

**CALMES NECK  
PROPERTY OWNERS  
ASSOCIATION, INC.**

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**BOARD OF DIRECTORS  
ORIENTATION MANUAL**

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## INTRODUCTION

This Orientation Manual has been compiled to provide those who serve on the Board of Directors of the Calmes Neck Property Owners Association (CNPOA) with a means of learning about Association Board service. This manual is not comprehensive and will always be a work in progress, requiring updating as laws and circumstances change.

The Commonwealth of Virginia has an estimated 24,000 community associations. New housing growth shows a rapid increase in common interest community development in Virginia and the annual introduction of legislation in the Virginia General Assembly regarding community associations foretells greater governmental involvement.

Community Associations are one of the most representative and responsive forms of democracy in America today. The basic authority in a community association lies with the owners. Residents of a community freely elect neighbors to serve on the Board of Directors of the Association. Numerous other owners or residents serve on committees and help with special tasks. Board members and committee members are volunteers who meet regularly to discuss pertinent details about running their community. A Board meeting at a community association is comparable to a town council meeting of a municipality.

The CNPOA was formed in 1993 when Articles of Incorporation were filed with the State Corporation Commission of Virginia. In 1994 the CNPOA acquired title to the recreation area, followed by the transfer of roads, equipment and other assets from the Double-E Land and Cattle Company. Operation of the CNPOA is conducted through a Board of Directors elected by the membership at an annual meeting held in the spring.

Documents that govern the activities of the Association are: The Virginia Nonstock Corporation Act, CNPOA Article of Incorporation, Bylaws of the CNPOA, Covenants of Calmes Neck Estates, and the Rules and Regulations pursuant to the Protective Covenants of Calmes Neck Estates. These documents, as well as additional information and resources, are available on the Calmes Neck web site at [www.cnpoa.com](http://www.cnpoa.com)

The following are additional recommended resources for CNPOA Board members...

- Virginia Nonstock Corporation Act  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1301000001000000000000>
- Robert's Rules of Order  
[http://www.cnpoa.com/PDF/Roberts\\_Rules\\_of\\_Order.pdf](http://www.cnpoa.com/PDF/Roberts_Rules_of_Order.pdf)  
<http://www.amazon.com/Websters-World-Roberts-Simplified-Applied/dp/0764563998> (\$5-\$9)  
<http://www.robertsrules.com>
- Homeowners Association and You (\$10.17)  
The Homeowner's Association Manual (\$11.53)  
<http://www.amazon.com>
- Clarke County Mountain Land Plan  
<http://www.co.clarke.va.us/mountainareaplan.asp>
- Clarke County Subdivision Code  
<http://www.co.clarke.va.us/zoningord.asp>

## **ASSOCIATION ORGANIZATION**

In a property owners association the land is subdivided into residential lots and common grounds. Some form of map is an essential document for a planned community. A map, plat, or plan is recorded in the County Recorder's office before any lots or units shown on it are sold. The purpose is to show the precise location of each lot or unit, as well as the common areas. The original plat for Calmes Neck Estates is recorded in the Clarke County Clerk's office in Deed Book 58, page 506 – 507E.

Each lot is privately owned, taxed, and assessed association dues whereas the common grounds and facilities are owned in the name of the association. An association is legally established and defined when the Declaration of Covenants, Conditions and Restrictions, an approved subdivision site plan, the Deed of Dedication, and (occasionally) the Bylaws are recorded in the County Land Records Office.

The Deed of Dedication may contain restrictive or permissive easements, covenants or other regulations that apply to and govern the use of all lots included in the association. The Declaration of Covenants, Conditions and Restrictions (CC&Rs) provides the legal basis for preserving the developer's approved plan for the residential and common properties in a development, and establishes the rights and obligations of the owners and their association. Prior to recordation, the County reviews these documents for their form, content, and compliance with law, including the County Code and the Virginia Property Owners Association Act.

As a corporation formally chartered to operate in the Commonwealth of Virginia, the CNPOA has legal obligations and clearly defined business responsibilities outlined in the Virginia Nonstock Corporation Act.

The CNPOA is a self-managed community. As such, the Board of Directors establishes the policies and procedures to be followed in the operation of the community and supervises the persons who carry them out.

Self-managed associations typically have limited facilities and provide limited services. The success of volunteer self-management depends on the residents themselves and requires dedication, teamwork, and expertise in performing the tasks associated with association operations. This type of management has the advantages of saving money, retaining association control over the tasks performed, and promoting member involvement in the community.

A volunteer self-managed association requires a significant commitment of time and effort. If the burden becomes too much, a volunteer may quit. Sometimes the loss of one or two volunteers with essential skills can cause a volunteer system to fail. In addition, mistakes made through inexperience or lack of expertise, such as improper facilities maintenance or inadequate financial record keeping, etc., can negate any savings. A volunteer self-managed association should seriously consider the breadth and amount of directors' and officers' liability insurance.

## BOARD OF DIRECTORS

The Board of Directors should set clear expectations for the open, fair and ethical conduct of Association business, reflecting the concept of "service to the Association".

All members of the Board of Directors are equal and bear full responsibility for all actions. No one member has more power than any other member. Although the Board of Directors is staffed by volunteer property owners, each putting forth their best effort, it is important to know that each Director has legal, corporate responsibilities.

State laws require homeowner associations to be governed by an executive body called the Board of Directors. The Board manages and conducts the business of the association; it maintains and repairs the common property; collects assessments; enforces the covenants, conditions and restrictions; and protects community standards and property values.

The number of Directors should be large enough to avoid being overburdened with work, but small enough to be efficient. Directors are elected by the membership for a term of two years. Elections are staggered to provide a continuing level of experience and continuity on the Board while accommodating "new blood" in its makeup and decision making.

As a practical matter to conducting Association business, the Board must delegate limited responsibility to Officers of the Board, Committees, and Coordinators (Pool, Road, Gate, etc.) to perform duties as defined. Each member of the Board retains the responsibility and accountability for actions taken by all other members of the Board and by persons designated by the Board.

As a corporation chartered to conduct business within the Commonwealth of Virginia, the Board of Directors has corporate responsibilities which include:

- Conducting the business of the Association in an open, fair and ethical manner.
- Encouraging input from residents on issues affecting them personally and the community as a whole.
- Applying "due diligence" when making business decisions for the Association.
- Exercising the finest sense of responsibility when collecting, maintaining and spending the Association's money.
- Keeping Association's members informed of Board activities in a timely and accurate manner.
- Understanding the association's governing documents and becoming educated with respect to applicable state and local laws, and managing the Association accordingly.

Board members are charged with a duty of loyalty and fiduciary responsibility to use good business judgment in conducting the governance of the association. Directors must make sure that their decisions work to the benefit and protection of property values without consideration of personal interest or gain.

Members of the Board are protected by the business judgment rule. "So long as the Board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the Board's." It is not illegal to err or cause financial loss or other harm **provided that the Board can demonstrate reasonable investigation,**

**consideration, thoroughness, and good business judgment in reaching its decisions.**

Board members must be very familiar with the documents of their Association, stay informed about Association issues, regularly attend meetings, and if and when they disagree with a Board's action, dissenting opinion be recorded in the meeting minutes.

While the Directors have the authority and responsibility to conduct the business and make the important decisions, all members of the Association have the right to attend meetings and to know what is happening and proposed in their community. The state laws governing homeowner Associations require that all Board of Directors meetings, workshops, committee meetings, and any other official assemblage of the Association must be open to any member of the Association.

The Board may hold preliminary work sessions when there is substantial business to transact or when the issues to be addressed are complex or controversial. This gives Board members an opportunity to discuss issues and time to obtain additional information to enable them to act efficiently on the matters in the upcoming meeting. No actions may be taken or voted on during a work session. Additionally, the Board may correspond via email, but no actions may be taken via email.

Current CNPOA Board of Directors and Officers Contact Information is available online at [http://cnpoa.com/BOD\\_Whos\\_Who.htm](http://cnpoa.com/BOD_Whos_Who.htm).

## GOVERNING DOCUMENTS

**Hierarchy of Documents:** The purpose of a community association's governing documents is to provide for the legal structure and operation of the community. The Board can delegate duties to committees, and/or community volunteers, however, the final responsibility and authority for decisions and for fulfilling its obligations remains with the Board. Directors must be aware of the laws and legal requirements applicable to their Association and apply due consideration in all decisions and actions of the Board. The Board's responsibilities and scope of authority are set out in the following hierarchy of documents or order of precedence:

- Federal laws (Civil Rights, Americans with Disabilities, Federal Fair Housing Acts), regulations, and applicability of federal court decisions;
- State laws (Virginia Nonstock Corporation Act, Virginia Property Owners Association Act), regulations, and court decisions;
- County/local ordinances, regulations, and court decisions;
- Declaration, Governing Deeds, and Covenants, Conditions and Restrictions (CC&Rs);
- Articles of Incorporation;
- Bylaws;
- Rules and Regulations; Board resolutions.

Board actions and decisions must yield to or comply with requirements or restrictions in documents of higher priority, precedence or legal standing. Federal laws at the top of the hierarchy are the most rigid and inflexible of documents and leave little or no discretionary choice. On the other hand, the adopted rules and regulations of the Board's making have the least legal standing and, therefore, are the best opportunity for flexibility and discretion. Between these extremes, the other documents provide more or less opportunity for discretion by the Board. The Board cannot adopt rules and regulations, or pass decisions that conflict with or violate provisions and requirements in the bylaws, the declaration, or a higher level of authority. Board decisions and resolutions cannot be in conflict on issues when the higher levels of authority are silent. The Board may not adopt regulations that are weaker or less stringent than those contained in documents of a higher level.

Directors must also understand and comply with the obligation of "shall" and "may" in any document. "Shall" means it is mandatory and that there is no permissible choice, whereas "may" means something may or may not be done – it is not mandatory but rather an opportunity for choice, using good business judgment, application of reasonableness, and understanding of the situation. Hopefully, all conflicts in the governing documents were eliminated by initial review, but in case of any conflict, the order of precedence will control and decide the issue. For example, if the bylaws say that the Board "shall" do (whatever) that conflicts with the recorded declaration or state law, the precedence or hierarchy of the restrictive document will prevail over the bylaws.

An understanding of the declaration; covenants, conditions, & restrictions (CC&Rs); or governing deeds requires an understanding of the rights of ownership first. Under Anglo-American common law, the ownership of land has been characterized as a "bundle" of rights. In the absence of any restrictions, the landowner traditionally has the full bundle. For example, he or she possesses the right to lease the property, build on it, mortgage it, occupy it, etc. When people buy a parcel of real estate, the bundle of rights is defined in the deed to the property, as it is in the previous deeds for the same parcel. All of them are recorded in the land records. These documents are called the "chain of title."

The provisions in deeds which define or limit the rights of ownership are often called deed

covenants or deed restrictions. The legal community speaks of these covenants or restrictions as "running with the land." That is, they apply to the land, no matter who owns it in the future. Instead of inserting all of the same covenants and restrictions into each individual deed in a community development, the developer draws up a declaration of covenants, conditions, and restrictions - or something with a similar name. The developer records this declaration in the County Recorder's office before any of the real estate is transferred to any other owner.

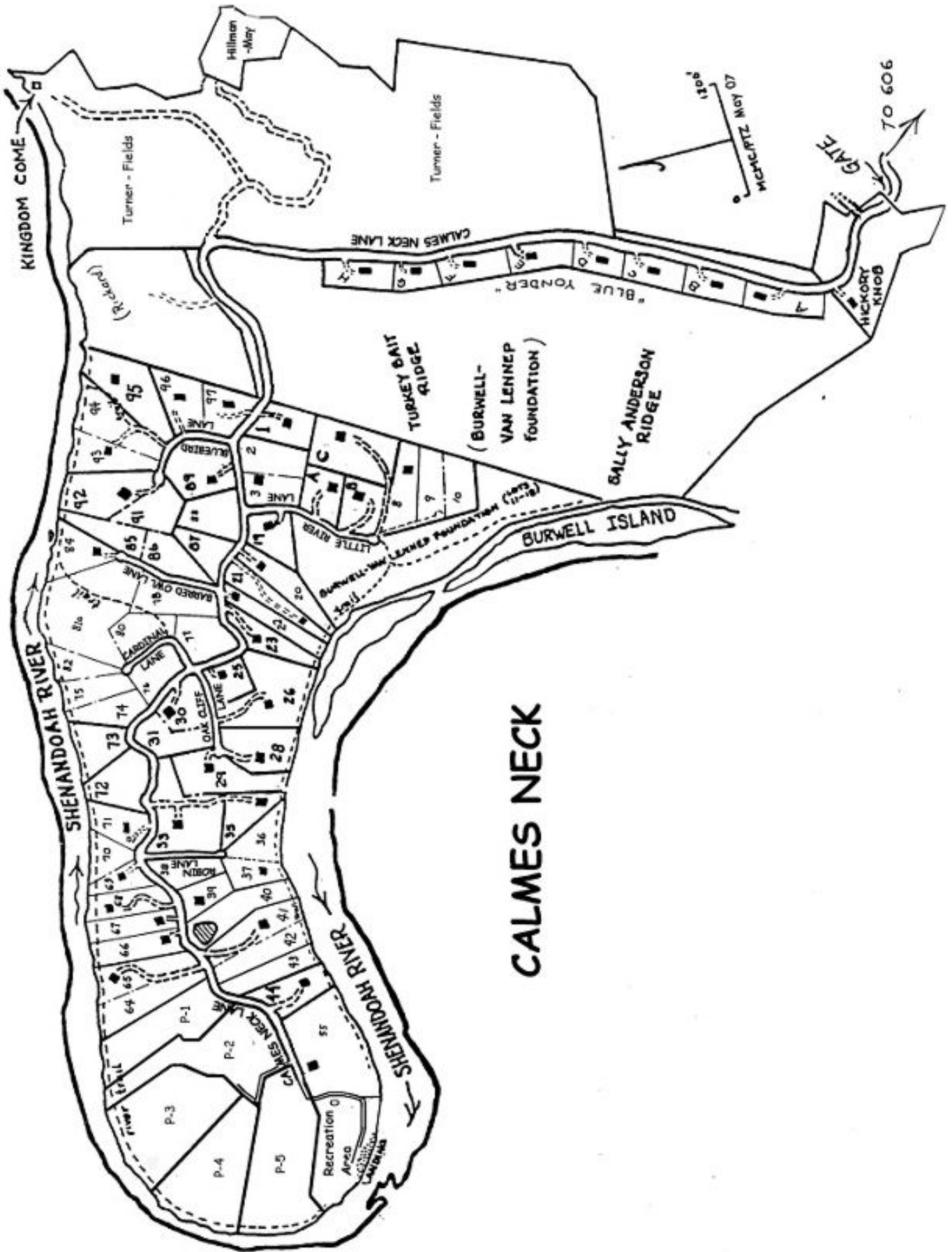
This means that the declaration is in the chain of title for each piece of real estate. Its terms are binding on the real estate itself, as well as on its original and succeeding purchasers. As a result, the declaration defines the bundle of rights of each owner in the community association.

The Calmes Neck Property Owner's Association is a Virginia non-stock corporation. Incorporation may or may not be a legal requirement for a community association. Planned communities are almost always set up as not-for-profit, non-stock corporations. A community association's corporate structure is established when a developer sets up the association. The developer files articles of incorporation - sometimes called a corporate charter - with the appropriate state corporation agency.

Bylaws are formally adopted governing regulations for the administration and management of a community association. Planned communities all have bylaws. Sometimes bylaws are developed as part of the declaration. At other times, they are adopted as soon as a corporation is established.

Rules and regulations for community associations are also established by means of Board resolutions. A resolution is a motion that follows a set format and is formally adopted by the Board of Directors. Resolutions may enact rules and regulations or formalize other types of Board decisions. The fundamental purpose of community association rules is to provide a basis for protecting members' equity in the development and to provide the framework within which people can live in harmony in a group situation.

The CNPOA Articles of Incorporation, Bylaws, Covenants, Rules and Regulations, (as well as the Blue Yonder Covenants and Eagle Point Covenants), can be downloaded at <http://www.cnpoa.com/covenants.htm>.



# CALMES NECK

## MEETINGS AND MINUTES

**Meetings:** In 2000, the laws of Virginia were amended to require a notice of the time, date, and place of each meeting be published where it is reasonably calculated to be seen by a majority of the members (association newsletter, bulletin board, website, or email). Further, any member who writes to request such notice must be sent a written notice by first-class mail or email on a continual basis for a full year. Unless exempt from public knowledge (as in an executive session), a copy of the full agenda package and supporting materials for each meeting must be made available to review by the membership. The very clear intent of these amendments is to preclude private Board meetings that attempt to avoid the members. Associations should openly publish the schedule and location of all meetings, and welcome the attendance and input of all interested members. (VA Code § 55-510.1)

The Board must designate a period of time during each meeting to allow any member present to voice his/her concerns or comment on any matter relating to the Association. The Board can adopt reasonable rules governing use of this time, i.e., a time limit for each person or subject. Members' comments are often matters for the record or for future attention. As such, they don't have to be thoroughly discussed and decided right away - just heard and acknowledged. In this context, it is constructive to develop a policy of "Reflective Listening" to let the speaker know he/she was heard. "As I understand it, your concern is..." acknowledges and reflects the subject, point, and opinion or position. This is neither agreeing nor disagreeing, avoiding or deciding, or committing the Board to any course of action or timetable; it's just listening to and accrediting the speaker.

Board meetings can create interest and involvement in the community by helping residents to feel informed, and a part of the decision-making process. It is constructive for the Board to listen to, acknowledge, and follow up on issues presented by Association members, **and to keep the membership informed of the discussions, progress and action concerning these issues.**

**Meeting Order of Business:** Part of any meeting should be a systematic plan for the orderly conduct of business. Robert's Rules provides a suggested meeting plans along with guidance on parliamentary motions.

**Minutes:** Virginia statutes require that factual and accurate minutes be kept of all Board of Directors meetings, annual meetings, and special meetings of the members. The importance of accurate minutes cannot be stressed enough because often the minutes are the only record of official decisions, directions, and actions of the Board. **If there is no verifiable record, a decision cannot be enforced.**

Too often, meeting minutes become lengthy with the intent of being thorough and correct. The purpose of a meeting is to conduct the business of the Association; and the minutes should record what was done or decided, and not what was said or by whom. The minutes should never reflect upon the character, emotion, or personality of any person, or give the secretary's opinion, favorable or otherwise, on anything said or done in the meeting.

Minutes officially record the time, date and place of each Association meeting, the presiding officer Board members in attendance, and the actions (motions) taken at the meeting. Only the motion should be recorded along with the exact final wording, including amendments, upon which the subsequent vote is taken. The votes for, against, and abstained, should be recorded if voting takes place. A motion referred to committee or tabled pending further information or

discussion should be so recorded in the minutes.

Complete minutes can be valuable to an Association should it need to document or defend its actions. The recording secretary should be familiar with "Minutes and Reports of Officers" of Robert's Rules of Order Newly Revised, 10th Rev. Edition. Meeting minutes, including motions, amendments and votes should be signed and dated by the secretary once they have been approved, and should be kept in a "book of minutes" for later reference (Robert's Rules of Order, page 160). Copies of meeting notices, financial statements, committee reports, and other documents should also be filed with the minutes, making them part of the Association's official records.

Formal approval of meeting minutes occurs at the next regularly scheduled meeting of the appropriate entity.

- Board of Directors approve the minutes of the Board of Directors at their next meeting
- General Membership approve the minutes of the regular or special meetings at their next meeting

## DELEGATED RESPONSIBILITIES

The Board of Directors is responsible to the members of the Association for the proper operation, maintenance and preservation of the Association's capital assets. Most of this will be exercised through Coordinators. Including, but not limited to: Association Roads, Swimming Pool, Association Equipment, Gate and Associated Security Components.

The Board of Directors may appoint "Coordinators" for these functions, and give them authority to manage the functions, such management to include input from committee members, coordination of volunteers, recommending contractors, generating budget need, and managing with approval of the Board of Directors.

The Board of Directors alone has the right to approve and to sign any contracts with any contractor.

**Committees:** Committees are created and their mission defined by an action of the Board of Directors.

The Virginia Nonstock Corporation Act (§ 13.1-869) provides that a Board of Directors may create one or more committees and appoint members of the Board or the Association to serve on the committee. Each committee may have two or more members who serve at the pleasure of the Board. The role of committees depends to a great extent on an Association's responsibilities and size. Many small associations can function without substantial committee assistance, but larger associations need effective committees to assist the Board in handling the overall workload.

Committees assist the Board by researching issues and assuming responsibility for specific aspects of association operation. Most committees are advisory in nature, but under the provisions of the Virginia Nonstock Corporation Act, a Board may adopt a resolution delegating limited authority to a committee unless its own documents specifically prohibit such delegation. Committees also help foster a broader member interest and participation in the Association and can help keep the Board aware of their concerns.

The size of a committee should be based on its purpose and the amount of work involved, being large enough to present varying points of view, while not being so large as to be inefficient. The chairperson should be someone with leadership qualities and who works well with the Board. It may be advisable to consult with the chairperson and obtain suggestions when choosing members of a committee. While the committee should not be composed of the chairperson's friends, it can be helpful to appoint persons with whom he or she can feel comfortable and work well. The primary criterion for appointment to a committee should be a willingness to work, although academic background, work skills and related experience can be very helpful. Care should be taken to choose persons who will work for the goals of the entire community, not just the desires of a small faction. Personalities can also be considered and used productively when forming committees. If a group must work closely together, compatibility is important and a committee composed of similar personalities may be most efficient. If the group is to explore alternatives and come up with new ideas, diverse personalities may prove most effective.

- CNPOA Committees are available at [http://cnpoa.com/Committee\\_Whos\\_Who.htm](http://cnpoa.com/Committee_Whos_Who.htm).
- A list of individuals who have keys/combinations for Association equipment i.e. the Kubota, the Main Gate, the camera, the Gate to the pool, the pool storage shed, the gasoline tank, etc., is available at [http://cnpoa.com/operational\\_resources.htm](http://cnpoa.com/operational_resources.htm).

- The address & location of Board mailbox & a list of the individuals who have mailbox keys can be downloaded at [http://cnpoa.com/operational\\_resources.htm](http://cnpoa.com/operational_resources.htm).
- A list of Contractors, Vendors and Suppliers (snow removal, road grading, gate maintenance, pool maintenance, insurance company, etc.) is available at [http://cnpoa.com/operational\\_resources.htm](http://cnpoa.com/operational_resources.htm).
- Copies of Current Contracts is available at [http://cnpoa.com/operational\\_resources.htm](http://cnpoa.com/operational_resources.htm).
- Copies of blank CNPOA Forms (Membership, Gate Card Request, Proxies, etc.) can be downloaded at <http://www.cnpoa.com>.

**Coordinators:** The Board of Directors is responsible to the Association membership for Support Services. As part of its normal business, the Board of Directors selects Coordinators for:

- Road Coordinator:
  - Responsible for supervising all road maintenance and snow removal activities of the Association.
  - Supervises all road maintenance volunteers and road maintenance and snow removal contractors.
  - Responsible for proposing an annual road maintenance and snow removal budget to the Financial Advisory Committee.
  - Responsible for identifying qualified road maintenance and snow removal contractors and making recommendations relating to their deployment to the Board.
  - Responsible for recommending standards for road maintenance and snow removal service and improvement priorities to the Board.
  - Responsible for the maintenance of Association equipment
- Pool Coordinator:
  - Responsibility for supervising all pool maintenance and recreation (common area) activities of the Association.
  - Supervises all pool maintenance and common area maintenance volunteers and contractors.
  - Responsible for proposing an annual pool and recreation budget to the Financial Advisory Committee.
  - Responsible for identifying qualified pool maintenance volunteers and contractors and making recommendations relating to their deployment to the Board.
  - Responsible for recommending standards for pool maintenance and common area service and improvement priorities to the Board.
  - Responsible for the maintenance of Association pool and common area equipment.
- Gate Coordinator:
  - Responsible for supervising all gate maintenance and security activities of the Association.
  - Supervises the work of all gate maintenance volunteers and contractors.
  - Responsible for proposing an annual gate maintenance budget to the Financial Advisory Committee.

- Responsible for identifying qualified gate maintenance volunteers and contractors and making recommendations relating to their deployment to the Board.
- Responsible for recommending standards for gate maintenance service and improvement priorities to the Board.
- Responsible for the maintenance of Association gate and security equipment.

Historically, these Coordinators have been members of the Association who volunteer their time, and who secure the services of other volunteers and/outside contractors.

The Board of Directors should inform the Association membership of these assignments, their purpose, and any compensation provided to the Coordinators. This information should be recorded in the Board's meeting minutes.

Coordinators are authorized to allocate/commit/spend the money in their respective parts of the Association's approved operating budget up to \$2,500, with the provision that all contracts which exceed more than \$2,500 in any given fiscal year be brought to the Board for review and approval. For contracts less than \$2,500 but more than \$500, at least two verbal bids should be acquired. For contracts more than \$2,500, at least three written proposals should be acquired wherever possible. In the event that the cost on an emergency repair or service exceeds the amount of money that an issue area director has remaining in her or his budget, the issue area may exceed his or her budget by up to \$500. All spending decisions by coordinators shall be immediately reported to the Treasurer and to the entire Board. Each member of the Board shall have the authority to commit/spend up to \$200 in any calendar month for emergency repairs, services or improvements that are in the best interest of the Community. An emergency is defined as an occurrence wherein no other Board members can be contacted and immediate action is necessary to protect the health, welfare and/or safety of the community or a community owned asset. Board members may combine their emergency spending allocations to increase the total amount of the allocation. All such spending commitments shall be immediately reported to the Treasurer and to the entire Board.

The Board of Directors is responsible for providing a supportive environment for volunteers and Coordinators to function. This includes, but is not limited to:

- Responding to requests for additional support from Coordinators
- Providing properly operating machinery for volunteers to use
- Providing sufficient resources for volunteers to carry out their activities
- Acting as the "Point of Contact" for the membership for comments, recommendations and suggestions concerning volunteer activities.

**Duties of the President:** The President presides at all meetings of the Board of Directors and of the Association, unless the Board designates another officer to preside at a meeting; sees that orders and resolutions of the Board are carried out; and signs all written instruments and contracts approved by the Board. The President shall be responsible to the Association membership for conducting Association business in accordance with all governing documents.

Subject to the approval of, and acting in concert with the Board of Directors, the President shall act as the official voice of the Association.

The President shall sign all written correspondence generated to conduct the Association's business, unless he and The Board agree that certain specific areas can be handled by other members of the Board.

The President shall provide a copy of all Association correspondence to all members of the Board of Directors as well and the Secretary of the Association.

ALL correspondence must be reviewed by the Board of Directors before it can be sent. In general, the approval process should take place at a meeting of the Board, but to facilitate action when needed, the approval may take place via email or telephone. In any case, Board approval of correspondence shall be recorded in the Board's meeting minutes.

**Duties of the Vice President:** The Vice President acts in place of the President in the event of his or her absence or inability to act, or when requested by the president to do so. In addition, the Board may delegate further authority for him/her to act in general or specific situations.

**Duties of the Secretary:** The Secretary keeps the minutes of all meetings and proceedings of the Board and of the Association in a businesslike manner; serves as custodian of the Association's files and records; and maintains a roster of all members of the Association and their mailing addresses. The Secretary is not required to be a member of the Board of Directors.

Complete minutes can be valuable to an association should it need to document or defend its actions. The recording secretary should be familiar with Robert's Rules of Order. Meeting minutes, including motions, amendments and votes should be signed and dated by the president or secretary once they have been approved, and should be kept in a Book of Minutes for later reference. Copies of meeting notices, financial statements, committee reports, and other documents should be filed along with the minutes, making them part of the Association's official records.

Reporting Board activities in a timely manner to the Association is a major responsibility of the Board of Directors; consequently, the following expectations for developing and distributing meeting minutes are established: Once minutes have been recorded, the Board will insure that that the approved (as corrected, if needed) minutes, along with all attachments presented at the Board meeting and/or referenced in the minutes will be:

- Signed by the Secretary with the original filed in the Association Book of Minutes
- Archived and made available to Association members online at [www.cnpoa.com](http://www.cnpoa.com)
- Printed and posted on the Bulletin Board on the ridge

The Secretary should strive to prepare and distribute draft minutes to the Board of Directors within 72 hours of a Board of Directors Meeting, and to the General Membership within 72 hours of a Meeting of the General Membership.

The Secretary should also distribute or cause to be distributed, approved meeting minutes to the membership. Minutes must be provided without cost and as expeditiously as possible to any member of The Association who requests them.

The Secretary shall maintain a complete file of all the Association's written correspondence.

The Secretary shall keep the Board Orientation Manual updated and current.

The Secretary shall arrange access to appropriate Association records, when requested.

A current list of members of the Association shall be maintained by the Secretary. The list should contain the following information: Name(s) of the lot owner; Mailing Address and Lot ID number; Phone number(s); Email Address(s); Renter contact information if applicable.

This list can be downloaded at [http://www.cnpoa.com/Members\\_Whos\\_Who.htm](http://www.cnpoa.com/Members_Whos_Who.htm).

**Duties of the Treasurer:** Authority to spend Association money resides with the Board of Directors, as approved by the members of the Association. The Board of Directors has a special obligation to provide maximum visibility to the Association membership. Treasurer is not required to be a member of the Board of Directors.

The Treasurer keeps proper books of the accounts of the Association. It should be noted that the Treasurer holds a special place in the Association that is one of a "fiscal conscience." Because the primary responsibility of the Treasurer is that of fiscal management, the Treasurer should not be distracted from this task by also being asked to concurrently serve the Association in any other capacity. The President and Vice-President hold similar, but overall responsibilities.

The Treasurer works in coordination with the Financial Review Committee to develop the annual budget and an annual balance sheet statement to be presented to the membership at its annual meeting.

The Board of Directors, acting on recommendations from the Financial Review Committee, is responsible for defining the Chart of Accounts and Category Codes.

The Treasurer is responsible for ensuring all reports are generated in the proper format. Monies of the Association will be invested only as approved by the Board of Directors. The checkbook will be maintained by the Treasurer with read only access to the accounts provided to all Board members.

The Treasurer receives and deposits in appropriate depository accounts all monies of the Association and disburses such funds as directed by resolution of the Board of Directors, provided, however, that a resolution of the Board of Directors is not necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The treasurer signs all checks and notes of the Association, provided that such checks and notes for amounts greater than \$500.00 shall also be signed by the President or the Vice-President.

Within 30 days of the close of the fiscal/calendar year, the Treasurer shall mail to each member of the Association a financial report of the year just completed. At a minimum this will include (1) balances of all funds and accounts and (2) total income and expenditure in each

fund/account and (3) the income realized and expenditures incurred for each major line item, compared against the line items in the budget originally presented for the year.

In addition to the reporting defined above, at each meeting of the members of the Association, the Treasurer shall present a financial summary to include (1) balances of all funds and accounts, (2) year-to-date performance and year-end projections of revenue and expenditures in total, and by major line item compared against the budget originally presented for the year.

Assessments shall be billed and collected as defined in the By-Laws. The Treasurer is responsible for preparing and mailing bills, for follow up on unpaid accounts, and for reporting to the Board of Directors on the status.

The Board of Directors shall approve the expenditure of all money. Should an expenditure exceed the budget, the Board of Directors must approve and record said expenditure. In all cases, the Treasurer, who writes the check, must be satisfied that the expenditures have been approved either through the budget or by a vote of the Board.

At each meeting of the Board and the General Membership (typically spring and fall), a report shall be provided showing in the appropriate line-items in the budget: Year-to-Date Revenue, Expenditures, Fund Transactions. Additional detail on the funds should be provided to clearly indicate how the funds are allocated across the investments.

The Financial Review Committee is responsible for managing the savings and all investment accounts and making recommendations to the Board of Directors to insure that the best return is achieved.

At least one meeting of the Board of Directors will be held for the express purpose of encouraging participation from the Association's membership in the Budget Process. The meeting will occur before the budget and property assessments are approved by the Board of Directors. This meeting will provide the Association's membership an opportunity to question, understand and, if necessary, challenge the budget structure and the assessment determination. Only after this opportunity is provided for membership participation will the Board of Directors vote to accept, reject or modify the upcoming year's budget and property assessment.

The resulting budget and the annual assessment will be voted upon by the General Membership. If the proposed assessment is not approved, then the Assessment remains at the current rate.

The budget is a covenant between the members of the Board and can be amended only by approval of the membership at a regular or special meeting. If an emergency arises – such as money needed to replace a road washout – the Board of Directors may act immediately to meet the emergency, but must notify the membership of its actions and the effect on the budget.

## FINANCES

The Board of Directors is responsible to the members of the Association for competent financial planning and management. The Bylaws provide specific guidance for budget development and cash transactions. Additionally, the Virginia Property Owners Act identifies minimum financial planning requirements for maintaining funding reserves for capital components. The fiscal year for the Association is the calendar year, Jan 1 through December 31.

Much of the maintenance and services provided by an association are required by its documents. Because of this, an association must have sufficient funds to cover the costs of properly maintaining the common areas and facilities, planning for future growth needs of the community, and carrying out its administrative and other responsibilities.

**The Budget:** A budget estimates these costs and, at its most elementary level, is used to balance income and expenditures to guard against overspending. A budget is also a planning tool to achieve the objectives and priorities of an association and to plan for its likely expenses on an annual and multi-year basis. It assures Association members that their assessments are justified and that the money is wisely spent for both the needs and desires of the association.

**Capital Reserves:** One of the major financial responsibilities of an association is the establishment of reserve funds to cover the cost of anticipated renovations, major repairs, and replacements for capital facilities. Reserves are generally included in the budget as an expense item. The documents of many associations require that reserves be established and maintained for the repair and replacement of Association facilities that have a life expectancy less than the buildings (i.e., equipment, pool, gate, etc.). Various mortgage-lending institutions require that reserves be established and maintained. Failure to establish reserves may require that an association must drastically increase its annual assessment, levy a special assessment, borrow money, or just not repair (often not an option) when faced with the expense of a major repair.

In 2002, the Virginia General Assembly enacted amendments to the Property Owners Association Act that requires every association to conduct a reserve study at least once every five years, and to review the most recent study at least every year (§ 55-514.1). The purpose of these requirements is to force the respective Boards to stay current with their association's real maintenance and replacement needs and costs, and to prevent falling behind and requiring a special assessment to cover their negligence. Inflation increases all costs but material costs often increase more rapidly than the rate of inflation (e.g., petroleum-based materials fluctuate more closely with crude oil prices on the world market than with the local economy). The anticipated time frame for major repairs can also change with mild or severe weather, the effects of proper maintenance or no maintenance, or variations in the use of a facility that may cause a change in its life cycle. The manner in which reserve funds are established and funded can make a big difference in an association's income tax liability, and should be discussed with an attorney or accountant. Some associations require that reserves be kept in a federally insured institution to limit their use for investment purposes. The placement of reserves for maximum interest or return on investment with minimal loss exposure should be thoroughly discussed by the Board.

The Board of Directors shall take such action as necessary to satisfy the Virginia law requirements for maintaining funding reserves for capital assets.

## **POLICY RELATING TO THE COLLECTION OF ASSESSMENTS/CHARGES/FEEES**

### **A. ANNUAL ASSESSMENT/CHARGE FOR COMMUNITY SERVICES:**

- a. It is the policy of the Board of Directors to provide its full range of community services to the properties owned by Association members who have paid the full amount of the annual assessment/charge of the Association's total operating costs as approved in conjunction with the adoption of the Annual Operating Budget for the Association by vote of the membership.
- b. The Treasurer shall send invoices for the annual assessment/charge for community services to all Association members by no later than January 1<sup>st</sup> of the year in which they are due. The due date for these payments shall be January 31<sup>st</sup> of the year in which they are due.
- c. The Board may grant an extension of up to one month with no late fees to members who request such an extension before January 31<sup>st</sup> of the year in which they are due.
- d. The Treasurer shall impose a per month late fee, not to exceed the maximum allowed, on all assessments/charges for community services that are not paid by the due date .
- e. The Treasurer shall notify members by U.S. mail when such late fees are imposed.
- f. If any Association members becomes more than three months late in the payment of his/her annual assessment, the Treasurer shall notify the Board of Directors.

### **B. SPECIAL ASSESSMENTS:**

- a. The Treasurer shall send invoices for the special assessment to all Association members by no later than one month after the special assessment is approved by vote of the membership at a meeting called for that specific purpose. The due date for the special assessment payment shall be six weeks after the date of the mailing.
- b. The Board may grant an extension of up to one month with no late fees to Association members who request such an extension before the original due date.
- c. The Treasurer shall impose a per month late fee, not to exceed the maximum allowed, on all assessments/charges for community services that are not paid by the due date.
- d. The Treasurer shall notify Association members by U.S. mail when such late fees are imposed.
- e. If any Association members becomes more than three months late in the payment of his/her special assessment, the Treasurer shall notify the Board of Directors.

### **C. ACTIONS FOR NONPAYMENT OF ASSESSEMENTS/CHARGES/FEEES:**

- a. When an Association member pays less than the full amount of the annual assessment/charge for community services as approved by vote of the membership, the Treasurer shall notify the member by U.S. mail of the Association's collection policy and request payment of an amount equal to a full annual assessment within 30 days.
- b. If any Association member becomes more than three months late in the payment of his/her assessment/charge for community services, the Treasurer shall notify the Board of Directors. The

Board of Directors may, in accordance with Association Due Process Protocols, initiate any or all of the following actions:

- i. File a Warrant in Debit (Civil Claim for Money) in the Circuit Court of Clarke County, Virginia against the Association member for the total amount due, including late fees
- ii. Suspend the Association's commitment to provide community services for the member's property
- iii. Suspend the Association member's right to use Association facilities and common areas other than the road
- iv. Suspend the Association member's right to vote on and participate in the affairs of the Association
- v. Impose a surcharge on the sale of Association products and services to the member

**D. PURCHASE OF PRODUCTS OR INFORMATION:**

- a. All sales of products, such as gate remotes, or services, such as community information packets, by the Association shall be on a cash-in-advance basis only.

## **DUE PROCESS PROTOCOLS**

WHEREAS, the Calmes Neck Property Owners Association, Inc., has empowered the Board of Directors to take certain adverse actions, including but not limited to, filing a Warrant of Debt and/or suspending a member's right to vote and/or use of the Association's common and/or recreational facilities in response to non-payment of assessments/charges/fees or violations of the Governing Documents; and

WHEREAS, it is the intent of the Board of Directors to establish protocols which ensure due process and consistency of enforcement,

IT IS HEREBY RESOLVED THAT the Board of Directors of the Calmes Neck Property Owners Association, Inc., shall take adverse action(s) against an Association owner, tenant, and/or guest only after the following due process protocols have been followed.

### **Section I; Definitions**

"Association" means Calmes Neck Property Owners Association, Inc., a non-stock Corporation which was incorporated pursuant to Chapter 10 of Title 13.1 of the Code of Virginia on the 30th day of October, 1993

"Board of Directors" means the executive body of Calmes Neck Property Owners Association, Inc.

"Common area" means property within a development which is owned or required by the Association to be maintained for the use of its members and designated as common area.

"Guest" means a person or persons who, by invitation or permission of an owner, has been granted use of Association common and/or recreational facilities

"Owner" means the person or persons who now or hereafter own a lot in fee simple, but does not mean any person whose estate or interest in a lot exists only by virtue of an unrecorded contract or is held only as security for the payment or performance of an obligation. Each lot shall at all times have one "Owner" within the meaning of this definition, but that Owner may consist of more than one person.

"Person" means a natural person, corporation, partnership, trust or other entity.

"Recreation Area" refers to any area designated in the Regulations for recreational use by members of the Association.

"Respondent" means an owner, other resident, tenant or guest.

"Tenant" means a person or persons who, by virtue of renting or leasing the property of an owner, has been granted use of Association common and/or recreational facilities

### **Section II; Notification of Delinquency and/or Violation Letter**

The Notification letter is to provide the owner in delinquency and/or violation the opportunity to rectify or correct the situation, to inform the owner of his/her due process rights to request a hearing before the Board of Directors, and to notify the owner that the Board of Directors may take action if the delinquency and/or violation is not ceased or rectified.

1. A written Notification letter shall be sent by certified United States mail, return receipt requested, to the owner at the address which the owner has provided to the Association or at the lot address if no other address has been provided. A copy may be sent to the tenant if there is a tenant.
2. The Notification letter shall specify the alleged delinquency and/or violation, the action required to abate the situation and a date usually not less than fifteen (15) calendar days after the date of the Notification letter by which the alleged delinquency and/or violation must be remedied. Provided,

however, when a violation may constitute a public health, safety or fire hazard, demand may be made to remedy the violation within twenty-four (24) hours.

3. The Notification letter shall state that if the delinquency and/or violation is not remedied, the alleged violator must request in writing a hearing before the Board of Directors to avoid action by the Board of Directors. The letter shall also state that if a hearing is not requested, the owner shall be deemed to have waived the opportunity for a hearing and the Board may act accordingly. The Notification letter may be combined with the Notice of Hearing if the delinquency and/or violation is of a serious nature or an emergency or if previous notices of delinquency and/or violation have been sent to the owner.

### **Section III; Notice of Hearing**

The Notice of Hearing is to inform the owner in delinquency and/or violation of the date of the hearing before the Board of Directors and to inform the owner of any possible charges and/or actions required to remedy the delinquency and/or violation and/or suspension of owner's rights to use Association common and/or recreational facilities.

If the alleged delinquency and/or violation is not remedied within the date or time specified in the notification letter referenced in Section II, or the owner requests a hearing, or if the Board of Directors determines a hearing is necessary, a Notice of Hearing shall be sent. Said notice of a hearing shall be sent by certified United States mail, return receipt requested, at least fifteen (15) calendar days, to the owner at the address which the owner is required to provide to the Association. Service by mailing shall be deemed effective three (3) calendar days after the notice has been mailed by certified United States mail.

The Notice of Hearing shall specify:

- 1) The time, date and place of the hearing.
- 2) That the owner, tenant, and/or guest, if applicable, shall be given an opportunity to be heard and to be represented by counsel.
- 3) The alleged delinquency and/or violation, citing provision of the Governing Documents or rules which allegedly have been violated.

### **Section IV; The Hearing**

Before any adverse actions may be imposed, the owner, tenant, and/or guest, is to be given an opportunity to be heard and to be represented by counsel before the Board of Directors of the Association. 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 of Directors' discretion. The Board, within its discretion, may grant a continuance. If the owner, tenant, and/or guest, for which 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 alleged violator requests that the hearing be open to owners and residents and further provided that the Board of Directors may impose a reasonable limit on the number or such persons who can be accommodated in the hearing room.

If the alleged violator acknowledges responsibility for the violation charged, or does not wish to contest the alleged charges, the Board may, in its discretion, dispense with a hearing after having afforded the alleged violator with an opportunity for a hearing.

### **Section V; Procedural Guidelines To Be Followed At Hearing**

1. The Presiding Director shall introduce himself/herself and state his/her role. The other Directors shall then be introduced. The 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 Respondent.

2. The Presiding Director shall ascertain 1) that the Respondent understands the proceedings as they have been outlined; 2) that the Respondent has received notice of the hearing; and 3) that the Respondent understands the allegations as set forth in the notice. The Presiding Director shall do so by addressing the Respondent directly.
3. The Presiding Director shall briefly state the alleged violations and sanctions sought to be imposed, and all the procedural steps that have already been taken leading up to the hearing, such as notices, and means and date of delivery.
4. The testimonial phase of the hearing shall begin. During this phase the Board of Directors shall hear all relevant testimony and ask questions regarding all alleged violations. 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 on 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 the objection in civil or criminal actions in court of competent jurisdiction in the State of Virginia. The Board shall have the right to limit in time and scope the testimony of any witness for the purpose of eliminating unjustifiable delay or repetitious evidence.
5. The Board shall first hear the testimony of any witness supporting the alleged violations. The Board shall ask questions if it deems so necessary. The Respondent shall have the right to ask questions and cross-examine the witness(es) and shall have the right to be represented by Counsel who shall then participate in the hearing applying the rules as they have been outlined in this document. The Board shall then hear the testimony presented by the Respondent and may ask questions if necessary. If necessary, the Board may also recall any of the witness(es) who have already given testimony and the Respondent shall also have the right to cross-examine those witness(es) on the newly offered testimony. The Board may accept exhibits that substantiate the testimony presented by either the witness(es) or the Respondent.
6. After hearing all evidence and testimony, the Board of Directors will discuss the issues in Executive Session. While in Executive Session, the Board of Directors shall consider all evidence presented by the witness(es) and by the Respondent to include their oral testimony and exhibits submitted to the Board of Directors
7. Upon conclusion of the Executive Session, the Board of Directors 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 certified United States mail, return receipt requested, to the member at the address of record with the Association within three (3) business days of the hearing.
8. In the event that the Respondent does not appear at the hearing and fails to give notice of his/her impossibility to attend and to request the rescheduling of the hearing, the Board of Directors will conduct the hearing despite his/her absence as long as there is at least one witness giving direct testimony supporting the alleged violation.
9. In the event that no witnesses appear at the hearing, the hearing shall be canceled and the matter before the Board of Directors shall be dismissed without prejudice unless there is indication that the witness(es) could not attend the hearing in which case a new date shall be set and new notice of hearing shall be served upon the Respondent. Notice of new hearing date can be waived if the Respondent is present and is given notice at that time.

## **Section VI; Records**

The Board of Directors shall make a record of the hearing by minutes taken during the hearing by the secretary of the Board of Directors. Such record shall be kept in accordance with generally accepted business practices. In addition, all correspondence relative to delinquencies and/or violations shall be kept in the lot owner's file.

## INSURANCE

The Board of Directors is responsible to the members of the Association for clearly identifying the insurance coverage provided for volunteers during formally sanctioned volunteer activities. Consequently, the Board of Directors should take such action as necessary to insure each volunteer is fully informed of the type and extent of insurance coverage (or lack of coverage) provided by the Association during volunteer activities.

**Directors and Officers Liability Insurance:** Directors and Officers Liability Insurance, or "D and O", (sometimes called "errors and omissions insurance") pays for the financial consequences of certain wrongful acts and behavior or negligence on the part of Board members (or the Association) that are not covered by a Comprehensive General Liability policy. Such wrongful acts/behavior could include:

- bad faith actions, breach of loyalty, and/or conflict of interest;
- failure to maintain the books and records, to collect assessments, or to maintain correct insurance;
- failure to enforce covenants, bylaws, rules and regulations;
- discrimination and/or wrongful hiring and termination practices, security and/or other personnel issues;
- mismanagement of the budget, association affairs, and/or failure to maintain adequate reserves; and
- failure to fully disclose required association information in a resale package.

Potential claimants include individual property owners (or their tenants), other Board members, employees, contractors; - virtually anyone connected to or conducting business with the Association. Such claims and suits may involve monetary and non-monetary damages. Section 13.1-870 "General standards of conduct for directors" of Title 13.1 of the Virginia Code, provides that a director of a mandatory community association incorporated under Chapter 10 "Virginia Nonstock Corporation Act," shall discharge his/her duties as a director in accordance with his/her good faith judgment of the best interests of the corporation. Provisions enacted in 1987 and later provide personal liability immunity for an uncompensated officer or director (and limit the liability exposure of a compensated officer or director) for damages unless the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

However, Officers and Directors are not immune from being sued, or from the costly litigation to defend against such suits. The degree to which Officers and Directors (or other association representatives – elected, appointed, or volunteers) are protected from liability by these provisions has yet to be tested in the courts. And while these individuals may qualify for immunity from liability risk under these provisions, the Association itself may not be immune. Furthermore, if an association's bylaws contain a mandate to protect its Directors and Officers (or others) from personal liability for their actions, the Association must bear the expense of defending its Officers and representative(s).

The current insurance policy is available at [http://cnpoa.com/operational\\_resources.htm](http://cnpoa.com/operational_resources.htm)

## **INFORMATION PACKAGE**

Because of the unique nature of property ownership and authority found in property owner associations, prospective purchasers need to know the various rights, responsibilities and authorities of the Association and its members before they buy. They also need to know that the property is in good standing with the Association in regard to its assessment account and its compliance with the covenants, conditions and restrictions of the governing documents. To accomplish this, the Association makes available a prepared package for an Association member to provide to prospective buyers.