



**Birkdale Community Association, Inc.**  
**Violation Complaint and Due Process Resolution**

WHEREAS, Section 55-513(A) of Chapter 26 of Title 55 of the Code of Virginia (The Property Owners' Association Act, or "Act") empowers a Board of Directors to establish, adopt and enforce rules and regulations respecting use of common areas and other areas of responsibility assigned to the Association by the Association's declaration; and,

WHEREAS, Article III, Section 3.4 of the Master Protections, A Declaration of Covenants, Easements and Restrictions, dated November 17, 1988 and recorded on December 6, 1988 in the Clerk's Office of the Circuit Court of the County of Chesterfield, Virginia, in Deed Book 1990 at Page 237, et. seq., as amended and/or supplemented ("Declaration"), and Article III, Section 2(f) of the Bylaws of Birkdale Community Association, Inc. ("Bylaws") authorize the Board of Directors of the Association to enact and amend rules for the use of the Common Areas and Recreation Area; and

WHEREAS, pursuant to Section 55-515(A) of the Act and the Declaration, all Lot Owners and all those entitled to occupy a Lot in the Birkdale community (collectively "Lot Owners") shall comply with the Declaration, Bylaws and Rules and Regulations, and Architectural Standards and Guidelines, as amended;

WHEREAS, Article II of the Amended and Restated Articles of Incorporation of Birkdale Community Association, Inc., provides that the Association will exercise all of the powers and privileges and perform all duties and obligations of the Association as set forth in the Declaration and

WHEREAS, in accordance with Section 55-513(B) of the Act and Article III, Section 3.4, Article IV, Section 4.3, and Article IX, Section 9.1 of the Declaration, the Association has the authority to assess charges against any Lot Owner and/or suspend of the right to vote and/or suspend the right to use any Common Area or Recreation Area for any violation of the Declaration, Bylaws, Rules and Regulations, and Architectural Standards and Guidelines; and

WHEREAS, in accordance with Section 55-513(B) of the Act, the Association, by duly adopted resolution, has the authority to "suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than sixty days past due .... "; and

WHEREAS, it is the intent of the Board of Directors, by virtue of this Resolution, to bring its enforcement policies and procedures provided by Article III, Section 3.4, Article IV, Section 4.3, and Article IX, Section 9.1 of the Declaration and Article III, Section 2(f) of the Bylaws into compliance with the enforcement authority established by Section 55-513(B) of the Act; and

WHEREAS, it is the intent of the Board of Directors, pursuant to Section 55-513(B) of the Act, to adopt by Resolution the authority to assess charges for violations of the Act, Declaration, Bylaws, Rules and Regulations and Architectural Standards and Guidelines and to suspend Lot Owners' use of facilities

or services, including utility services, provided directly through the Association for the nonpayment of assessments which are more than sixty days past due, for which the lot owner is responsible; and

WHEREAS, Section 55-513(B) of the Act further provides that certain procedures must be followed before such charges may be assessed and such suspensions may be imposed; and

WHEREAS, it is the intent of the Board of Directors to enforce the Declaration, Bylaws, duly adopted Rules and Regulations, and Architectural Standards and Guidelines for the benefit and protection of the Association's Lot Owners, by establishing procedures which ensure due process and consistency of enforcement;

NOW THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors of the Birkdale Community Association, by the Act, the Declaration, Bylaws and this Resolution, hereby adopts and establishes a procedure by which the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and Architectural Standards and Guidelines can be enforced and herewith establishes a Covenants Committee for the administration thereof. Further, that the Board of Directors establishes a procedure by which facts and information pertaining to an alleged violation, are brought to the attention of the responsible Owner and that Owner be given a chance to rectify an identified violation, and, further, that if no such remedy is made, the Board of Directors, or a committee appointed by the Board of Directors, on behalf of the association, called, from now and this point forward, the Covenants Committee, can investigate and review related facts and information, report to the Board of Directors, and attempt to resolve the matter, prior to the Covenants Committee or the Board imposing any sanctions provided herein and/or bringing any legal action. The Covenants Committee shall consist of up to five (5) homeowners of record of the community appointed by the Board.

IT IS HEREBY FURTHER RESOLVED THAT the Board of Directors is adopting the ability for the Covenants Committee, on behalf of the Board of Directors, to assess charges for any violation of the Act or the Declaration, Bylaws, Rules and Regulations or Architectural Standards and Guidelines and to suspend a lot owner's right to use property owned by the Association, facilities or services, including utility services, provided directly through the Association for nonpayment of assessments which are more than sixty days past due, for which the Lot Owner is responsible pursuant to Section 55-513(B) of the Act, which will be assessed and/or suspended only after the following procedures have been followed:

1. It is encouraged that Lot Owners aware of a violation should first advise the violating Lot Owner of the violation and request that the alleged violating resident comply with the appropriate governing documents.
2. Notwithstanding Paragraph 1, above, any Association Member, Lot Owner, tenant, Managing Agent, employee or Board member who believes that a Member or a Lot is in violation of the Act, Declaration, Bylaws, Rules and Regulations or Architectural Standards and Guidelines may report a violation to the Covenants Committee and/or the Managing Agent. A Rules Violations Complaint form is available on [www.birkdaleonline.com](http://www.birkdaleonline.com) or by providing similar information via a telephone call, email, or in a letter to the Covenants Committee Chair or the Managing Agent. If the complaint is in regard to a suspected violation, the person bringing about the complaint must provide full details of the matter. All verbal or written reports of suspected violations will be confidential and held in the Association files kept by the Managing Agent for the Association.
3. Upon receipt of the complaint, Covenants Committee shall investigate the matter. The Covenants Committee Chair will utilize the Complaint Form, attached as Exhibit "A" as a way of logging each step taken from

the time that a possible violation was noted until resolved without a hearing or a hearing was held in accordance with this Resolution. This file is to be used only by the Covenants Committee Chair and the members of the Covenants Committee to correctly ascertain the time line of the event. After a resolution is reached between the Covenants Committee, the Association and the violating Lot Owner/Member, the file of record should be placed into the Lot Owner's file located with the Managing Agent as custodian in perpetuity.

**4.** Upon receipt of a written complaint, a conference, either via email or phone call, should take place between the Covenants Committee Chair and the Managing Agent to review the matter. With the Managing Agent and Covenants Committee Chair's authority, a Friendly Reminder Notice, which may be in a form similar to Exhibit "B" hereto, shall be sent by first class mail or shall be hand-delivered to the lot owner at the address which the owner has provided the Association or at the Lot's address if no other address has been provided. A copy may be sent to the tenant if there is a tenant. The Friendly Reminder Notice shall specify the alleged violation, the action required to abate the violation and a date usually not less than ten (10) days after the date of the Friendly Reminder Notice letter by which the alleged violation must be remedied. Provided, however, when the violation may constitute a health, safety or fire hazard, demand may be made to remedy the violation within twenty-four (24) hours.

**5.** The Covenants Committee Chair shall monitor the situation and if no remedy is made within the specified time noted in the Friendly Reminder Notice letter, the Covenants Committee shall mail a Notice of Violation, which may be in the form similar to Exhibit "C" hereto, shall state that if the violation is not remedied by a specified date, the alleged violator may be subject to a hearing. If the alleged violation is not remedied within the date or time specified in the Notice of Violation and the Lot Owner requests a hearing or if the Board of Directors or Covenants Committee determines a hearing is necessary, a hearing before the Covenants Committee shall be scheduled at a reasonable time and place in the discretion of the Board of Directors or Covenants Committee, and notice of hearing shall be sent. Hearing Notice shall be hand delivered or mailed by registered or certified United States mail, return receipt requested, at least fourteen (14) days in advance thereof, or within such other time as may be required by the Act, to the Lot Owner at the address which the lot owner is required to provide to the Association. Service by mailing shall be deemed effective two (2) days after the notice has been mailed in a regular depository of the United States mail. The Hearing Notice may be similar to Exhibit "D" attached hereto and shall specify:

a) The time, date and place of the hearing of the Covenants Committee.

b) That the lot owner and tenant, if applicable, shall be given an opportunity to be heard and to be represented by counsel before the Covenants Committee.

c) The alleged violation, citing provisions of the Declaration, Bylaws, Rules and Regulations, and Architectural Standards and Guidelines, which allegedly have been violated.

d) That charges for violation of the Declaration, Bylaws and Rules and Regulations may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners' Association Act.

**6.** At the violation hearing, the Managing Agent or Covenants Committee Chair will present the facts and other information relating to the alleged violation and will review each of the notices mailed to the suspected

violating Member/Lot Owner. The alleged violating Member will be entitled to present facts, and other information related to the matter. The alleged violating Member may also bring and be represented by an attorney. Furthermore, some, but not all, alleged violations might require the presence of the ARC Chairperson, to discuss the issue as it relates to the Architectural Standards and Guidelines of the community. It will be up to the discretion of the Covenants Committee to decide whether the ARC Chair is to be present at the hearing.

**7.** Because the Covenants Committee hears matters regarding violations of the governing documents, the hearing shall be conducted in private, pursuant to Section 55-510(E) of the Act, at the discretion of the Covenants Committee and further provided that the chairman of the hearing body may impose a reasonable limit on the number of such persons who can be accommodated in the hearing room. During the course of any hearing held, the Covenants Committee, within its discretion, may afford those residents involved with the dispute or violation an opportunity to be heard within reasonable time limits.

After proper notice has been given, if the Lot Owner fails to appear at the hearing or if no hearing is requested, the hearing or meeting may continue as scheduled and the Covenants Committee may assess charges from the final compliance date of the Notice of Violation letter or take such other action as may be authorized by the Declaration, Bylaws or Rules and Regulations or by law.

If the alleged violator acknowledges responsibility for the violation charged, or does not wish to contest the alleged charge, the Covenants Committee may, in its discretion, dispense with a hearing after having afforded the alleged violator with an opportunity for a hearing.

**8.** After the facts have been presented and all discussions have ended regarding the noted violation, the Covenants Committee will excuse all parties and proceed into an executive session, consisting only of the Covenants Committee members. At which point, the Covenants Committee will review all of the facts and information presented during the hearing and make a determination of what, if any, further action is to be taken, including, but not limited to, levying charges for violation of the Declaration, Bylaws and Rules and Regulations, which may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners' Association Act, and/or suspension of the Lot Owner's right to use facilities or services, including utility services, offered by the Association until the offense is cured and/or ceased.

Minutes of each hearing or meeting shall be kept and a form similar to that attached hereto as Exhibit "E" shall be completed and placed in the Lot Owner's file and appropriate Association files.

**9.** In accordance with Section 55-513(B) of the Act, within seven (7) days of the violation hearing, the Covenants Committee shall notify, in writing, the alleged violator of its decision by hand-delivery or mailing by registered or certified mail, return receipt requested to the violator's address of record with the Association, and the assessment of any charges and the date which those assessments shall accrue from and be due, which shall not be earlier than the date set forth in the demand letter by which the violation must cease, and whether or not it is suspending the owner's right to use the common areas and facilities.

**10.** This resolution shall not be deemed to require a hearing prior to assessment of violation charges if a hearing is not requested, prior to the use of other remedies, or to prevent the Association from exercising any other remedies authorized or available under the Act, the Association's governing documents or by law. Suspension of use rights and/or assessment of charges shall not constitute an election of remedies. Remedies may be cumulative and include, without limitation:

(a) suspension of voting rights of an Owner for any period during which an assessment against his Lot remains delinquent as authorized by Article IV, Section 4.3 of the Declaration; and

(b) assessment of interest and late charges as authorized by Article V of the Declaration; and

(c) the right of access to lots to correct a noncompliance with the Declaration after notice and after judicial proceedings are initiated as authorized by Article IX, Section 9.1 of the Declaration; and

(e) suit for damages or injunctive relief, including attorneys' fees, as authorized by Section 55-515(A) of the Act and Article IX of the Declaration.

**11.** This resolution shall become effective on the \_\_\_\_\_ day of May, 2015 and shall supersede all previous resolutions regarding due process procedures.

**(Exhibit A)**  
**BIRKDALE COMMUNITY ASSOCIATION, INC.**  
**Rules Violation Complaint**

Address of alleged violation: \_\_\_\_\_

Describe in detail the alleged violation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When did the violation occur?    \_\_\_/\_\_\_/\_\_\_

Is violation on-going?    Yes    No

Person making complaint (Optional):

Name \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_

Attach photos if appropriate

**FOR ASSOCIATION USE ONLY**

=====

Owner Name: \_\_\_\_\_

Owner Address: \_\_\_\_\_

Owner City, State, Zip: \_\_\_\_\_

Tenant Name: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date first letter sent:    \_\_\_/\_\_\_/\_\_\_    Date second letter sent:    \_\_\_/\_\_\_/\_\_\_

Request for hearing by Owner:    Yes    No    Date request received:    \_\_\_/\_\_\_/\_\_\_

Hearing date set for:    \_\_\_/\_\_\_/\_\_\_    Date hearing letter sent:    \_\_\_/\_\_\_/\_\_\_

**(Exhibit B)**

***Birkdale Community Association, Inc.***  
***C/O Community Group, Inc.***  
***3901 Westerre Parkway, Suite 100***  
***Richmond, VA 23233***  
***Telephone (804) 270-1800 Fax (804) 346-8640***

**Friendly Reminder Notice**

[Date]

[Recipient Name]

[Street Address]

[City, State Zip]

Property:

Violation:

Location:

Dear [Recipient Name]:

One of the primary goals of Birkdale Community Association, Inc. is to protect the aesthetic appeal and property values of the neighborhood. In order to accomplish this, certain rules and regulations are established by which homeowners and residents must abide. During a recent site inspection, we noted a concern with reference to your home and this is a reminder to correct the following concern:

[Description of violation]

[Site violation from governing document]

We understand that many times residents are simply unaware that a problem exists or the inspector may have observed a very temporary situation that will be taken care of shortly. If you feel you have received this letter in error, please contact our office at (804) 270-1800 or by email at [email@communitygroup.com](mailto:email@communitygroup.com).

Please be sure to remedy this situation in the next [number of days for violation] days if you have not already done so. Thank you in advance for your assistance in keeping Birkdale looking its best.

Sincerely,

Wendy Parks  
Community Manager

**(Exhibit C)**

***Birkdale Community Association, Inc.  
C/O Community Group, Inc.  
3901 Westerre Parkway, Suite 100  
Richmond, VA 23233  
Telephone (804) 270-1800 Fax (804) 346-8640***

**Notice of Violation**

[Date]

[Recipient Name]

[Street Address]

[City, State Zip]

Property:

Violation:

Location:

Dear [Recipient Name]:

You were recently mailed a notice of your violation of the governing documents for Birkdale Community Association, Inc. On [Date & Time of Friendly Reminder Notice], another inspection was performed and this violation remains uncorrected.

In order to resolve this issue and avoid a Hearing on this matter, please take the following action within 10 days of the date of this letter:

[Description of resolution]

[Site violation from governing document]

If there are special circumstances that prevent you from correcting this observation, or if you have any questions, please contact our office at (804) 270-1800 or by email at [email@communitygroup.com](mailto:email@communitygroup.com).

Thank you in advance for your assistance in keeping Birkdale looking its best.

Sincerely,

Wendy Parks  
Community Manager

**(Exhibit D)**

***Birkdale Community Association, Inc.  
C/O Community Group, Inc.  
3901 Westerre Parkway, Suite 100  
Richmond, VA 23233  
Telephone (804) 270-1800 Fax (804) 346-8640***

**Hearing Notice**

[Date]

[Recipient Name]

[Street Address]

[City, State Zip]

Property:

Violation:

Location:

Dear [Recipient Name]:

We have previously sent you several notices asking you to correct this violation. As of [Date], your property continues to be in non-compliance of the Community's governing documents.

[Description of Violation]

[Site violation from governing document]

A hearing has been scheduled whether a charge should be imposed. You may be present at the hearing, and may be represented by counsel, should you so desire. If you plan to attend the hearing you must notify the Community Manager in writing at the address in the letterhead, or by email prior to the hearing date. Information regarding the hearing can be found below:

Location: Birkdale Clubhouse

Date/Time: [14 days notice]

Charges for violation of the Declaration, Bylaws and Rules and Regulations may include assessment of up to Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per day for any offense of a continuing nature or such greater amounts as may be authorized by the Virginia Property Owners' Association Act.

If you bring your violation into compliance by the date of the hearing please contact our office to inform us you have done so at (804) 270-1800 or by email at [email@communitygroup.com](mailto:email@communitygroup.com). Thank you in advance for your help in preserving the integrity of Birkdale Community Association, Inc.

Sincerely,

Wendy Parks  
Community Manager

**(Exhibit E)**  
**BIRKDALE COMMUNITY ASSOCIATION, INC.**  
**RECORD OF HEARING**

Lot Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

Hearing Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Hearing Time: \_\_\_\_\_

Alleged Violation(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Provisions of the Association's Instruments Violated:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Persons in Attendance:

Committee Members	Lot Representatives

Decision and Reasoning: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Charges Imposed

Amount: \_\_\_\_\_ Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ End Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_