

# Kensington Courts Community Association Covenants & Conditions Policy Statement #1

## Enforcement

**The KCCA Articles of Incorporation** state in Article V that, “The Association..., and the specific purposes for which it is formed are to provide for... (iv) the promotion of the health, safety, pleasure, recreation, and welfare of the residents of the Lots within the Property; (v) to assure the maintenance, preservation and architectural control of the lots and Common Areas. In furtherance of these purposes, the Association, (by action of its Directors unless otherwise noted in these Articles of Incorporation or in the Declaration) shall have full power to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration as the same may be amended from time to time as therein provided, the Declaration being incorporated herein by reference as if set forth at length;

(b) fix, levy, collect, and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration...

(g) have and to exercise any and all powers, rights and privileges which a nonstock corporation organized under the Corporation Law of the State of Maryland by law may now or hereafter have or exercise.

**The KCCA Bylaws** state in Article VII, Section 1 that, “The Board of Directors shall have the power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas including any improvements and amenities located thereon, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;...

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration”....

***Section 2. Duties.*** It shall be the duty of the Board of Directors to:

(f) otherwise perform or cause to be performed the functions and obligations of the Board and the Association as provided for in the Declaration and Articles of Incorporation and these Bylaws...

**The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended** state in Article VII that, “The owner of each Lot shall keep the Lot, and the buildings and other improvements thereon, in good order and repair, and free of debris. Lawns shall be seeded and mowed at a height of 6” or less, shrubbery trimmed, and painted exterior surfaces repainted, all in a manner and with such frequency as is consistent with good property management. In the event the Owner of a Lot shall fail to maintain the Lot and the buildings and other improvements thereon as provided herein, the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair as well as the right to remove garbage and other debris from a Lot. All costs including legal fees incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VI of this Declaration.

In the event the Owner of a Lot fails to comply with a provision of this Declaration or engages in a prohibited use, all costs including legal fees incurred by the Association in connection with obtaining compliance with this Declaration shall be reimbursed by the Owner to the Association upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VI of this Declaration.”

**The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended** state in Article VIII, Section 1 that, “No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes in color, changes or additions to driveways, or walkway surfaces and landscaping modifications) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by a covenant committee ... **Any** exterior addition to or **change** or alteration **made without** application having first been made and **approval** obtained as provided above **shall be deemed to be in violation of this covenant** and the addition, change or alteration may be required to be restored to the original condition at the Owner’s cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits therefore having first been obtained by the Owner from the applicable public authorities or agencies. In addition, no changes, alterations or additions may be constructed which are not in compliance with local governmental guidelines or restrictions.

**The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended** state in Article VIII, Section 4 that, “The Covenant Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate.

**The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended** state in Article IX, Section 2 that,

(b) .... The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.”

**The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended** state in Article IX, Section 5 that, “There shall be no violation of any reasonable rules for the use of the Common Area and community facilities or “house rules” or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

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**Board Evaluation- Compliance Enforcement Authority.**

The Articles of Incorporation establish that the Association has a ‘stated mission’ to (1) “promote the health, safety, pleasure, recreation, and welfare of the residents”; and (2) “to **assure** the maintenance, preservation and architectural **control of the lots and Common Areas**”. They also establish that it is recognized as being necessary to the achievement of that mission, that the Association must have “full power (a) to exercise all powers, privileges, duties and obligations as set forth in the Declarations; (b) to fix, levy, collect, and enforce payment of (any and) all charges or assessments pursuant to the terms of the Declarations; and (c) to exercise any and all powers, rights and privileges, which a nonstock corporation may have or exercise.”

The Bylaws establish that the Board has the authority to exercise the rights and powers of the Association on its behalf, and that this expressly includes the authority to adopt and publish rules and regulations governing the use of the Common Areas, the conduct of Members and their guests thereon, and to establish penalties for the infraction thereof. It also, more generally, establishes the authority of the Board to act on behalf of the Association in exercising all powers, duties, and authorities vested in the Association. Additionally, the bylaws establish that it is a “duty” of the Board to perform the functions and obligations of the Board and Association as established by the entire set of governing documents.

In Article IX, Section 5, the Declaration of Covenants, Conditions & Restrictions provides that “There shall be no violation of... community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and **the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.**”

In Article IX, Section 5, the Declaration of Covenants, Conditions & Restrictions also provides that “There shall be no violation of any reasonable rules for the use of the Common Area and community facilities or ‘house rules’... not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

In Article VII, Section 4, the Declaration of Covenants, Conditions & Restrictions establishes that the Board (or Covenant Committee, by designation of the Board) may adopt rules and regulations regarding architectural requirements, even to the point of controlling “architectural style or details, or other matters”.

In Article IX, Section 2(b), the Declaration of Covenants, Conditions & Restrictions establishes that the Board shall have the right to adopt such rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

**In concert**, these provisions clearly confirm that the Board of Directors is granted very broad authority to pass such rules and regulations as it reasonably deems to be necessary to the accomplishment of its mission, duties and obligations.

When looking at “Rules and Regulations”, as published by entities authorized to administer such things, whether they be Federal, State, or Local Legislatures; Federal State or Local Executive Agencies; Judicial Bodies; Independent Administrative Agencies, Public Commissions; or even private companies authorized to administer issues over the public at large, we find a nearly universal “Standard Practice and Convention” (an effective “Industry Standard” among governing bodies), and that is, that the authority to pass “statutes”, “regulations”, or “rules” necessarily includes the authority to pass not only ‘rules that define prohibited *actions*’, but *also* to pass ‘rules that define reasonable *penalties*’ for violations of those established constraints. If governing bodies had no power to define and enforce penalties, it would not have any actual authority (or ability) to

accomplish its defined mission, and this result can easily be seen to be contrary to the intent of the governing documents establishing authority in the *first* place.

It there were any doubt, the phrases, “The Association... shall have full power to: ... fix, levy, collect, and enforce payment... of all charges and assessments pursuant to the terms of the Declaration, ... (and) have and to exercise any and all powers, rights and privileges which a nonstock corporation organized under the Corporation Law of the State of Maryland by law may now or hereafter have or exercise”; and “the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules” (“community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules”), should remove any such doubt.

The Policies and Rules of the Association are enforceable under the Maryland Homeowners Association Act (Maryland Code, Title 11B of the Real Property Article), given that they are on File with the Clerk of the Cecil County Circuit Court, as Maintained by the Clerk in the Cecil County Homeowner’s Association Depository, pursuant to §11B-112(c)(3).

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Therefore it is the policy of this board to interpret this subject-matter as follows:

POLICY: There are multiple provisions throughout the Association’s Articles of Incorporation, Bylaws, and Declarations, which clearly and expressly establish the authority of the Association, through the Board, to issue and enforce those rules and regulations, necessary to accomplishing the responsibilities attached to it, provided *only* that these rules are not contradictory to the clear expressions of the association’s governing documents, themselves, and are not contradictory to any other controlling law.

In addition to this, the Governing Documents of the Association confer a general authorization to adopt such rules as the Board of Directors reasonably deems necessary to the accomplishments of its assigned mission.

Such Rules and Regulations for this Association shall be adopted through Board Resolution, documented by way of written policy statement, and promulgated throughout the community. They may include provisions, which impose fines and/or other penalties, according to the determination of the Board, as to appropriateness, and necessity to accomplishing the missions, duties and obligations of the Association.

Penalties can also include (through due process mechanisms) causing a corrective action to be performed upon the dwelling of a member, which has been determined to be in a state of material non-compliance, and can include the assessment of the costs of such an action, back to the member.

Other potential penalties can include gaining a court order to enforce member compliance, including the removal of offending equipment, vehicles, debris, animals, etc.

COVENANT ENFORCEMENT RULE 1-1: This Rule “incorporates by reference” all of the Fines and other Penalty provisions Documented in the “KCCA Violation Fine Table” as part of the body of this Rule, and extends the effect of those Fines and Penalty Provisions to the various other relevant Rules as documented within the remainder of all Community Policy Statements and the Community Rules Summary, itself.

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This policy may be updated or amended as necessary, as the requirement to do so becomes apparent.

**The Board of Directors, KCCA, Inc.**