

**DUE PROCESS PROTOCOL  
OF THE  
CALMES NECK PROPERTY OWNERS ASSOCIATION, INC.**

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Adopted by the Board on February 20, 2009 and amended by the Board on March 1, 2020 and March 30, 2025.

WHEREAS, the Calmes Neck Property Owners Association, Inc. has empowered the Board to take the following adverse action (Adverse Action), including, but not limited to: (a) filing a warrant in debt, (b) suspending a Member's right to vote, (c) prohibiting a Member from using the Recreation Area, defined below, for non-payment of assessments/charges/fines/fees, violations of the Governing Documents, and/or violations of the Rules for Common Areas of the CNPOA, (d) prohibiting a Non-member Owner from using the Recreation Area for non-payment of assessments/charges/fines/fees and/or violations of the Rules for Common Areas of the CNPOA, and (e) prohibiting a Tenant from using the Recreation Area for non-payment of assessments/charges/fines/fees by the Member or Non-member Owner of the Tenant and/or the Tenant's violations of the Rules for Common Areas of the CNPOA.

WHEREAS, it is the intent of the Board to establish a protocol which ensures due process and consistency of enforcement,

IT IS HEREBY RESOLVED THAT the Board shall take Adverse Action against an Authorized User only after the following Due Process Protocol has been followed.

**Section I. Definitions**

**Authorized Users** shall mean the following categories of users: (a) Members, in good standing, who pay a full assessment to the CNPOA; (b) Non-member Owners who pay a full assessment (pursuant to CNPOA Article IV(8)); and/or (c) Tenants of the foregoing **who pay the additional annual user fee**. Members or Non-member Owners who are not in good standing or who do not pay a full assessment will not be considered Guests of Authorized Users. Family members of Authorized Users may use the Recreation Area without being accompanied by an Authorized User, but such family members do not hold the Easements defined in the Articles.

**Board** shall mean the Board of Directors of the Calmes Neck Property Owners Association, Inc., who are authorized pursuant to Section 853 of the Nonstock Act to manage the CNPOA Business and Affairs, pursuant to the good faith business judgment rule of Section 870 and the Articles and Bylaws.

**CNPOA** shall mean the Calmes Neck Property Owners Association, Inc., a non-stock corporation, which was incorporated, pursuant to Code of Virginia § 13.1-801, *et. seq.*, on November 4, 1993.

**Common Areas** shall mean the areas owned and/or maintained by the CNPOA. The Common Areas include the CNPOA Roads, Recreation Area, and Security Gate.

**Good Standing** shall mean an Owner (a) who is current on their obligation to pay an Annual Assessment to the CNPOA, (b) who complies with the Governing Documents and ensures that their family members, Guests, pets, invitees, and Tenants also comply, and (c) who has not been prohibited by the Due Process Protocol from using the Recreation Area.

**Governing Documents** shall include the following (a) applicable Protective Covenants, (b) Articles, (c) Bylaws, (d) Rules, (e) Due Process Protocol, (f) Short-term & Long-term Rental Protocol, (g) Terms of Use for Website and Broadcast E-mail Lists, (h) Roads, Gate plans, policies, and programs, (i) Plater Settlement Agreement, and (j) applicable Calmes Neck Estates Subdivision (CNES) Rules and Regulations.

**Guest** shall mean a Person, defined below, who, by invitation or permission of an Authorized User, has been granted use of the Recreation Area, but only if accompanied by the Authorized User or a family member of the Authorized User, as set forth in the Rules for Common Areas of the CNPOA.

**Member** shall mean the Owner who, by virtue of a recorded deed (a) in CNES is an automatic Member, or (b) in CNE Independent Lots (CNE IL), Burwell-van Lennep Foundation (B-vLF), Blue Yonder Subdivision (BYS), and River Glen Subdivision (RGS) becomes a voluntary Member.

**Non-member Owner**, for purposes of this Due Process Protocol, shall mean the Person who, by virtue of a recorded deed in CNE IL, B-vLF, BYS, RGS, and, has a covenant obligation to pay an assessment to the CNPOA and/or has an easement for the Recreation Area, but chooses not to be a Member of the CNPOA.

**Person** shall mean a natural person, corporation, partnership, trust, or other entity.

**Recreation Area** shall mean the 9.993 acres deeded to the CNPOA by Richard C. Plater, Jr. on February 21, 1994, recorded at DB 242/P 14, and for which Owners have Easements.

**Short-term Rental** shall mean a rental of a dwelling of an Owner for a period of less than 30 days, as contrasted with a long-term rental lease. **Short-term renters are expressly prohibited from using the Recreation Area.**

**Short-term Renter** shall mean a renter or transient visitor for a period of less than 30 days, as contrasted with a Tenant who resides in the dwelling of an Owner pursuant to a long-term rental lease. **Pursuant to the Rules, Short-term Renters are not considered Guests of the Owner and are expressly prohibited from using the Recreation Area.**

**Tenant** shall mean a person who, by virtue of a long-term rental (30 days or more) lease of the property of a Member or Non-member Owner, has paid the additional annual fee, shall be granted use of the Recreation Area. For purposes of this definition, a renter for a period of less than 30 days shall not be considered a Tenant, but a short-term renter.

**Violation** shall mean non-payment of assessments/charges/fines/fees, violations of Governing Documents, and/or violations of the Rules for Common Areas of the CNPOA. For purposes of this Due Process Protocol, multiple violations may be referred to in the singular.

## **Section II. Notice of Violation**

The CNPOA shall provide notification of the Violation by United States Priority Mail (Notice Letter). The Notice Letter is to provide the Authorized User in Violation the opportunity to remedy the Violation, to inform the Authorized User of the right to request a hearing before the Board, and to notify the Authorized User that the Board may take Adverse Action if the Violation is not remedied.

The Notice Letter shall be sent to the Authorized User at the address which the Authorized User has provided to the CNPOA, or at the lot address, if no other address has been provided. A copy shall also be sent by e-mail to the last known e-mail address of the Authorized User. A copy may be sent to the Tenant, if there is a Tenant.

The Notice Letter shall specify the alleged Violation, the action required to remedy the Violation, and a date (usually not less than 15 calendar days after the date of the Notice Letter) by which the alleged Violation must be remedied; provided however, when a Violation constitutes a public health, safety or fire hazard, the Board may demand the Violation be remedied within 24 hours.

The Notice Letter shall state that, if the Violation is not remedied, the Authorized User must request in writing a hearing before the Board to avoid action by the Board. The letter shall also state that, if a hearing is not requested, the Authorized User shall be deemed to have waived the opportunity for a hearing, and the Board may act accordingly. The Notice Letter may be combined with the notice of hearing, if the Violation is of a serious nature or an emergency, or if previous notices of Violation have been sent to the Authorized User.

### **Section III. Notice of Hearing**

The notice of hearing (Notice of Hearing) is to inform the Authorized User in Violation of the date of the hearing before the Board and of any possible actions required to remedy the Violation.

If the alleged Violation is not remedied within the date or time specified in the Notice Letter, referenced in Section II, or the Authorized User requests a hearing, or if the Board determines a hearing is necessary, a Notice of Hearing shall be sent. Said Notice of Hearing shall be sent by United States Priority Mail, at least 15 calendar days prior to the hearing, to the Authorized User at the address which the Authorized User has provided to the CNPOA, or at the lot address, if no other address has been provided. A copy shall also be sent by e-mail to the last known e-mail address of the Authorized User. A copy may be sent to the Tenant, if there is a Tenant.

The Notice of Hearing shall specify:

1. The time, date, and place of the hearing.
2. That the Authorized User shall have the opportunity to be heard, be represented by counsel, and present supporting evidence.
3. The alleged Violation, citing provision of the Governing Documents, which allegedly has been violated.
4. The Adverse Action that the Board is proposing to take regarding the Violation.

### **Section IV. Hearing**

Both the Board and the Authorized User may be represented by counsel who may participate in the hearing in accordance with these guidelines.

Before Adverse Action may be taken, the Authorized User is to be given an opportunity to be heard. The hearing is to be conducted fairly and impartially.

The hearing shall be scheduled at a reasonable and convenient time and place, within the Board's discretion. The Board, within its discretion, may grant a continuance. If the Authorized User for whom the hearing is scheduled, requests, and is granted, a continuance to a different time or date, no further notice shall be required.

The hearing shall be conducted in private, unless the Authorized User requests that the hearing be open to other Persons; provided however, that the Board may impose a reasonable limit on the number or Persons in attendance.

If the Authorized User acknowledges responsibility for the Violation, or does not wish to contest the Violation, the Board may, in its discretion, dispense with a hearing after having afforded the Authorized User with an opportunity for a hearing.

## **Section V. Procedural Guidelines to be Followed at the Hearing**

The presiding Director (Presiding Director) shall state the source of the authority by which the hearing is held and the basic procedural requirements to be afforded to the Authorized User.

The Presiding Director shall ascertain that the Authorized User (a) understands the proceedings as they have been outlined; (b) has received the Notice of Hearing; and (c) understands the allegations as set forth in the Notice of Hearing.

The Presiding Director shall briefly state the alleged Violation and proposed Adverse Action, and all the procedural steps that have already been taken leading up to the hearing, such as Notice Letter and Notice of Hearing, and means and date of delivery.

During the evidentiary phase of the hearing, the Board shall hear all relevant evidence and ask questions regarding the Violation. The Board shall conduct the hearing fairly and expeditiously. Relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely, regardless of whether the evidence would be admissible in civil or criminal actions in courts in the Commonwealth of Virginia. The Board shall have the right to limit in time and scope the presentation of evidence for the purpose of eliminating unjustifiable delay or repetition.

The Board shall first hear evidence supporting the alleged Violation and may examine any witnesses. The Authorized User shall have the right to cross-examine the witnesses.

The Board shall then hear the evidence presented by the Authorized User and may cross-examine any witnesses. If necessary, the Board may recall any of the witnesses who have already given testimony.

The Board may accept exhibits that substantiate the evidence presented by either the Board or the Authorized User.

After hearing all the evidence, the Board will discuss the issues in executive session. While in executive session, the Board shall consider all evidence presented by the Board and by the Authorized User.

Upon conclusion of the executive session, the Board shall reconvene in open session and vote on the matter. A written report of the hearing to include the hearing result shall be mailed by United States Priority Mail, return receipt requested, to the Authorized User at the address of record provided to the CNPOA, or at the lot address, if no other address has been provided, within three (3) business days of the hearing.

In the event that the Authorized User does not appear at the hearing and fails to give notice of the failure to attend and to request the rescheduling of the hearing, the Board will conduct the hearing despite the Authorized User's absence if there is at least one (1) witness giving direct testimony supporting the alleged Violation.

In the event that no evidence is presented at the hearing, the Board may act without a hearing.

## **Section VI. Records**

The Secretary of the Board shall make a record of the hearing by minutes taken during the hearing. Such record shall be kept in accordance with the provisions of the Virginia Nonstock Corporation Act, Code of Va. § 13.1-801, *et seq.* In addition, all correspondence relating to alleged Violations shall be similarly maintained.