

# **GARLINGTON ESTATE RULES**

**MADE BY THE BOARD IN TERMS OF CLAUSE 73 OF THE MEMORANDUM OF INCORPORATION ON ###AND RATIFIED BY MEMBERS IN TERMS OF SECTION 15(3) OF THE COMPANIES ACT 2008 ON ###**

## **1. INTERPRETATION**

1.1. In these Rules, unless the context otherwise requires, the following words and phrases have the meanings assigned to them hereunder –

1.1.1. “the Association” means the Garlington Homeowners Association NPC registration number 2006/038584/08;

1.1.2. “Board” means the board of directors of the Association;

1.1.3. “Common Property” means those parts of the Estate that are intended for the shared use of all Owners and Residents and includes all roads, road reserves and sidewalks, open fields, parks, squares, the promenade and similar areas;

1.1.4. “Estate” means Garlington Estate, Seeking Drive, Hilton, 3245 KZN;

1.1.5. “Estate Manager” means the person appointed to that office by the Board;

1.1.6. “General Manager” means the person appointed to that office by the Board

1.1.7. “Invitee” means, in relation to any Owner, Tenant and/or Resident, their respective guests, visitors, contractors and every other person entering upon the estate by invitation or at the instance of such Owner, Tenant, and/or Resident;

1.1.8. “Law” means any law of general application and includes statutes, regulations, ordinances, by-laws, the provisions of any applicable town-planning scheme, and the common law;

1.1.9. “MOI” means the Memorandum of Incorporation” of the Association;

1.1.10. “Owner” means the registered owner of Property and a “member” as defined in the MOI;

1.1.11. “Property” includes both freehold land and sectional title units forming part of the Estate, whether developed or undeveloped;

- 1.1.12. "Resident" means a person lawfully residing on the Estate;
  - 1.1.13. "the/these Rules" means the rules as contained in this document, as amended from time to time;
  - 1.1.14. "Tenant" means a person occupying a Property as lessee of an Owner, and includes sub-tenants;
  - 1.1.15. "Vehicle" means any motor car, light delivery vehicle, truck and heavy motor vehicle, motor cycle, motorised scooter, quad-bike, motorised tricycle, golf cart, caravan, trailer, and includes any similar means of transportation or conveyance.
- 1.2. Words importing the singular are deemed to include the plural and vice versa.
  - 1.3. Clause headings are for reference purposes only and shall not be taken into account for purposes of interpreting these Rules.
  - 1.4. The use of the words "include" or "including" means to include without limitation.

## **2. PURPOSE**

- 2.1. These Rules are intended to regulate and promote the harmonious co-existence of all Residents.
- 2.2. It is a fundamental principle of these Rules that Residents must treat one another in a courteous and respectful manner and must have due regard to the privacy, dignity and reasonable requirements of others. Residents must take all reasonable measures to avoid inconvenience and disturbance to others.
- 2.3. It is not the function of the Association to resolve disputes between Residents. Without detracting from the duty of the Association to enforce these Rules in accordance with 22, Residents should endeavour to resolve disputes with neighbours and others in a courteous and amicable manner.

## **3. LEGAL MATTERS**

- 3.1. These Rules are binding on all Owners and Residents including their respective Invitees.
- 3.2. It is the responsibility of every Owner to ensure that the Owner's Tenants and other Invitees are familiar with the provisions of these Rules and that these Rules are adhered to by them.
- 3.3. No Owner, Resident or Invitee shall be entitled to rely on the non-compliance with a Rule by any other person or the fact that any Rule has

not been enforced or applied against any other person as a defence for non-compliance with these Rules.

- 3.4. These Rules may be amended by the Board from time to time in accordance with the provisions of the MOI and the provisions of the Companies Act 2008.
- 3.5. Any authority, approval or consent required to be given by the Board, the Estate manager and/or the General Manager shall be given by them in their sole and absolute discretion.
- 3.6. The Board shall be entitled to delegate to the Estate Manager and/or the General Manager the right to give any authority, approval or consent on its behalf.
- 3.7. If there is any conflict between the provisions of these Rules and the provisions of the MOI then the provisions of the MOI shall apply.

#### **4. LIMITATION OF LIABILITY/WAIVER OF CLAIMS**

Neither the Association nor any of its members, directors, employees, servants and other representatives (“representatives”) shall be liable to any Owner or Resident, including their respective Invitees and other persons for any death, injury, loss or damage suffered on or about the Estate and/or any Common Property howsoever arising and whether or not arising from the negligence or other wrongful act of the Association and/or any of its representatives, and every Owner and Resident waive all such claims as they may now have or in the future acquire against the Association and/or its representatives.

#### **5. BUILDING MATTERS**

- 5.1. No building or structure may be erected, altered or added to other than in accordance with plans approved by the Garlington Architectural Review Committee (“GARC”) established in terms of the MOI.
- 5.2. Owners and Residents must comply with the requirements of GARC in all matters relating to the construction of improvements.
- 5.3. The Estate Manager shall notify all Owners intending to build of the requirements of GARC and the Association regarding the construction of improvements.
- 5.4. The Estate Manager is entitled but not obliged to inspect Properties during construction to ensure that such requirements are adhered to. The failure by the Estate Manager to inspect any Property shall not be construed as a waiver of the right that such requirements be complied with.

- 5.5. None of the Association, GARC and/or the Estate Manager is responsible to supervise or control the quality of any improvements being constructed. Quality control is and remains the responsibility of the Owner concerned.
- 5.6. Construction activities may be undertaken only on such days and during such hours as may be stipulated by the Board from time to time, and no construction activities may be undertaken on Saturdays, Sundays, public holidays and customary builders holidays, unless the prior written consent of the General Manager has been obtained.

## **6. GENERAL CONDUCT RULES**

Without limitation by inference from any other Rule herein contained the following restrictions shall apply on the Estate-

- 6.1. No fireworks and/or firearms of any nature may be discharged;
- 6.2. Hunting and trapping of any nature are prohibited except with the prior written consent of the General Manager or the Estate Manager;
- 6.3. No unauthorised persons are permitted to enter upon building sites;
- 6.4. The number of persons permitted to permanently reside in a dwelling is limited to two persons per bedroom;
- 6.5. No person shall do anything that may reasonably interfere with the use and enjoyment of Common Property by others;
- 6.6. Littering is not permitted;
- 6.7. Camping is not permitted on the Estate. Organised braais and similar events are permitted on squares, the promenade and similar areas;
- 6.8. Except for braais permitted in terms of 6.7 open fires are not permitted;
- 6.9. Gardening on Common Property is permitted only with the written consent of the General Manager and in accordance with such guidelines as may be imposed by the landscaping committee. Flora forming part of Common Property may not be picked without the written consent of the General Manager or the Estate Manager;
- 6.10. The provisions of every Law, including any environmental management plan, shall be observed at all times;
- 6.11. In order to minimise light pollution at night, all outside lights must be turned off by 22h00 at night unless such lighting is reasonably required for purposes of outdoor activities and/or for purposes of providing reasonable lighting for persons returning home;

- 6.12. Where reasonably possible outside lights must have low wattage globes. Flood lights, other than movement activated flood lights required for security purposes with the consent of the General Manager, are prohibited;
- 6.13. No Resident may interfere with or give instructions to any employee or contractor of the Association in the performance of their duties.
- 6.14. Residents must ensure that objects that may reasonably be considered to be unsightly are not visible from Common Property and/or other Properties.
- 6.15. Washing, mats and other objects may not be draped over walls or fences and must not be visible from Common Property and/or other Properties.
- 6.16. Pamphlets and similar material may not be distributed on or about the Estate, including the entrances, without the prior written permission of the General Manager.
- 6.17. No door-to-door sales, canvassing or fund raising is permitted on the Estate, without the prior written permission of the General Manager.
- 6.18. No animals may be slaughtered on or about the Estate.
- 6.19. No flagpoles may be erected and no flags may be displayed.
- 6.20. No powered (except battery powered) model aeroplanes and/or model cars may be operated on any part of the Estate.

## **7. NOISE DISTURBANCE**

- 7.1. No noise shall be permitted before 7h00 on Mondays to Fridays and before 8h00 on Saturdays, Sundays and public holidays.
- 7.2. No noise shall be permitted after 22h00 from Sundays until Thursdays and after 24h00 on Fridays and Saturdays.
- 7.3. The sound of music, video and DVD players, TV's, and musical instruments shall be maintained at a level so as not to cause a disturbance to neighbouring Residents.
- 7.4. Power tools, lawn mowers, grass cutters, and other noisy equipment may not be operated before 10h00 or after 13h00 on Sundays, Christmas Day, New Years Day and Good Friday.

## **8. GENERATORS**

- 8.1. Generators are permitted but must be located and housed in such a manner as to minimise disturbance to others.
- 8.2. Every Law regarding the use and/or operation of generators and the storage of fuel must be adhered to.
- 8.3. No generator may be operated between the hours 22h00 and 6h00.
- 8.4. Except for construction purposes, generators may only be operated during power outages.

## **9. ROAD TRAFFIC**

- 9.1. Vehicles shall be operated with utmost care at all times. The Estate is a ‘child friendly’ estate and children, animals and birds shall at all times have the right of way.
- 9.2. Access to and egress from the Estate shall be limited to entrances and exits designated for that purpose.
- 9.3. The use of access devices is reserved for the use of Owners and Residents and members of their immediate families.
- 9.4. A speed limit of 40 kilometres per hour (or such lesser limit as may be imposed by the Board) shall apply on all roads.
- 9.5. No driving or parking of Vehicles is permitted on the promenade and/or on squares.
- 9.6. Parking is not permitted on any road reserves, sidewalks or public open space and other Common Property except in such areas as may be specifically designated by the Board for that purpose.
- 9.7. Vehicles that have been parked contrary to these Rules must be removed forthwith on request by any of the Association’s security personnel or other representatives.
- 9.8. Vehicles (other than those of the Association’s employees or other personnel) are restricted to designated roads and are not permitted on other Common Areas including open fields.
- 9.9. Caravans, boats, trailers and similar Vehicles must be stored in such a manner as not to cause a negative visual impact.
- 9.10. Only licensed drivers/riders are permitted to operate any Vehicle on or about the Estate. The provisions of this clause do not apply to battery-powered children’s mini-scooters (“mini-scooters”).

- 9.11. All road traffic rules and signs must be obeyed at all times.
- 9.12. Suitable protective headgear should at all times be worn by the rider (and every passenger, if applicable) of every motorcycle, quad-bike, tricycle, bicycle, scooter (whether or not motorised), skateboard, and every similar Vehicle or device. Reflective clothing should be worn after dusk.
- 9.13. The revving of engines and hooting must be restricted to the absolute minimum.
- 9.14. No repairs of Vehicles are permitted on Common Property.
- 9.15. Children are permitted to operate mini-scooters, but only if their parents have signed a written indemnity and waiver of claims (in such form as may be approved by the General Manager) in terms of which they waive all claims and indemnify the Association against any injury, loss or damage that may be suffered or caused by such child whilst riding the mini-scooter concerned.

**10. SPECIAL PROVISIONS RELATING TO MOTOR CYCLES, QUAD BIKES, GOLF CARTS AND SIMILAR VEHICLES**

- 10.1. Motorcycles, quad-bikes, and similar Vehicles may not be operated on the Estate without the prior written permission of the General Manager. Such permission may be withdrawn if such Vehicle is operated in an irresponsible manner or otherwise contrary to these Rules.
- 10.2. Motorcycles, quad-bikes and similar Vehicles may be used solely for purposes of commuting between the owner's residence and the closest entry/exit facilities to/from the Estate.
- 10.3. No motorcycle, quad-bike, golf cart or similar Vehicle may carry more than the number of persons than that which it is designed for.
- 10.4. Any claim arising from the use of an unlicensed or non-roadworthy Vehicle shall be the sole responsibility of the owner thereof who indemnifies the Association, its members, directors, employees and other representatives accordingly.

**11. PETS**

- 11.1. Domestic animals are limited to two dogs per Property. No dogs may be kept in any of the flats.
- 11.2. Cats are not permitted.
- 11.3. Pigeons, aviaries, wild animals, reptiles, livestock and fowl may not be kept except with the prior written permission of the Board.

- 11.4. Tenants may not keep any dogs or other pets.
- 11.5. Dogs must be kept in an enclosed area and may not stray onto Common Property and/or any other Property.
- 11.6. Dogs found unattended on Common Property may be removed from the Estate at the expense of the owner.
- 11.7. Dogs must be leashed and under control while on Common Property.
- 11.8. Dog excrement on Common Property must be removed immediately by the person in control of the dog concerned
- 11.9. Dogs must wear a tag reflecting the contact details of its owner. Dogs found without such tags may be treated a stray and be removed from the Estate.
- 11.10. Dogs must not be allowed to cause a nuisance or disturbance to neighbours or others. Without limiting the generality of the foregoing, dogs must be kept indoors between the hours 20h00 and 6h00.
- 11.11. Dogs which, in the discretion of the General Manager, constitute or create a continual or regular nuisance will be required to be removed from the Estate.
- 11.12. Notwithstanding the foregoing any animal that is currently lawfully on the Estate and/or for which amnesty has been granted in accordance with a general amnesty announced by the Board and/or for which written permission has previously been granted by the Board may be kept in accordance with the conditions of such amnesty or permission.

## **12. BUSINESS ACTIVITIES**

- 12.1. No business activities may be conducted on the Estate except to the extent permitted in terms of the applicable town-planning scheme and prior written consent has been granted by the Board.
- 12.2. No bed and breakfast facility, guesthouse or similar establishment may be operated without the prior written consent of the Board.
- 12.3. No advertising or similar material may be displayed on or about the Estate, without the prior written consent of the General Manager.
- 12.4. The use of the Association's mailing list for private commercial purposes is strictly prohibited. Such mailing lists may not be made available to others.



### **13. SWIMMING POOLS**

- 13.1. All swimming pools must be fenced and/or otherwise secured in accordance with the provisions of every applicable Law. Without limitation by inference from the foregoing, all swimming pools must be and remain fenced and/or otherwise secured in such manner as to ensure that they are not accessible to children who are not under direct and responsible adult supervision. If a Property is securely walled or fenced so as to prevent access from neighbouring Property, streets and/or Common Property then no additional fencing or securing of a swimming pool on the Property concerned will be required.
- 13.2. Water may not be discharged from a swimming pool onto Common Property without the prior written permission of the Estate Manager, and may not be discharged onto a neighbour's Property.
- 13.3. In order to ensure an adequate supply of water for the Estate, swimming pools may only be filled by prior arrangement with the Estate Manager.

### **14. SPORTS AND RECREATIONAL FACILITIES**

- 14.1. If a booking system is operated by the General Manager's office for the use of the Estate's sports facilities, Residents who have made prior bookings will enjoy preferential use of these facilities.
- 14.2. The Estate's sports facilities are available for use by Residents and their guests.
- 14.3. Sports and recreational facilities may be used solely for the purpose for which they are intended.
- 14.4. The use of sports facilities is at the sole risk of the user who waives all claims against the Association and indemnifies the Association for any loss, damage or injury sustained on or about such facilities.
- 14.5. Appropriate footwear must be worn on the tennis courts, and appropriate protective clothing or other gear must be worn at all times.
- 14.6. Persons using the driving range must take due care not to injure any cattle, wildlife, other animals and pedestrians all of which have the right of way.
- 14.7. All sporting and recreational facilities must be left in a clean, neat and tidy order and condition and free of litter.
- 14.8. Golf is prohibited on the Estate except on the driving range designated for that purpose.

## **15. ESTATE SECURITY**

- 15.1. Residents and their Invitees must at all times comply with such security measures as are put in place by the Association and must observe any instruction given to them by the Association's security personnel. Residents may not give any instructions to such personnel.
- 15.2. The verbal or other abuse of security and other personnel is strictly prohibited.
- 15.3. The use of private alarm systems is permitted subject to the following conditions -
  - 15.3.1. the alarm must not be audible from outside the dwelling concerned;
  - 15.3.2. the security company concerned must at all times comply with these Rules including traffic rules and any instructions given to them by the Association's security personnel;
  - 15.3.3. the Association's security personnel must be informed immediately of any security related incident;
  - 15.3.4. the alarm may be connected to the Estate alarm monitoring facility (if any) for which a reasonable charge may be levied.
- 15.4. None of the Association, its members, directors, employees, contractors and other representatives ("representatives") will be liable for any loss, damage or injury suffered by any resident and/or his Invitee arising from any breach of security howsoever caused and whether or not such breach is caused by the negligence or other wrongful act of the Association and/or its representatives.

## **16. ACCESS CONTROL**

- 16.1. Access control devices (limited to two devices per Property unless the General Manager otherwise agrees) are issued against payment of a prescribed fee for the sole use of Residents and their Invitees, subject to such conditions as the Board may from time to time impose.
- 16.2. Access control devices may be suspended or de-activated if a relevant Owner or Resident is in default of any obligation to the Association and/or any of the provisions of these Rules.
- 16.3. A person whose access control device has been suspended or de-activated will remain entitled to access to the Estate but will be required to sign in and out manually in the same manner as any other visitor.
- 16.4. The Association's security personnel will be entitled to deny any person access to the Estate on reasonable grounds.

- 16.5. Visitors to the Estate will not be allowed access to the Estate unless the host concerned has made prior arrangements with the security personnel or such host approves admission by way of a telephone call.
- 16.6. The General Manager must be informed immediately an access control device is lost.
- 16.7. Upon a person ceasing to be a Resident all access control devices issued to that person must be returned to the General Manager.

## **17. MAINTENANCE OF PROPERTY**

- 17.1. Owners are required to maintain their Properties (including the exterior of their houses, gardens, boundary walls and fences, kerbs and sidewalks) in a clean, neat and tidy order and condition to a standard commensurate with a prestigious residential estate. Buildings and structures must be repainted as and when the need arises.
- 17.2. The Association may at any time call upon an Owner to perform maintenance and/or repairs required to be done in terms of 17.1. If such maintenance and/or repairs are not done timeously the Association shall be entitled (but not obliged) to perform the required work and to claim the cost thereof from the Owner concerned.
- 17.3. Where a building or structure is to be repainted only colours approved by the Garlington Architectural Review Committee may be used.
- 17.4. Except for the ordinary discharge of storm water, no seepage, leakage, or discharge of water and/or any other matter is permitted onto Common Property (including sidewalks and roadways) and/or onto any adjoining Property.

## **18. REFUSE**

- 18.1. Residents must comply with such directions regarding the collection of refuse as may be given by the General Manager from time to time.
- 18.2. Without limiting the generality of 18.1 –
  - 18.2.1. all refuse must be kept in containers and out of sight from roads except when put out for collection;
  - 18.2.2. refuse bags may only be placed at designated collection points on the day of collection;
  - 18.2.3. where any refuse (including garden refuse) is of a size or nature that it will not be collected by the Association's personnel or refuse

collection services then the removal of such refuse from the Estate is the responsibility of the Resident concerned;

- 18.2.4. garden refuse may be left at the designated garden refuse area, but must be removed from refuse bags. Only biodegradable refuse may be left in this area.

## **19. SALES/RENTAL**

- 19.1. Only estate agents who have been accredited by the Association may be used to market (whether for sale or for rent) Properties.
- 19.2. The provisions of 19.1 do not prohibit an Owner from marketing a Property as principal, but subject always to the provisions of these Rules.
- 19.3. No “show houses”, “open days” or similar events may be held other than with the prior written consent of the Board. All viewing of Properties must be done by prior appointment and subject always to conditions relating to the admission of visitors.
- 19.4. Prospective purchasers and/or Tenants may not be permitted to travel or wander about the Estate unless accompanied by the Owner or agent concerned.
- 19.5. Every lease of a Property must contain –
  - 19.5.1. a copy of these Rules;
  - 19.5.2. an acknowledgment by the Tenant concerned that the Tenant knows and understands the contents of these Rules and agrees to be bound by them;
  - 19.5.3. an express prohibition against the keeping of pets including dogs and cats;
- 19.6. The General Manager must be informed within two business days of the conclusion of the lease together with –
  - 19.6.1. a copy of the lease complying with the provisions of 19.5;
  - 19.6.2. details of the duration of the lease and the Property leased;
  - 19.6.3. details regarding the Tenant concerned as the General Manager may require, including the Tenant’s full names, address, telephone numbers and e-mail address and other contact details.
- 19.7. Owners may make use of the Association’s website for purposes of marketing their Properties subject to the payment of the prescribed fee and such further conditions as the General Manager may determine.

**20. LANDSCAPING**

All landscaping of gardens must be done in accordance with such guidelines and restrictions as may be imposed by the Board from time to time.

**21. WATER RESTRICTIONS**

Owners and Residents must adhere to such water restrictions, including restrictions regarding the installation and use of private boreholes, as may be imposed by the Board from time to time.

**22. SEPTIC TANKS**

Owners are responsible for the maintenance and upkeep of their septic tanks in a good and proper working order and condition. Septic tanks must be purged on a regular basis as and when necessary.

**23. ENFORCEMENT AND PENALTIES**

- 23.1. Although every endeavour shall be made to ensure that these Rules are applied in a fair, reasonable and consistent manner, they shall be enforced by the Association at its discretion and in such manner as it may deem appropriate in the circumstances.
- 23.2. The Association shall be entitled to impose reasonable fines and penalties for any non-compliance with any of the provisions of these Rules. Any such fine or penalty will be debited to the relevant Owner's levy account.
- 23.3. Owners are responsible for the payment of any fine or penalty levied against their Tenants or other Invitees.
- 23.4. If any event occurs which constitutes an on-going offence or breach of these Rules then that event shall be deemed to constitute a separate and severable offence or breach for every twenty-four hours (or part thereof) that it endures.
- 23.5. An Owner who disputes liability for a fine or penalty imposed, must give Written notice thereof to the General Manager within 14 days of becoming aware of the imposition of such fine or penalty, or within 14 days of the date on which such Owner ought reasonably to have become aware thereof, whichever date is the earlier. Failing such written notice the Owner concerned shall be deemed to have admitted liability for such fine or penalty.
- 23.6. Upon receipt of any notice contemplated in 22.5 the General Manager must as soon as reasonably possible refer the matter to the chairman of the Association who shall cause the objection to be considered, and the

relevant Owner to be heard, as soon as possible thereafter by a panel of not less than two directors or other suitably qualified independent persons.

- 23.7. Any determination by a panel contemplated in 22.6 shall be final and binding unless it is appealed against and referred for adjudication in terms of 23.

#### **24. DISPUTE RESOLUTION**

- 24.1. Any dispute arising from or in terms of these Rules (including any appeal in terms of 22.6) shall be finally and exclusively determined by an adjudicator in accordance with the provisions of this clause 23.

- 24.2. The adjudicator shall be a practising or retired attorney or advocate nominated by the chairman of the Association.

- 24.3. In determining the dispute the adjudicator shall –

- 24.3.1. not be bound by the Arbitration Act 42 of 1965 or any similar or substituting legislation;

- 24.3.2. be entitled to determine the process of the proceedings including how, where, when and by whom submissions are to be made;

- 24.3.3. be entitled to make such award as to payment of costs as the adjudicator deems fit.

- 24.4. It is the intention that such dispute shall be determined as informally, expeditiously, and in the most cost effective manner reasonably possible in the circumstances.

- 24.5. Any award of the Adjudicator shall be final and binding and shall not be subject to appeal.

- 24.6. The provisions of this clause 23 do not preclude a person from approaching a Court of competent jurisdiction for interim and/or urgent relief.