

PROPOSED AMENDMENT

Sixteenth Amendment - to adopt a new article (Article XVIII) of the By-Laws of Marbrisa Homeowners Association, Inc. to provide a hearing process for determining violations of covenants, rules and regulations and a method of levying fines. The By-Laws are amended to adopt Article XVIII as follows:

ARTICLE XVIII - HEARING PROCESS FOR  
DETERMINATION OF VIOLATIONS AND LEVYING OF FINES

Section 1. Written Complaint. An action under this Article may be initiated upon the filing of a written complaint with the Board of Directors by any member of the Association or by any officer or Director. The Complaint shall constitute a written statement of charges, which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged to the end that the respondent will be able to prepare his defense. The Complaint shall specify the specific provisions of the Declaration, Articles of Incorporation, By-Laws or Book of Resolution which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

Section 2. Service of Complaint. Upon the filing of the Complaint, the Board shall serve a copy thereof on the respondent by any of the following means: (1) personal delivery or (2) registered or certified mail and addressed to respondent at the address appearing on the books of the Association. Service by mailing or posting shall be deemed delivered and effective two (2) days after such posting and mailing in a regular depository of the United States mail.

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Section 3. Notice of Hearing. The Board shall serve a Notice of Hearing, as provided herein, on all parties at least ten (10) days prior to the hearing. The Notice of Hearing shall be substantially in the following form, but may include other information:

BUENAVENTURA LAKES SUBDIVISION, UNIT 4, MARBRISA VILLAS  
NOTICE OF HEARING

"You are hereby notified that a hearing will be held before the Board at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ at the hour of \_\_\_\_\_ upon the charges made in the Complaint served upon you. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence and you will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors of the Association."

If at least twenty-four (24) hours prior to the hearing any of the parties can show good cause as to why they cannot attend the hearing on the set date and if they indicate times and dates on which they could be available, the Board may reset the time and date of hearing and promptly deliver notice of the new hearing date. The Board shall reset the time and date of hearing and promptly deliver notice of a new hearing date if the Board determines same to be necessary or appropriate to allow either party to conduct discovery per Section 7, to obtain notarized statements and permit cross-examination of the author thereof per Section 8 or for any other reason the Board determines necessary.

Section 4. Notice of Defense. The Complaint and Notice of Hearing shall be accompanied with a postcard or other written form entitled "Notice of Defense" which, when signed and returned by the respondent, or on behalf of respondent, will constitute a notice that the respondent intends to impose a defense to the Complaint. The Notice of Defense shall be substantially in the following form, but may include other information:

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BUENAVENTURA LAKES SUBDIVISION, UNIT 4, MARBRISA VILLAS  
NOTICE OF DEFENSE

I (will) (will not) attend a hearing before the Board as provided in the Notice of Hearing;

I (do) (do not) object to the substance of the Complaint upon the grounds that it does not state acts or omissions upon which the Board may proceed;

I (do) (do not) object to the form of the Complaint on the grounds that it is so indefinite or uncertain that the respondent cannot identify its violating behavior or prepare his defense; or

I (do) (do not) admit to the Complaint in whole or in part.

I understand that my failure to appear at the hearing or otherwise establish a defense to the Complaint may be considered by the Board in arriving at its decision.

\_\_\_\_\_  
Owner

Any objections to the form or substance of the Complaint shall be considered by the Board within a ten (10) day period prior to the hearing date. If the Complaint is insufficient, the complaining party shall have seven (7) days within which to amend the Complaint to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental Complaint. If it is determined by the Board that the Complaint is still insufficient, then the matter shall be dismissed by the Board.

Section 5. Cease and Desist Orders. The Board may, at its own discretion, issue a Cease and Desist Order, along with the Complaint, Notice of Hearing and Notice of Defense, which shall be substantially in the following form:

BUENAVENTURA LAKES SUBDIVISION, UNIT 4, MARBRISA VILLAS  
CEASE AND DESIST ORDER

The Board has received the attached complaint. By authority of Article XVIII of Section 5 of the By-Laws, as amended, the Board hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the Board of Directors or court of law permits.

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~~FAILURE TO COMPLY WITH THIS REQUEST MAY RESULT IN A~~  
penalty greater than that which would be imposed for a  
single violation.

Section 6. Amended or Supplemental Complaints. At any time  
prior to the hearing date, the Board may file or permit the  
filing of an amended or supplemental Complaint. All parties  
shall be notified thereof in the manner heretofore provided.  
If the amended or supplemental complaint presents new charges,  
the Board shall afford the respondent a reasonable opportunity to  
prepare his defense thereto.

Section 7. Discovery. Upon written request to the other  
party and the Board, made prior to the hearing and within fifteen  
(15) days after service of the Complaint by the Board or within  
ten (10) days after service of any amended or supplemental  
Complaint, either party is entitled to (1) obtain the names and  
addresses of witnesses to the extent known to the other party,  
and (2) inspect and make a copy of any statements, writing and  
investigative reports relevant to the subject matter of the  
hearing. Nothing in this Section, however, shall authorize the  
inspection or copying of any writing or thing which is privileged  
from disclosure by law or otherwise made confidential or  
protected as the attorney's work product. Any party claiming his  
request of discovery has not been complied with shall submit a  
petition to compel discovery with the Board. The Board shall  
make a determination and issue a written order setting forth the  
matters or parts thereof which the petitioner is entitled to  
discover.

Section 8. Notarized Statements. At any time ten (10) or  
more days prior to a hearing or a continued hearing, each party  
shall mail or deliver to the opposing party and the Board a copy  
of any sworn statement which that party proposes to introduce in  
evidence together with a Notice that sets forth the right of the  
opposing party to cross-examine the author of the sworn statement

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as is set forth hereinafter, which Notice shall be substantially in the following form:

BUENAVENTURA LAKES SUBDIVISION, UNIT 4, MARRISA VILLAS  
NOTICE FOR CROSS EXAMINATION

You are hereby notified that the enclosed document constitutes a copy of the sworn statements your opponent intends to introduce into evidence. To preserve your right to cross-examine the author of the sworn statements, you must mail or deliver to the proponent a request to cross-examine the author of the statements within seven (7) days after the mailing or delivery of this Notice to you. If you fail to make this request, your right to cross-examine said author will not be afforded, and the sworn statement may be introduced in to evidence, but shall be given only the same effect as hearsay evidence.

Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent and the Board a request to cross-examine the author of the statements, his right to cross-examine such author is waived and the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

Section 9. Constraints on the Board. It shall be incumbent upon each member of the Board to make a determination as to his own ability to function in a disinterested and objective manner in the consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the Board and remove himself from the proceedings and have it so recorded in the minutes. In any event, the respondent may challenge any member of the Board for cause at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge. If a majority of the Board sustains the challenge, such member shall not participate in the consideration. If there are less than three (3) members considering the case, the President shall appoint such temporary Board members to replace the challenged member of the Board as are required in order to have at least three (3) persons hearing the case. All decisions of the Board in this regard shall be

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final.

Section 10. Hearing. (a) Whenever the Board has commenced to hear the matter and a member of the Board is forced to withdraw prior to a final determination, the remaining members shall continue to hear the case. Oral evidence shall be taken only by oath or affirmation administered by an officer of the Association.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; and to rebut the evidence against him. Even if the respondent does not testify on his own behalf, he may still be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding.

(d) The President of the Board shall serve as hearing officer and preside over the hearing unless disqualified, in which case a substitute shall be elected by the members of the Board hearing the case. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. Generally, each principal is entitled to make an opening statement, starting with the complainant. Then each party is entitled to produce evidence, witnesses and testimony and to cross-examine the witnesses and opposing party. Then each party is entitled to make a closing statement. Any party may waive the rights to exercise any part

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of this process, and the Board is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted, so long as the above rights are protected.

Section 11. Authorized Action. At the conclusion of testimony, the Board shall deliberate the evidence. By a vote of its members the Board shall determine whether the allegations as presented constitute a violation of any covenant or rule and regulation. If the Board concludes that a violation has taken place, it may make any of the following decisions, which shall be cumulative and not exclusive in nature:

- (1) Reprimand;
- (2) Levying a fine in such amount as the occasion determines; or
- (3) Authorize the initiation of appropriate action.

Section 12. Fines as Common Expense. Fines levied by the Board pursuant to this Article shall be considered an assessment of the member, leviable by the Board against the unit and collectible in the same manner as other assessments of the Association. More particularly, each and every fine shall be subject to the provisions set forth in Article V- Covenant for Maintenance Assessment, Section 1, 6 & 7 of its Declaration, and specifically including, without limitation, pursuing foreclosure proceedings, injunctive relief and/or personal judgment and the right of the Association to recover its attorney fees and costs incurred in the enforcement of the violation.

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