



800 CHIMNEY HILL PKWY VIRGINIA BEACH, VA 23462
O: (757)463-3805 F :(757) 463-5266
WWW.CHIMNEY-HILL.NET

Mission Statement: To provide every resident in Chimney Hill with a clean, enjoyable, and desirable place to live.

Vision: To protect and positively influence property values.

ARCHITECTURAL CONTROL COMMITTEE (ACC) VIOLATION AND APPEAL PROCESS AND REQUIREMENTS POLICY

The Architectural Control Committee, acting at the pleasure of the Board of Directors, has determined it to be in the best interest of the Association to adopt and expand on the Policy Resolution Relating to Violations and Due Process hearings adopted on December 7, 1999.

It is crucial to recognize that the associations' power and authority stem from their governing documents and are bound by the defined conditions and standards when enforcing restrictions. Likewise, when homeowners purchase properties governed by Associations, they agree to abide by the same terms. Associations, through their body of authority, must act in good faith and offer homeowners fair, reasonable, and nondiscriminatory enforcement procedures.

The following procedure(s) will be followed when a property has been cited for a violation(s) of the Architectural Control Committee Rules and Regulations, CHCA Governing Docs, CHCA Declaration of Covenants, Conditions and Restrictions, the Virginia Maintenance Code, City and State Laws, Ordinances and the Property Owner's Association Act, Title 55.1, Subtitle IV, Chapter 18, Operation and Management of Association, § 1819 Adoption and enforcement of rules.

NOTE: It is the homeowner's responsibility to ensure that the Association has the most current contact information i.e., mailing address, email address, phone numbers.

STEP ONE:

The 1st Notice Letter will be sent to the owner and/or agents to the mailing address on file. The letter will contain the following information:

1. A photo of the cited violation – use the photo as a reference only. This may or may not be the only area in question.
2. The architectural violation cited
3. The code that is used from any of the following: CHCA Governing Docs CHCA Declaration of Covenants, Conditions and Restrictions, the Virginia Maintenance Code, City and State Laws, Ordinances and the Property Owner's Association Act, Title 55.1, Subtitle IV, Chapter 18, Operation and Management of Association, § 1819 Adoption and enforcement of rules
4. The action required to resolve the violation.
5. Number of days to complete/correct the violation.
6. What the homeowner and/or Agent needs to do if a cited violation cannot be resolved within the allotted time given by the ACC.
7. Action completion date.

STEP TWO:

The 2nd Notice Letter will be handled in the same manner as the 1st Notice Letter as stated above with the following exception.



1. Under the Action Completion Date, the following will be stated; that this is the second and final warning along with the date that the 1st Notice Letter was sent, the new completion date, and statement of what the next step will be if the violation is not corrected by the new completion date.

STEP THREE:

Notice of a Due Process Hearing (ACC); During the recheck of the cited property, if the cited violation is not corrected by the assigned completion date, an Architectural Control Committee Letter will be sent to the homeowner and/or approved homeowner agent via Certified Mail, Return Receipt Requested and Regular Standard Mail inviting them to their due process hearing before the ACC Committee. This letter must be sent fourteen (14) days in advance of the scheduled Due Process hearing. This Letter will contain the following information.

1. Certified Mail Number.
2. The architectural violation cited
3. The code that is used from any of the following: CHCA Governing Docs CHCA Declaration of Covenants, Conditions and Restrictions, the Virginia Maintenance Code, City and State Laws, Ordinances and the Property Owner's Association Act, Title 55.1, Subtitle IV, Chapter 18, Operation and Management of Association, § 1819 Adoption and enforcement of rules
4. Date, Time, and Location of the ACC Due Process Hearing.
5. Actions that may be taken by the Architectural Control Committee.
6. Owner's rights at this hearing (i.e. to be represented by legal counsel)
 - a. **The owner and/or agent will be required to notify the Association no less than seven (7) days prior to the scheduled hearing if they intend to bring legal counsel. This will allow the Association to schedule their Legal Counsel to attend this hearing.**
7. After the Due Process Hearing is held, the Architectural Control Committee will discuss the violation, as well as all evidence submitted by the owner, either in writing or in attendance at their scheduled Due Process Hearing. The Architectural Control Committee will then decide what actions will be taken against the homeowner.
8. Once a decision has been rendered, the Architectural Control Committee must send notice to the owner and/or approved homeowner agent stating the decision of the Committee. This notice must be sent within seven (7) days after the scheduled ACC Due Process Hearing via Certified Mail, Return Receipt Requested and Regular Standard Mail.

STEP FOUR: Appeal Process

A homeowner/registered agent may appeal the ACC's Decision if you meet the following grounds and timeline. An Appeal may be filed if it is within **30** calendar days of the date of the ACC Decision's Letter and an explanation if the Association did not follow Due Process and/or the violation(s) did not violate from any of the following CHCA Governing Docs CHCA Declaration of Covenants, Conditions and Restrictions, the Virginia Maintenance Code, City and State Laws, Ordinances and the Property Owner's Association Act, Title 55.1, Subtitle IV, Chapter 18, Operation and Management of Association, § 1819 Adoption and enforcement of rules. If you do not meet the timeline and you do not have the appropriate grounds for an appeal, then your appeal request will be automatically denied. **The homeowner(s) may submit The Request for Appeal Form. Please include the following information for consideration by the Board of Directors:**

1. Violation(s) information and ACC Decision(s)
2. Reason for the appeal to the Board of Directors.
3. What would you like for the Board to consider.

You will be given an opportunity to show just cause why you do not agree with the ruling of the ACC during your Appeal Hearing. If you cannot make this meeting, **please submit a letter addressed to**



the Board of Directors at least 3 days prior the Appeal Hearing explaining your situation. If you fail to appear at your requested Appeal Hearing the Board will review your appeal and all documentation presented by you and the ACC Committee and will make a ruling based on this information. If the Board does not hear from you and you do not show up at the meeting and the Board rules against you, an immediate charge or additional penalties of up to ten dollars (\$10.00) per day, from the date of the original hearing, could be upheld for each day the violation continues up to 90 days, as provided under the Code of Virginia, Title 55, Chapter 26, property Owners' Association Act, 55-513-D. Please be aware that any and all penalties and any legal fees required to collect them is the owner's responsibility as provided by the Virginia Statute under House Bill 854.

Also, please be advised that the Board of Directors will not entertain any of your concerns unless your homeowner dues are paid in full, and your account has a zero balance.

An Appeal Letter will be sent to the homeowner and/or approved homeowner agent via Certified Mail, Return Receipt Requested and Regular Standard Mail inviting them to their Appeal Hearing before the Board of Directors. This letter must be sent fourteen (14) days in advance of the scheduled Appeal hearing.

The Board of Directors will hear the appeal on the decision of the ACC and make a final ruling. Below is an example:

- a. Uphold the decision of the ACC.
- c. Modify the decision of the ACC
- d. Totally dismiss the decision of the ACC and notify the ACC with the reason for doing so.

The Homeowner/agent has the right to have an attorney present for the Appeal Hearing, and should you choose to exercise this right, please inform the Association's office Staff at least (7) seven days in advance of the scheduled hearing.

Final Action: The Association will send a letter to the owner and/or agent stating the Appeal Decision of the HOA Board of Directors. This letter must be sent within **seven (7) days** after the scheduled HOA Board Meeting. A Board Letter must be sent via Certified Mail, Return Receipt Requested and Regular Standard Mail.



Title 55.1. Property and Conveyances » Subtitle IV. Common Interest Communities » Chapter 18. Property Owners' Association Act » Article 3. Operation and Management of Association § 55.1-1819. 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. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may 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 application for injunctive relief or actual damages, during which the court shall award to the prevailing party 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 to such declaration 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 that 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.
- C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains uncorrected, 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 actions that may be taken by the association in accordance with this section, 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.
- D. 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 § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.
- E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.
- F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or 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, the association 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 lot owner to abate or remedy the violation.
- G. In any action 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.