
Return to: Kiawah Island Community Association
23 Beachwalker Drive
Kiawah Island, South Carolina 29455
Attn: Jimmy Bailey

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cross Reference: Deed Book M-114
Page 407

**AMENDMENT TO THE DECLARATION OF COVENANTS
AND RESTRICTIONS OF THE KIAWAH ISLAND COMMUNITY ASSOCIATION, INC.**

WHEREAS, The Kiawah Island Community Association Inc., a South Carolina non-profit non-stock corporation, ("Association") and Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the Territory of the British Virgin Islands (successor to Kiawah Island Company, Inc., which merged with Kiawah Island Company Limited under Articles of Merger recorded the 14th day of December, 1976, in Book C-111, page 213, in the R.M.C. Office for Charleston County, S.C.) executed a Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. ("Declaration"), on or about February 19, 1976 by instrument recorded in Book T 108, page 337 in the R.M.C. Office for Charleston County, South Carolina; and

WHEREAS, the Declaration has been amended by the following instruments: in Book O-125, page 163; Book K-139, page 058; Book R-210, page 748; Book W-243, page 258; Book A-284, page 914; Book H-348, page 383; and Book W-444, page 552; Book F-583, page 354; and _____; and _____; and

WHEREAS, those Amendments were incorporated into a Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. ("Consolidated Declaration"), recorded in Book M-114, Page 407 in the R.M.C. Office for Charleston County, South Carolina; and

WHEREAS, Article VI, Section 3 (k) of the Consolidated Declaration authorizes the Association to take any and all actions necessary to enforce all covenants and restrictions affecting the Properties; and

WHEREAS, Article VIII, Section 3 of the Consolidated Declaration provides for the enforcement of the covenants and restrictions by any proceeding at law or in equity; and

WHEREAS, the Declaration fails to establish a procedure to be followed to enforce the Covenants; and

WHEREAS, The Board has determined it is in the best interest of the members and the Association to adopt an efficient and fair procedure to enforce the Covenants; and

WHEREAS, Article VIII, Section 2 of the Consolidated Declaration provides for its amendment by the approval of three-fourths (3/4) of the votes cast at a duly called meeting; and

WHEREAS, South Carolina S.C. ST§ 33-31-708 provides that an action that can be taken at a meeting of the members can be taken by ballot in lieu of a meeting; and

WHEREAS, this Amendment was approved by at least three-fourths (3/4) of the ballots cast;

NOW THEREFORE, the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. is hereby amended as follows:

1.

Article VIII, Section 3 of the Declaration is deleted in its entirety and replaced with the following:

Section 3: Enforcement

(a) **Authority.** The Properties shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and Rules and Regulations of the Association (“Association Documents”), and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Association Documents. In addition to any rights the Association may have against an Owner’s family, guests, tenants or occupants, as a result of such person’s violation of the Association documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board of Directors may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or occupant against the Association for failure to enforce the provisions hereof if the aggrieved owner or occupant has not personally pursued all available remedies against the violator for redress provided under South Carolina law.

(b) **Types of Enforcement Actions.** In the event of a violation of the Association Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, unless otherwise provided, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from the Properties.

- (i) suspend all rights to use the Common Property;
- (ii) suspend the voting rights of a violating Owner;
- (iii) impose reasonable fines, which shall constitute a lien on the violating Owner's Lot;
- (iv) use self-help to remedy the violation;
- (v) bring an action for permanent injunction, temporary injunction and/or specific performance to compel the violator to cease and/or correct the violation; and
- (vi) record in the Charleston County land records a notice of violation identifying any uncured violation of the Association Documents.

(c) **Suspension and Fining Procedure.** Except as provided below, before imposing fines or suspending the right to use the Common Property or the right to vote, the Association shall give a written violation notice to the Owner as provided below.

- (i) **Violation Notice.** The written violation notice to the Owner shall:
 1. Identify the violation, suspension(s) and/or fine(s) being imposed; and
 2. Advise the Owner of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) or the fine(s).

Notwithstanding the Owners right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(ii) **Violation Hearing.** If the Owner submits a written request for a violation hearing within fifteen (15) days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If an Owner fails to timely request a violation hearing, such Owner loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If an Owner timely requests a violation hearing, the Owner shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(iii) **No Violation Notice and Hearing Required.** No violation notice or violation hearing shall be required to:

1. impose late charges on delinquent assessments;
2. suspend a violating Owner's voting right if the Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
3. suspend an Owner's right to use the Common Property if the Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Owner's right to use the Common Property shall be automatic (which shall allow the Association to tow and/or boot an Owner's vehicle located on the Common Property without complying with the Suspension and Fining Procedures described above);
4. engage in self-help in an emergency;

5. impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Owner; or

6. impose fines if the same violation occurs again on the same property, in which case fine(s) may be imposed on a per diem basis without any further notice to the Owner.

d. **Method of Giving Notice.** All notices shall be in writing and shall be given via:

- (i) Personal delivery to the addressee; or
- (ii) United States mail, first class, postage prepaid; or
- (iii) Electronic mail; or
- (iv) Facsimile; or
- (v) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

Notice sent by one of those methods described shall be deemed to have been duly given when sent or delivered to:

- (vi) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;
- (vii) If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; or
- (viii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address.

Effective Date. Notice sent in accordance with the above shall be deemed to be effective as follows:

- (ix) if sent by United States mail correctly addressed with first class or higher priority postage prepaid, when deposited with the United States Postal Service;
- (x) if delivered personally, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or as indicated in a record by the delivery person; or

(xi) if sent by fax, electronic mail or other electronic transmission, upon transmission, as evidenced by a printed confirmation of transmission.

(e) **Injunctions and Other Suits at Law or in Equity.** All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel an Owner to cease and desist and/or correct any violation.

(f) **Costs and Attorney's Fees for Enforcement Actions.** In any action taken by the Association to enforce the Association Documents, the Association shall be entitled to recover from the Owner, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

(g) **Failure to Enforce.** The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Owner. The failure of the Board to enforce any provision of the Association Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

(i) the Association's position is not strong enough to justify taking enforcement action.

(ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person;

(iii) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;

(iv) the aggrieved Owner or occupant asserting a failure of enforcement has not independently pursued all available individual remedies under South Carolina law; or

IN WITNESS WHEREOF, the undersigned officers of the Kiawah Island Community Association, Inc. hereby certify that the above amendment to the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. was duly adopted by the requisite vote

