PROCEDURES TO RESOLVE DISPUTES

A. Informal Actions. Before any formal process is initiated against an Owner to seek compliance with the Association's governing documents, an informal request may, but need not, be made by any member, officer, trustee or agent of the Association to that Owner to cease or correct the act or omission which appears to be in violation of the Association documents.

B. Written Complaint. If informal action is not taken or proves unsuccessful, any member, officer, trustee or agent of the Association may file a written complaint with the Dispute Resolution Committee. The complaint must 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 persons involved. The complaint should specify the provisions of any Association documents or regulations which the respondent is alleged to have violated.

C. Preliminary Investigation. Upon receipt of a written complaint, the Dispute Resolution Committee may request the community manager or a member of the Committee to make a preliminary investigation and promptly report to the Committee. If a resolution has been reached, the Committee will request that the complaint be withdrawn.

D. Service of the Complaint. The Dispute Resolution Committee, through the manager, will serve a copy of the complaint, which may be in the form of a letter, on the respondent at least 10 days prior to any hearing on the matter before the 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 Committee may take no action unless the respondent has been served as provided in this paragraph.

E. Contents of the Complaint. The Complaint to respondent, which may be

combined with the Notice of Hearing from the Committee, 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 persons involved, and the specific provisions of any Association documents and/or regulations which respondent is alleged to have violated. It should also request the respondent to cease and desist from the alleged violation.

F. Contents of the Notice of Hearing. The Notice of Hearing, which may be combined with the Complaint, must set forth the time, place, and date of hearing. It should contain a statement that the respondent: may be present at the hearing; may, but need not be represented by counsel; may present any relevant evidence, and shall 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 relevant books, documents, or other items by applying to the Board of Trustees or the manager of the Association.

The Notice must also advise the respondent to answer the allegations in the complaint at least three (3) days before the hearing either by filing a written Answer, or by notifying the Dispute Resolution Committee in writing that respondent will appear at the hearing, and that failure to answer or notify 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 Dispute Resolution Committee may file or permit filing of an Amended or Supplemental Complaint. All parties must be notified in the same manner as notified of the original complaint, and a new hearing date shall be scheduled at least 10 days after the new notice. If new charges are presented, the respondent may file a Supplemental Answer.

H. Discovery. At any time after service of the Complaint and prior to the date for hearing, either party may request the Board of Trustees, the manager, or the other party to provide the names and addresses of witnesses to be called, and copies of any statements,

the Dispute Resolution 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 shall 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 or a necessary witness to the violation does not appear at the hearing, the complaint may be dismissed.

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

7. Whenever the Dispute Resolution Committee has commenced to hear a matter, and a member withdraws before a decision, the remaining members will continue to hear the case and render a decision even if they no longer comprise a quorum.

L. Decisions. After a hearing on any matter has been completed, the Dispute Resolution Committee must issue a written decision on the matter within 30 days. To be effective, a decision of the Committee must be by a majority vote. Copies of the decision must be delivered to the parties by personal service or by certified mail, return receipt requested, promptly after the decision is issued.

M. Penalties After Decision. Disciplinary action imposed by the Dispute Resolution Committee may include an order to cease and desist, to correct or eliminate the violation, and/or to restore property, as appropriate; the imposition of a fine if authorized by the

Master Deed or By-Laws; and/or suspension of respondent's right to vote and/or suspension of the respondent's right to use the recreational facilities until the infraction is corrected. For a continuing infraction, including non-payment of any fine after it becomes delinquent, suspension may be imposed for as long as the infraction continues. For the purposes of fines, each day that a violation continues may be deemed a new violation subject to additional fines. A summary of the decision may also be published in a newsletter.

N. Mediation. Nothing herein shall bar the parties to the dispute, including the Association, from agreeing to mediate the dispute, as set forth in Article V of this Regulation.

IV. CONSTRUCTION OF ADR PROCESS

A. This regulation shall be construed to achieve the following due process rights for all parties:

1. Respondent will be notified of the charges.
2. Complainant will have an opportunity to present his or her case at a hearing at which he or she may present witnesses and evidence and may cross-examine the respondent's witnesses.
3. Respondent will have an opportunity to be heard at a hearing at which he or she may present witnesses and evidence and may cross-examine the complainant's witnesses.
4. An opportunity to appeal to the court will be available.
5. Basic principles of fairness will govern.

B. Any inadvertent omission or failure to follow the procedures for due process in this Regulation 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.

C. Notwithstanding any language in this Regulation, the Association may seek immediate judicial relief without utilizing these procedures where immediate action is necessary due to an emergency or imminent threat.

V. MEDIATION

A. The parties to any dispute or some of them may, at any time, agree to mediate their dispute rather than present it to the Dispute Resolution Committee to attempt to reach a mutually agreeable resolution.

B. The Board of Trustees shall make available to the parties a mediator for the dispute.

C. If more than two parties are involved in the dispute, any two or more of the involved parties, although not all of them, may agree to mediate issues between or among them, and those parties may jointly request that the Board make a mediator available.

D. The mediator must be able to perform in a disinterested and objective manner in consideration of the dispute, or must disqualify him or herself. The mediator may be challenged by any party involved in the mediation. If the challenged mediator does not voluntarily disqualify him- or herself, the Board of Trustees will decide the challenge, and all decisions of the Board in this regard are final.

E. Where the dispute involves or pertains to a tenant of a unit owner, the parties may agree to invite the tenant to participate in the mediation.

F. The parties agreeing to mediate shall bear the fees and costs charged by the mediator equally.

G. In the event the matter has been presented to the Dispute Resolution Committee but a decision has not yet been rendered and parties agree on mediation, the Committee shall suspend further proceedings while mediation continues, and the parties shall inform the Committee when the matter is resolved or the mediation is discontinued. If the mediation is discontinued without a resolution, upon the request of any party to the dispute, the Committee shall reinstate the matter and proceed to a decision.

IN WITNESS WHEREOF, the Wyndmoor at the Highlands Association, Inc. has affixed its hand the day and year first above written.

Attest:

Harriet Callanan
Secretary
HARRIET CALLANAN

WYNDMOOR AT THE HIGHLANDS
ASSOCIATION, INC.

Patrick E. Hughes
Patrick E. Hughes, President

ACKNOWLEDGEMENT

STATE OF NEW JERSEY :
: ss
COUNTY OF MONMOUTH :

I CERTIFY that on August 28, 2013, Harriet Callanan personally came before me and this person acknowledged under oath, to my satisfaction, that he/she is the Secretary of the Wyndmoor at the Highlands Association, Inc. is the attesting witness to the signing of this document by the proper corporate officer who is Patrick E. Hughes, the President of the corporation; this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper Resolution of its Board Members; he/she knows the proper seal of the corporation which was affixed to this document; and he/she signed this proof to attest to the truth of these facts.

Harriet Callanan
Secretary

HARRIET CALLANAN

Subscribed and sworn to before me
this 28th day of August, 2013

Michael A. Foy
A Notary Public of New Jersey

My Commission expires _____.

Attorney at Law of the
State of New Jersey