

**RESOLUTION REGARDING ADOPTION OF  
HEARINGS PROCEDURES / GUIDELINES  
THE BAL HARBOUR ASSOCIATION**

WHEREAS, the By-Laws governing The Bal Harbour Association ("the Association"), as well as the Association's Articles of Incorporation, the respective Declaration of Covenants, Conditions and Restrictions encumbering all properties governed by the Association (the "Declarations") and all amendments and/or supplements thereto, and the Texas Business Organizations Code, authorize the Association, acting through its Board of Directors, to exercise all powers reasonable and necessary for the governance and operation of the Association;

WHEREAS, the Texas Property Code provides that the Association may exercise other powers necessary and proper for the governance and operation of the Association;

WHEREAS, various sections of Chapter 209 of the Texas Property Code provide opportunities for property owners to request and/or participate in a hearing before the Board of Directors of their property owners' association to appeal, discuss and verify facts and resolve matters in issue;

WHEREAS, the Board of Directors ("the Board") of the Association desires to create guidelines in order to assist property owners in understanding the steps to initiate a hearing, as well as the hearing process which may follow;

WHEREAS, the Board of Directors of the Association ("the Board") has determined that in keeping with current legislation, the adoption of the below-stated Hearings Procedures / Guidelines is in the best interest of the community and its members.

NOW, THEREFORE, BE IT RESOLVED that the attached Hearings Procedures / Guidelines is hereby adopted on behalf of the Association, to become effective upon being recorded in the office of the County Clerk.

Adopted on this 7<sup>th</sup> day of February, 2022.

**THE BAL HARBOUR ASSOCIATION**

CERTIFICATION

"The undersigned, being a Director of The Bal Harbour Association, hereby certify that the foregoing Resolution Regarding Adoption of Hearings Procedures / Guidelines was adopted by the Board of Directors of The Bal Harbour Association, at a meeting of such Directors at which a quorum was present, or as otherwise authorized by law."

By: Tricia Lotz  
Director, The Bal Harbour Association

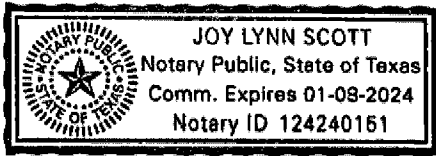
Print Name: TRICIA LOTZ

RP-2022-70422

STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS               §

Before me, the undersigned authority, on this day personally appeared Tricia Hotz, a Director of The Bal Harbour Association, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he/she had executed the same as the act of said entity for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 7<sup>th</sup> day of February, 2022.



[Signature]  
Notary Public, State of Texas

**HEARINGS PROCEDURES / GUIDELINES**

- (1) **Right to a Hearing.** In accordance with the Texas Property Code, a property owner is entitled to a hearing under the following circumstances:
  - a. after disapproval by the Association’s architectural review authority (“ARA”) of an owner’s application for the construction of improvements on their property;
  - b. prior to the Association taking enforcement action against an owner for a curable violation;
  - c. prior to the Association filing a lawsuit against an owner other than a suit to collect a regular or special assessment or foreclose under an Association’s lien;
  - d. prior to the Association charging an owner for property damage;
  - e. prior to the Association levying a fine for a violation of terms of any dedicatory instrument of the Association; or
  - f. prior to the Association suspending an owner’s right to use a common area.

An owner desiring a hearing must request a hearing on or before the 30<sup>th</sup> day after the date the notice of violation and right to a hearing was mailed to such owner. An owner that does not request a hearing within such thirty (30) day period, will not be entitled to a hearing.

Hearings under this section do not apply if the Association files a lawsuit seeking a temporary restraining order or temporary injunctive relief or files a lawsuit that includes foreclosure as a cause of action.

Hearings under this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

- (2) **Notice for ARA Disapproval.** In the case of an ARA disapproval / denial, written notice must be given to the owner by certified mail, hand delivery or electronic delivery. The notice must:

RP-2022-70422

- a. describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
- b. inform the owner that the owner may request a hearing on or before the 30th day after the date the disapproval notice was mailed or delivered to the owner.

(3) **Notice Prior to Enforcement Action.** In all other cases in section 1, above, prior to such enforcement action, notice must be given to the owner by certified or verified mail describing the violation or property damage that is the basis for the enforcement action. Such notice must:

- a. provide a reasonable cure period with a specific date to cure the violation, if the violation is of a curable nature and does not pose a threat to public health or safety;
- b. inform the owner that they may have special rights or relief under federal law including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty; and
- c. inform the owner that the owner may request a hearing on or before the 30<sup>th</sup> day after the notice was mailed to the owner;

If the owner has previously been given notice of a violation and the opportunity to exercise any rights under his section within the preceding six (6) months, no further notice is required before enforcement action may be taken.

For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this section, the non-repetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

By way of example, the following acts are considered incurable:

- a. shooting fireworks;
- b. an act constituting a threat to health or safety;
- c. a noise violation that is not ongoing;
- d. damage to property owned or maintained by the association; and
- e. holding a garage sale or other event prohibited by a dedicatory instrument.

By way of example, the following acts are considered curable:

- a. a parking violation;
- b. a maintenance violation;
- c. the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- d. an ongoing noise violation such as a barking dog.

(4) **Request a Hearing.** To request a hearing, an owner must make a written request which specifies the matter from section 1, above, for which the hearing is requested. The request must include a description of the issues in dispute, the basis for dispute and the owner's desired outcome from the hearing. Such request must be mailed, hand delivered or electronically delivered to the Association's address on the most recently filed management certificate. Because the hearing steps begin upon receipt of such request by the Association, the owner should verify receipt by the Association if no response is received within a reasonable timeframe.

- RP-2022-70422
- (5) **Hearing Date.** Hearings must be held not later than the 30th day after the date the Association receives the owner's request for a hearing. However, the Association or the owner may request a postponement which shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of both parties.

Not later than the 10th day before the date of the hearing, the Association must notify the owner in writing of the date, time, and place of the hearing. In addition, not later than the 10th day before the date of the hearing, the Association must provide the owner a packet containing all documents, photographs and communications relating to the matter which the Association intends to introduce at the hearing. Such notice and packet may be provided by mail, hand delivery or electronic delivery. If the Association does not provide the packet within the designated period, the owner is entitled to an automatic 15-day postponement of the hearing.

As provided under Section 209.051 of the Texas Property Code, all hearings will be held with the Board at a duly called meeting where notice is provided to the members. All hearings will be held in closed / executive session.

- (6) **Attendance at Hearing.** On behalf of the Association, the Board, their designated representative, and if related to an ARA disapproval and if invited by the Board, a representative of the ARA may attend the hearing. On behalf of the owner, the owner and the owner's designated representative may attend the hearing.

If the owner desires to be represented by their attorney at the hearing, the owner must notify the Association in writing at least ten (10) days in advance, in order that the Association's attorney may also be present. If attorneys are present, each party must pay their own legal fees related to their attorney's preparation, attendance and immediate follow-up to the hearing.

If the owner is not able to attend the hearing but will send a representative, the owner must inform the Association of the name of the person who has authority to be their designated representative at the hearing prior to the start of the Board meeting in which the hearing will be held. If such advance notice is not possible then the designated representative may provide written evidence that they have authority to represent the owner at the hearing.

If the owner or their designated representative does not attend the hearing as scheduled, the Association will have satisfied its obligation to offer a hearing to the owner.

- (7) **During the Hearing.** The Association may set a reasonable duration for the hearing giving adequate time to the topic at hand. During a hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.

The Board may ask clarifying questions of the owner or their designated representative to better understand their position or request.

Either party may make an audio recording of the hearing by announcing that an audio recording is being made. The recording device should be placed in a position such that all voices can be heard and recorded.

- (8) **After the Hearing.** After the hearing is concluded, the owner and their designated representative will leave the hearing so the Board may continue their executive session to discuss and consider the information presented. If needed, the Board may take any action authorized under the

Association's dedicatory instruments or by applicable laws. Any such decisions shall be summarized orally, after returning to the open portion of the Board meeting, with appropriate discretion with regard to privileged information, privacy and/or confidential information. Typically, within ten (10) days after the hearing, the Association will provide the owner with a written notice with their decision, regarding the matter of the hearing.

To the extent the terms and provisions of this "Hearings Procedures / Guidelines" conflict with any of the Association's other governing documents or dedicatory instrument, the terms and provisions of this document shall control. All terms and provisions of the Association's other governing documents and/or dedicatory instrument which do not conflict with this "Hearings Procedures / Guidelines" are not affected by this document, and shall remain in full force and effect.

RP-2022-70422

RP-2022-70422  
# Pages 6  
02/08/2022 02:08 PM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
TENESHIA HUDSPETH  
COUNTY CLERK  
Fees \$34.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Teneshia Hudspeth*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

RP-2022-70422