

The Malvern Club, Inc.
PROCEDURES RELATIVE TO POA PRIVACY AND ACCESS TO RECORDS

POLICY RESOLUTION NO. 004 (2012-09-13)

Purpose: to establish rules that clarify the covenant related to the Property Owner's Act (POA) Privacy and access to records so that the Board of Directors and homeowners can be guided by a consistent policy.

Authorization: Virginia Code, Section 55-510, provides for the access to records for the members, and requires that a reasonable fee schedule be adopted in advance of any assessment of copy and review charges and expenses to members requesting a review of the Association records.

NOW, THEREFORE, BE IT RESOLVED that the Board adopts the following rules pertaining to meetings of the Board and of the membership, the Privacy Policy and Access to Records policy:

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I. CONFIDENTIALITY

A. Board Members and Committee Members shall respect the confidentiality of information exchanged in executive sessions or which is otherwise privileged under operative laws, and Board policy. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance personal, financial or other private interests. The same applies, but is not limited, to any written communications from legal counsel denoted as a confidential document. Board Members and Committee Members should not forward email communications from Legal Counsel to others without the express consent of Legal Counsel of the Board. Board members shall not disclose confidential information under any circumstances to any person not on the Board without the express consent of a majority of the Board of Directors voting at a duly convened meeting.

B. For the purpose of this Resolution, the term "Confidential Information" shall mean any information related to:

1. communications, including by email or text message with legal counsel or professional consultants,
2. pending or probable litigation,
3. pending matters involving formal proceedings for enforcement of the Association instruments or rules or regulations of the Association,
4. pending negotiations for vendor or legal transactions involving the Association and agreements containing confidentiality requirements,
5. employment records or personnel matters,
6. a Member's assessment obligations to the Association, or
7. matters of which there would be in violation of Federal or State law.

C. Confidential Information shall not be deemed to include information:

1. that at the time of disclosure is available to the general public through public records or records of the Association that the Association must make available to the members for inspection or copy under State law, or
2. that an administrative agency or court of competent jurisdiction orders to be disclosed, provided however, that upon receipt of any order, subpoena, or summons of any kind. Before providing the information or document requested, the Board member receiving such request shall give the entire Board immediate notice thereof in order to allow the Board an opportunity to protect its confidential information. The Board shall provide all necessary cooperation for this purpose.

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D. Board members shall consult with the President before making any disclosure to any third party which might arguably release any confidential information covered by this Resolution, as that term is defined above.

E. All Confidential Information is the property of the Association. Board and Committee Members shall keep in strict confidence any and all information, documentation, records and devices which contain Confidential Information, and, upon the expiration of the Board member's term, shall return all Confidential Information in their possession to the Association and shall keep confidential all non-tangible Confidential Information.

F. No private financial information, information deemed confidential, or non-public personal information, personnel matters relating to specific, identified persons or a person's medical records will be shared with members, an individual Director or with Committee Members. A member's private financial information or non-public personal information will be shared with the Board of Directors, as needed to perform Board actions. The Board or its designated Agent shall restrict access to member's financial data in accordance with their internal policies, and ensure that an individual's financial information is not accessed during an inspection of the Association records.

G. Redaction of private financial information will be the responsibility of the Board or its designated Agent when electronic records or documents are transmitted in an electronic format.

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II. MEMBER AND DIRECTOR ACCESS TO RECORDS OF THE ASSOCIATION

Member access to Association records shall be in accordance with the following rules:

A. All records inspections shall take place at the office of the Board of Directors of the Association to ensure security of the records being examined, unless other sites and times are agreed to by the parties.

B. This right of examination shall exist without reference to the duration of membership and may be exercised

1. only during reasonable business hours or at a mutually convenient time and location and
2. upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the Association requested to be inspected.

C. Books and records kept by or on behalf of the Association shall be available for examination by a member in good standing or his authorized agent including but not limited to:

1. The Association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation minutes of any meeting of the Board of Directors, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or Board of Directors without a meeting, and
2. Accounting records of the corporation; and
3. Aggregate salary information of all association employees, if any.

D. The Association shall furnish its members annual financial statements prepared using generally accepted accounting principles, which may be consolidated or combined statements of the Association that include a balance sheet as of the end of the fiscal year, and an income statement for that year, on an annual basis.

E. No member that is greater than 60 day delinquent in the payment of any assessments, monetary sanctions or charges to the association shall be permitted to exercise the right to review Association documents.

F. No member is permitted to review documents that contain proprietary information, information that contains, or is responsive to,

1. financial information of a Member;
2. Individual Member or Lot files, other than those of the requesting lot owner, including any individual Member's files kept by or on behalf of the Association;
3. Contracts, leases, and other commercial transactions to purchase or provide goods or services to the Association, currently in or under negotiation, or which a vendor specifically identifies as proprietary in nature and indicates it is not to be distributed or copied;
4. matters which concern pending or probable litigation;

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5. communications with legal counsel;
6. and/ or all material in reports compiled for or on behalf of the association or the Board by its Agents or committees for consideration by the Board in executive sessions (the "Protected Information").

G. No member shall be permitted to have unfettered access to the records or to independently review Association records without direct observation and if needed, supervision by a member of Association's Board of Directors while the document review is taking place.

H. Members may be required by the Board to pay a charge, and prior to the providing of copies of any books and records to be a member in good standing under this section.

I. The Association adopts the attached fee schedule (Exhibit A) for copies and hourly charges for the review and duplication of association records.

J. The Association may impose and shall collect a charge, reflecting the reasonable costs of copies and reasonable labor charges to pull any requested records, not to exceed the actual costs thereof incurred by the Association.

K. Acting on its own or through a designated agent, the Association shall prepare and keep, for a minimum of one (1) year, detailed books and records of receipts and expenditures affecting the operation and administration of the Association. With respect to all books, records and/or files relating to matters other than expenditures, the Association shall keep those books and records for such reasonable time periods as determined by the Board of Directors.

L. Subject to certain exceptions set forth below, members shall have the right to examine and copy these books and records, provided that their membership is in Good Standing. Good Standing shall be defined to mean that a member is current in the payment of assessments and any other financial obligation to the Association and compliant with all other responsibilities of membership, including, but not limited to, maintenance of his or her Lot in a condition that does not violate any term or provision of the Governing Documents.

M. In order to exercise the rights described herein, members must complete the attached form, Exhibit B, and file it with the Association's Managing Agent, or other duly appointed representative. After receipt of a filing, the Association's representative shall have the authority to review the form and make determinations as to its completeness and satisfaction of all requirements necessary to allow the Association to act upon the filing. If a form is not complete, the Association shall notify the member of the deficiency, required corrective action, and that no records shall be provided or made available until such corrective action is taken.

N. Upon receipt of a completed form and within a reasonable period of time, the Association shall provide the member with the cost schedule attached hereto as Exhibit A, as well as an estimate on the costs associated with responding to the request. An estimate may include, but not be limited to, the costs of locating, duplicating, and supplying the records, which includes the cost of materials and labor. Prior to the Association performing any work related to the request, members must pay the estimated charges in advance. Upon receipt of cash payment (or clearance of a personal check), the Association shall make arrangements for a meeting at a mutually convenient time to provide the member with copies of the requested records within five (5) days of receipt of the payment.

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O. Whenever a member makes a written request to examine original records, the Association shall have a member of the Board of Directors meet with the member and serve as a custodian of the records for the protection of the documents. The Association will include the cost of this service in the estimate and may establish reasonable limitations on how long such meetings may last.

P. After the rendering of services requested, the Association shall compare the estimate with the actual costs incurred by the Association as set forth in the cost schedule. If the amount paid by the member exceeds the actual costs, the Association shall promptly refund the difference to the member. If the actual costs exceed the estimate, the Association shall notify the member and the member shall be obligated to pay the difference. The Association may withhold additional services and/or copies until it receives payment.

III. COST AND CHARGES

A. The Board of Directors hereby incorporates and adopts as the fees and cost of reproduction of documents, the attached costs and fee schedule of copy charges (Exhibit A) to be paid to the Association. The cost and fee schedule will be reviewed annually at the time of the annual budget preparation.

B. Members requesting an inspection of Association records shall be required to pay the reasonable labor charges when expected charges exceed one hour production time to pull Association records for the requested inspection.

C. Where members are to be billed labor charges and cost for copying of documents, members will be charged fees in accordance with the fees set forth in the attached document.

D. Prior to any document inspection, review or production, members will be provided with the cost schedule by the Board.

E. Members can request copies of specified documents (unless protected information pursuant to this resolution, law or statute), and shall be charged reasonable labor charges for the copying and production of the documents in place of the physical inspection.

F. Reasonable labor cost shall be assessed and paid to the Association within fifteen days of the start date of any physical document inspection after Owner is provided the estimated amount of charges.

1. Members shall pay all postage and handling costs of any mailed document copies.
2. Failure to pay for copies and labor charges incurred will result in a charge to the member's assessment account in the amount of any unpaid charges.

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IV. NOMINAL REQUEST

If the Association concludes that a request submitted by a member involves a nominal amount of time and cost to the Association, it may waive any of the above requirements. For purposes of this Resolution, “nominal requests” shall include requests for copies of:

- A. Approved minutes or highlights of the most recent meeting of the Board of Directors or Membership Meeting;
- B. Approved minutes or highlights of the most recent meeting of any Committee;
- C. The Association’s current annual operating budget; and
- D. The file of the requesting member.

V. AMENDMENTS TO RESOLUTION

The Board shall have the right to amend the cost schedule attached hereto as Exhibit A without having to amend the entire resolution.

I hereby certify that this Policy Resolution was adopted by the Board of Directors on this 13th day of September, 2012.

The Malvern Club, Inc.

By:

_____/s/_____

Roberta Jalbert, President

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Exhibit A

THE MALVERN CLUB, INC.

RECORDS COST SCHEDULE

- Hourly rate for copying of materials (up to 2 hours): \$25.00
- For each hour over 2 hours: \$25 .00 per hour
- Hourly rate for serving as administrative custodian of records (up to 2 hours): \$25.00 per hour
- For each hour over 2 hours: \$25 .00 per hour
- The charges shall be billed in 15 minute increments.
- Copies shall be billed at a rate of \$0.20 per page for B&W copies and \$ 1.00 per page for color copies

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Exhibit B

THE MALVERN CLUB, INC.
RECORD REQUEST FORM

You may use this form to request copies of or inspect the official records of The Malvern Club, Inc. (“Association”). In order to properly submit a request, please complete, sign and date this form and deliver via United States Postal Service Mail or hand-delivery to the Association’s common interest community manager at the address below:

The Malvern Club, Inc.
c/o President
905 Malvern Dr.
Madison, Virginia, 22727

Name of Requesting Party: _____

Mailing Address: _____

Address of Property located within the Association if different than mailing address:

Phone: (Home) _____ **(Work)** _____

(Mobile) _____ **(Email)** _____

Please describe the records you wish to copy and/or inspect (include all relevant, dates, names or other identifying information):

Please describe the purpose of your request:

Please check applicable box(es):

I am requesting to receive copies of the above-referenced records.

I am requesting to conduct an in-person inspection of the above-referenced records.

I am requesting to inspect such records on _____ at _____. (The Association will provide you confirmation of the appropriate time, date and location for the inspection)

➤ Please note, not all Association records are available for review and inspection, per Section 55510(C) of the Virginia Property Owners’ Association Act. You will be notified if your request contains records subject to withholding. You will also be notified of the estimated cost, if any, related to your request and such charges must be paid in advance of the Association fulfilling your request.

➤ Be advised, the Association is only obligated to respond to record requests from those members of the Association who are in “good standing.” Good Standing shall be defined to mean that a member is current in the payment of assessments and any other financial obligation to the Association and compliant with all other responsibilities of membership, including, but not limited to, maintenance of his or her Lot in a condition that does not violate any term or provision of the Governing Documents.

Owners must date and sign this form. Anonymous or requests from tenants will not be accepted.

Signature: _____ Date: _____

Received by: _____ Date: _____

RESOLUTION ACTION RECORD

Resolution Type: Policy No. 004 (2012-09-13)

Pertaining to: Policy Resolution-Privacy & Access to Record Policy.

Duly adopted at a meeting of the Board of Directors held September 13, 2012.

MOTION BY: Donna Phillips

SECONDED BY: Wallace Harvey

OFFICER	TITLE	YES	NO	ABSTAIN	ABSENT
Roberta Jalbert	President	x			
Randell Allen	1 st Vice President	x			
Joseph Graham	2 nd Vice-President	x			
Donna Phillips	Treasurer	x			
Edward Johnson	Secretary			x	
Wallace Harvey	Member At Large	x			
Paul Hankla	Member At Large	x			

ATTEST: /s/ Edward Johnson, Secretary September 13, 2012 Date