

Article XXIII
The Judicial Process

Note: Capitalized terms are defined in Appendix A, Definitions and Forms

1. **Judicial Committee.** A Judicial Committee as established pursuant to the Declaration and the Bylaws has as its principal responsibility to determine if any Member or Non-Member should be fined or if Community privileges or services should be suspended pursuant to the powers granted to the Association by the North Carolina Planned Community Act and North Carolina Nonprofit Corporation Act.
2. **Quorum and Decisions.** A majority of the Judicial Committee members shall constitute a quorum to conduct hearings and render decisions, except for the hearing of North Carolina Class 1 traffic Violations which will be heard by at least three (3) members of the Committee. Decisions of the Judicial Committee will be by majority vote of the members present.
3. **Violations of Declaration, Bylaws, or Rules and Regulations.**
 - A. **Complaints.** Complaints of alleged Violations of the Declaration, Bylaws, or these Rules and Regulations must be made in writing to the General Manager.
 - (1) **Investigation.** The General Manager will conduct an initial investigation of each complaint and determine if a Violation has occurred.
 - (2) **Resolution.** After investigation and identification of a Violation, the General Manager may attempt to resolve any complaint or alleged Violation.
 - (3) **Referral.** If unable to arrange such a resolution, the General Manager may refer the matter to the Judicial Committee; however, the General Manager may refer any complaint of an alleged Violation to the Judicial Committee at any time.
 - B. **Violations of Architecture and Environment Committee (A&EC) Rules and Regulations (see Article XXII).** The following matters may be referred to the Judicial Committee:
 - (1) Failures to obtain permit approval from the A&EC for work that changes the external appearance of a property or impacts the natural environment
 - (2) Failures to comply with the requirements or limitations of an approved permit
 - (3) Other alleged Violations of the provisions of Article XVIII that are unresolved after review by the A&EC and the General Manager

7. **Content of Hearing Notice.** The Hearing Notice shall be provided to the Respondent within a reasonable time after the Judicial Committee's receipt of the referral with respect to the Violation, and such Hearing Notice shall specify:

- A. a hearing date (which shall not be sooner than fourteen (14) calendar days after the Hearing Notice is mailed or personally delivered to the Respondent) as well as the time and place of the hearing
- B. the nature of each alleged Violation and the facts on which each is based
- C. the amount of the anticipated fine and the extent of the suspension of Privileges and other sanctions which may be imposed for each alleged Violation

The Hearing Notice shall also state that the Respondent will have the opportunity to be heard to contest such fines, suspensions and other sanctions and be represented by counsel (but only at the Respondent's sole cost and expense) at the hearing and to present statements, evidence, and witnesses.

If the Respondent is a Tenant or Guest/Visitor of a Member or a Resident Affiliate, the Hearing Notice will also be mailed or personally delivered to the Member.

8. **Service and Sufficiency of Notice.** Service shall be by mail or personal delivery to the person or entity to be served. Mailing shall be considered sufficient notice when placed in first class US Mail addressed to the person or entity to be served at the last address such person or entity registered with the Association. The address for notice to a Tenant, Guest/Visitor or Resident Affiliate shall be the resident address in the Community of the Member owning the property where the Tenant, Guest/Visitor or Resident Affiliate is occupant.

9. **The Board may Demand Immediate Correction of an Alleged Violation and Initiate a Hearing by the Judicial Committee.** The Board or its designee may demand immediate correction of the alleged Violation in such circumstances which, in the Board's or such designee's discretion, poses a danger or nuisance to safety or property. The Board may also request the Judicial Committee to issue a Hearing Notice on an alleged Violation and to review Judicial Committee's decisions.

10. **Hearings by Judicial Committee.**

- A. **Presentation by Alleged Violator.** The Judicial Committee will provide the Respondent an opportunity to be heard and to present any evidence in defense of the alleged Violation.
- B. **Representation by Legal Counsel.** The Respondent may be represented by legal counsel at the hearing if he or she so elects; such representation shall always be at the Respondent's sole cost and expense.

- C. **Failure to Appear.** The failure of the Respondent to appear in person or by legal counsel will not prevent the hearing from going forward or the Judicial Committee from rendering a decision.

11. Fines and Assessments.

- A. **Authority.** The Judicial Committee has the authority and duty, after hearing the evidence, to decide on each alleged Violation and, when applicable, impose fines, suspension of Privileges and/or the Member's Right to vote, issue an order to correct a Violation, or any combination of the above.
- B. **Separate Violations.** Whenever an alleged Violation of the Declaration, Bylaws or Rules and Regulations consists of a series of repetitive or continuous actions, the Judicial Committee has the right, at its discretion, to consider each act as a separate Violation and impose a separate Assessment, penalty, suspension, or corrective order for each of the Violations the Committee finds to have occurred. Alternatively, for on-going Violations, the fine may be imposed daily until the Violation has ceased.
- C. **Fine Amounts.** Fines or charges for damages imposed shall not exceed \$100.00 per Violation or per day for each day beginning on the sixth (6th) day after the decision has been delivered to the Respondent notifying him/her that the Violation has been found to have occurred. Any fine will become an Assessment against the Owner of the Lot involved in the Violation. If the Respondent is a Tenant or Guest/Visitor of a Member or Resident Affiliate occupying a Member's Lot, the fine shall initially be imposed on the Respondent (with notice to the Member), but if not paid by the Respondent within the time specified in the Judicial Committee's decision, it shall be then imposed and assessed against the Member and be payable on notice to the Member from the Association.

- 12. Suspension of Rights and Privileges.** An order suspending a Member's Right to vote, and/or Privileges of a Respondent or other violator may suspend some or all of such Right or Privileges for a specified period of time but shall never deny the Member the Right of ingress or egress to the Member's property.

13. Corrective Orders.

- A. **Contents.** A corrective order shall define the condition which must be corrected or an action which must cease and the time within which the corrective action must be completed.
- B. **Retention of Jurisdiction.** Whenever the decision of the Judicial Committee includes an order for corrective action, it retains jurisdiction of the matter until the corrective action ordered has been completed.

C. Failure to Complete Corrective Work. The Judicial Committee may impose daily fines as set forth above for every day that the corrective work is not completed after the specified completion date.

14. Form of Decisions. Each decision of the Judicial Committee will be in writing. The original shall be sent to the General Manager along with any minutes or findings of fact made by the Judicial Committee. Copies of the decision will be sent (in the same manner as the original Hearing Notice) to the Respondent, any other violator and to any Member or Resident Affiliate involved if the violator is a Guest/Visitor or Tenant.

15. Right to Appeal to the Board. A Member's or Respondent's right to appeal decisions of the Judicial Committee and the appeal process are described in Section C of Article XI, Enforcement Procedures, of the Declaration. Additionally, the Board may also remand the prior decision to the Judicial Committee with specific instructions for further consideration. The Board shall deliberate and make its decision in Executive Session and may base its decisions only on a review of the record without any further hearing. The Board's decisions shall be final.