



# Hethwood

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## Hearing Procedure

1. After homeowner violations are noted during an inspection, a First Notice will be sent to the homeowner in the form of a letter. If contact information is known, a phone call can be made to alert the homeowner of the violation and ask that it be corrected, and that a written notice is on the way. Documentation must be kept regarding the time and date of the phone call and the parties involved in the conversation.
2. If the violation is not corrected prior to the next inspection, a written Second Notice will be sent to the homeowner.
3. If the violation is not corrected prior to the third inspection a minimum of 30 days from first inspection, a Third Notice will be sent to the homeowner. This will be the final notice. It will state the following: if the issue is not corrected prior to next inspection, which will occur within 10 days, a hearing will be arranged with the Hethwood Foundation Board of Directors.
4. The Hearing Notice will state that because the violation has not been remedied, the owner is requested to appear before the Hethwood Foundation Board of Directors at a given place, date and time. The hearing notice shall be hand-delivered or mailed by registered or certified mail to the homeowner at the address of record with the Foundation at least 14 days prior to the hearing. A receipt will be obtained to show the homeowner received notice. At the hearing the homeowner will be given the opportunity to address the Board Members to explain the circumstances surrounding the alleged violation.
5. Within 7 days after the hearing, a notice of the decision shall be hand-delivered or mailed by registered or certified mail to the homeowner at the address of record with the Foundation. A receipt will be obtained to show the homeowner received the notice.

The hearing before the Hethwood Foundation Board of Directors will be a closed (executive) meeting.

The President or presiding officer of the Board will convene the hearing, recognize the Board members present, and state the purpose of the hearing is to determine whether there has been a violation of the Foundation's governing documents. The presiding officer will request that the Hethwood staff member summarize the facts concerning the alleged violation. If necessary, an officer may then have the pertinent section of the governing documents read, which refers to the alleged violation. The owner will be given the opportunity to speak and explain the circumstances surrounding the alleged violation. The owner may also call witnesses or legal counsel to speak. After the presentation by the owner, the Board members may question the owner. After the

question period, the owner will be asked if there are any final or closing remarks that he/she may desire to make. After the closing remarks by the owner, the officer may dismiss the owner (and others in attendance) from the hearing. The Board will then continue its discussion in closed session. Enforcement sanctions are covered in Section 55-513 of the Property Owners' Association Act (attached) and according to the Hethwood Foundation policies and bylaws.

Please note that prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the hearing. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Board Officer, Director, or agent who delivered such notice. The notice requirements shall also be deemed satisfied if the owner appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

The owner will be advised of the Board's findings within seven (7) days of the hearing by registered or certified mail, return receipt requested, and regular mail, sent to the address of record. Should the Board decide to levy assessments for the violation, this letter will serve as the only notification of the ensuing charges. If the property has not been brought into compliance by the date set forth by the Board, the financial management company for the Foundation will be advised to commence with the posting of charges to the owner's account. Upon the owner compliance with the Board's decision, the owner will notify Foundation staff and request an inspection of the corrected violation. The property will be re-inspected by a Foundation staff member within three (3) business days. Once the violation has been deemed to be in compliance, the owner will be notified in writing by registered or certified mail or hand delivery, with a receipt obtained to indicate delivery. If charges are still accruing for the violation, the financial management company will be notified to cease posting charges, once the property has been brought into compliance and inspected by Foundation staff.

The Board of Directors may (but shall not be obligated to) offer the owner a new compliance date. Should the property not be brought into compliance by the time of the newly offered date, the Board may impose charges retroactively to the date of the hearing. The Hethwood Foundation Board has the right to suspend voting privileges and use of the Hethwood amenities by the homeowner and other residents of said property. If assessments are levied, the amount of any charges shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature. The charges shall be treated as an assessment against the member's lot for the purposes of § 55-516 of the *Code of Virginia*. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days. The Board may suspend any proposed sanction if the violation is cured within 10 days. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

In addition to any fines imposed by the Hethwood Foundation Board of Directors, the Hethwood Foundation also retains the right given by Article IX, Section I of the Hethwood Foundation ByLaws and Declaration of Covenants, Conditions and Restrictions, which states that "*Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed in violation of the covenant and may be required to be restored to the original condition at Owner's Cost.*"

§ 55-5I3. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the association court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) 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 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

Before any such charges or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-5I6. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges, obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.