

**BOARD OF DIRECTORS  
PROSPERITY HEIGHTS HOMEOWNERS ASSOCIATION, INC.**

May 2013

**To: All Prosperity Heights Homeowners**

**Re: Proposed Revisions/ Amendments to Governing Documents**

We had a wonderful turnout for our Annual Meeting on April 2. Several neighborhood items and development projects were reviewed. These will be highlighted in an upcoming newsletter.

Revisions to our Governing Documents were presented and a wide-ranging discussion was held. As a result, we have prepared a Frequently Asked Questions (FAQ) sheet for those who have not yet provided their proxy votes on this important matter. The FAQ is enclosed in this mailing along with another copy of the proxy and declaration documents.

As noted previously, due to changes in laws passed by the General Assembly of Virginia and court decisions affecting case law over the years, the Board looked into amending provisions of our governing documents affecting the Prosperity Heights community. Our current documents were last revised in 2004, and after an extensive review by the Board and with the assistance of legal counsel, we are proposing and recommending changes to our governing documents.

The proposed changes are intended to reflect changes to state law and court jurisprudence and to continue the Association's goals of protecting our respective investments in our homes and property in Prosperity Heights.

Please review, sign and return these items using the envelope provided at your earliest.

If you have additional questions, please contact Prosperity Heights Board Member, Heath Weems, at [heath.weems@yahoo.com](mailto:heath.weems@yahoo.com).

Sincerely,

*Craig Dellorso*

Craig Dellorso, President

Enclosures

# **PROSPERITY HEIGHTS HOMEOWNERS ASSOCIATION, INC.**

## **Frequently Asked Questions (FAQ)**

**Q: Why do the by-laws need to be updated?**

A: Our governing documents were last updated in 2004. Since that time, court rulings and state laws have affected HOAs necessitating changes to our documents. In addition, the Board only has one means of enforcing our covenants and rules which is to take a homeowner to court – a costly and lengthy process. The proposed amendments provide the Board with tools to encourage compliance with our covenants and rules.

**Q: How do the rules of Fairfax County interface with the HOA by-laws?**

A: The HOA follows both Virginia and Fairfax County laws and regulations that provide the authority to establish an HOA as well as the basic rules they must follow. Given that, the HOA was established for the benefit of the overall community – homeowners in Prosperity Heights. Our covenants, by-laws and governing documents were established by the community for the purposes of helping to maintain the overall appearance and upkeep of the community which helps to promote property values. The HOA also collects dues for the upkeep of common areas, and other services that benefit Prosperity Heights such as trash collection.

**Q: What fines can the HOA impose? Are there restrictions on what kind of fines/fees can be levied? Are there limits to what the HOA can do?**

A. The HOA is governed by Virginia and Fairfax County law which allows groups of homeowners to form HOAs for the betterment of their community. The ability to levy fines, limits on their amounts, and the right to due process, etc. are regulated by state and county law. The HOA does not super cede those laws.

As the HOA falls under the jurisdiction of state and county law, the responsibilities of the HOA and homeowners are implied and not explicitly delineated in the HOA governing documents. If the HOA were to cite statute and/or code, any changes by the state legislature or county would necessitate amending the HOA bylaws which is not very feasible. Information on the Code of Virginia and Code of Fairfax County is available at <http://www.fairfaxcounty.gov/consumer/codes.htm> or by calling the Fairfax County Consumer Affairs Branch at 703-222-8435, TTY 711.

**Q: Why should I vote to approve the proposed amendments?**

A: There are two primary reasons: 1) to bring our covenants, by-laws and governing documents up to date to reflect changes in court rulings and state and county law changes; 2) to provide the HOA with a more rational system to promote compliance with community covenants and by-laws, which ultimately helps to maintain the overall community and promote our property values.

**Q: What signatures are necessary on the forms?**

A: Only one homeowner must sign the forms. However, **the forms must be signed in two places**: the proxy form (page 4) and the Declaration Ratification form (page 5). Anyone may serve as a witness on the proxy form. The proxy form is the homeowners vote on the proposed changes and the Declaration Ratification form is needed to file with the County.

**Q: Does the signature need to be notarized?**

A: No. Only a witness signature is required on the proxy form. Anyone, except the signer, may witness the signature.

**Q: How many signatures are required to approve the changes?**

A: 2/3 of current homeowners who are in good standing (i.e., no back dues owed) must vote in the affirmative to adopt the changes.

**Q: Will the Board be doing walk-around inspections on homeowners' properties to look for violations?**

A: No. The Board does not intend to do inspections. Generally, the Board responds to complaints received from neighbors or community members.

**Q: Please clarify Section 6.2 about the HOA Board's entering and inspecting for violations.**

A: The governing documents do not create additional rights or law for the HOA. The HOA is bound by the laws and code of both Virginia and Fairfax County, which are incorporated in the HOA covenant by implied reference and not repeated. (Reference the Virginia and Fairfax County laws and code, including definitions for terms such as 'property' and 'due process.') To clarify Section 6.2, the HOA covenant changes allow the Board to step onto a property to look for a reported HOA violation but does not permit entry into a home. For example, the Board could walk in the yard around a home to verify a reported complaint, given that the violation would not be visible from the street, such as a backyard addition.

**Q: What happens if an HOA violation is reported?**

A: In general:

- The board will make a first attempt to contact the homeowner(s) to notify them of a reported complaint and/or violation and ask the issue to be resolved within a reasonable time.
- If the homeowner(s) continues to be non-compliant, the Board issues a certified notice of a hearing and the possibility of the penalty of a fine. The homeowner(s) have the right to appear before the Board to review the violation and explain the reasons why a violation may not exist or what steps will be taken to correct violations. After the hearing notice is issued, the Board may assess a fine or penalty, usually in the form of monetary sanctions as set by Virginia Code. The fine process and amount is determined by state law.

**Q: What rights do I have as a homeowner?**

A: Homeowner(s) have basic rights under Virginia law that are not included in our covenants, by-laws or governing documents as it is not necessary for the HOA to duplicate state statute and regulation. Those rights include the right to due process and allowing the homeowner(s) the ability to go before the Board to review a proposed violation.

**Q: If a violator is taken to court, will the judge rule in favor of the HOA?**

A: The court evaluates each case individually and on the merits of the case. No one can predict with certainty how the court will decide.

**Q: Will enforcement cause an increase in homeowner dues?**

A: No, not likely. The Board has the right to recover expenses incurred due to violations of the covenants and by-laws, including recovering attorney fees.

**Q: Why do the documents not spell out a homeowner(s)' rights or due process rights?**

A: The HOA must comply with state and county laws and regulations. As such, inquiries about state or county law may be found through legal or legislative resources. In addition, the HOA does not want to get into the practice of incorporating specific statutes and regulations into our documents as every change by the state or county would require going through our amendment process.

**MEDcottages – Definition:**

**Q: What is a MEDcottage?**

A: It is a portable, long-term care, self-contained housing unit option for seniors. See [www.medcottage.com](http://www.medcottage.com).

**Q: Why are we addressing MEDcottages?**

A: Fairfax County allows MEDcottages to be used on a property. The proposed amendments provide the HOA with the ability to set a time limit on their use.