

ILUKA HOMEOWNERS' ASSOCIATION Inc.

P O Box 119 Joondalup WA 6919

Email: ihoa@iluka.org.au

Policy

Constitution Management: Rules - Annexure "B"

Version: 1.1

17 January 2013

1.0 Scope.

This policy applies to all members of the Iluka Homeowners' Association (IHOA). Every person who owns residential property located in the suburb of Iluka is a member of the Iluka Homeowners' Association. Every property in the suburb of Iluka is subject to the *Rules - Annexure "B"* described in this policy.

Upon purchase of a property in the suburb of Iluka, postcode 6028, in the state of Western Australia, hereafter "Iluka", the purchaser agrees to be and remain a member of the Iluka Homeowners' Association, for as long as the purchaser is the owner of the property in Iluka.

The Association was formed under a constitution as amended from time to time. A copy of the Constitution for the IHOA may be downloaded from the IHOA website or a copy will be provided upon request.

In accordance with rules 19(2) and 19(3) of the Constitution of the Iluka Homeowners' Association, the *Rules - Annexure "B"* attached therein form part of the rules of the IHOA and bind all residents of Iluka.

1.1 Rented Properties.

Property owners who rent their properties have a duty to inform their tenants of their obligations under the Iluka *Rules - Annexure "B"* and ensure that tenants comply with the Iluka *Rules - Annexure "B"*. The duty to comply with the Iluka *Rules - Annexure "B"* shall be a contractual obligation implied or otherwise in all rental agreements between the Iluka property owner and their tenants.

2.0 Context.

Each and every Iluka Homeowner takes benefits from the Iluka *Rules - Annexure "B"* and accordingly each and every Homeowner has a duty to abide by the Iluka *Rules - Annexure "B"*. Benefits include; superior property values, enhanced aesthetic environment, and a cordial community spirit. Duties of owners and residents include; abiding by the Iluka *Rules - Annexure "B"* and advising visitors to abide by the Iluka *Rules - Annexure "B"*.

The *Rules - Annexure "B"* of the Iluka Homeowners' Association shall not be enforced in an arbitrary manner. Any action required by this policy shall be subject to and undertaken in accordance with; Commonwealth Law, State Law, the IHOA constitution and this policy. No resident shall be the subject of an action by the IHOA Association, or any other resident, unless there is a breach of the Iluka *Rules - Annexure "B"* or the constitution of the Iluka Homeowners' Association.

All residents are equal before the Iluka Homeowners' Association. All residents have equal rights and all residents are subject to the Iluka *Rules - Annexure "B"* and the constitution without favouritism. The Iluka *Rules - Annexure "B"* and the constitution of the IHOA shall be applied to all residents equally. No resident shall be discriminated against in any way.

This policy is intended to enhance the community spirit in Iluka, to encourage residents to "do the right thing" and to honour their obligations. Predominantly it is only a small minority of residents, who blatantly breach the *Rules - Annexure "B"* for reasons of self-interest, poor community spirit and general obstinacy.

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3.0 Policy Statements

Any statement in this policy shall not limit the effect of the Iluka *Rules - Annexure "B"* or the constitution of IHOA. Where there is a conflict in interpretation, the Iluka *Rules - Annexure "B"* take precedent over this policy.

4.0 Decisions and actions of the Association.

All decisions and actions taken by the Committee of the Iluka Homeowners' Association are decisions and actions taken by the Iluka Homeowners' Association as a whole, by all residents in the interests of all residents. Where residents choose not to attend Committee Meetings and not to participate in the running of the Association, it is deemed that they vote in accordance with the majority of the Committee vote.

The Association's decision is final and cannot be objected after a vote is taken.

5.0 The Process

Breaches of *Rules - Annexure "B"* will be managed in accordance with the process provided in this section.

5.1 Alleged breach of *Rules - Annexure "B"* received by the Association.

All alleged breaches of *Rules - Annexure "B"* set out in the rules of the Association must be submitted to the Association in writing.

The allegation must:

1. Clearly state the name and address of the person making the allegation, "The Plaintiff". Anonymous allegations cannot be entertained and will be ignored.
2. Contain a statement that the allegation is true and not mischievous, or vexatious to the best of the plaintiff's knowledge.
3. Clearly state the address at which the alleged breach of the *Rules - Annexure "B"* occurs.
4. Clearly state which *Rules - Annexure "B"* listed in Annexure "B" of the IHOA Constitution they believe have been breached.
5. Contain a statement that they **have** or **have not** attempted to approach the property owner at which the alleged breach occurs. If they **have** approached the property owner at which the alleged breach occurs, provide what outcomes resulted from that approach.
6. Be signed and dated.

Where an allegation does not comply with the aforementioned criteria, the Association *Annexure "B"* Sub-committee shall inform the plaintiff and not proceed with the allegations any further.

5.2 Verification of breach.

Upon receipt of an allegation of a breach of *Rules - Annexure "B"* in accordance with section 1 above, the Association *Annexure "B"* Sub-committee will verify that the allegation has merit.

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5.3 First Letter to alleged offender.

Where the IHOA *Annexure "B"* Sub-committee believes that an allegation of breach of *Rules - Annexure "B"* has merit, the Association shall send a "First Letter" to the property owner informing them that the IHOA believes that they are in breach of the *Rules - Annexure "B"* of the Association. Further the first letter shall respectfully request that the breach of *Rules - Annexure "B"* be rectified. The "First Letter" template is in Attachment A of this policy.

5.4 Reply to the plaintiff.

The IHOA *Annexure "B"* Sub-committee shall write to the plaintiff informing them of the progress of their allegation.

5.5 Compliance time.

The IHOA *Annexure "B"* Sub-committee shall allow at least 30 days for the alleged breach offender to consider their position and take any advice they see fit. The IHOA *Annexure "B"* Sub-committee shall entertain any reasonable request for time to comply with the Association's *Rules - Annexure "B"*.

5.6 Verify compliance.

Where an alleged offender claims that the breach has been rectified, the IHOA *Annexure "B"* Sub-committee shall verify that the property is then compliant with the IHOA Constitution.

5.7 Response to plaintiff.

The IHOA *Annexure "B"* Sub-committee shall write to the plaintiff informing them of the progress of their allegation.

5.8 Decision by the Association to join the plaintiff.

Where an allegation of breach of *Rules - Annexure "B"* cannot be resolved by the preceding actions the IHOA *Annexure "B"* Sub-committee must advise the plaintiff that the IHOA can only proceed in one of the following:

1. Do nothing. If the plaintiff wants to proceed they need to engage a lawyer of their choosing and the IHOA has no further part to play in the matter.
2. Impose a fine(s) on the property in accordance with this policy and the IHOA has no further part to play in the matter.
3. Join the plaintiff in the matter and proceed to engage a lawyer to have the matter dealt with in court.

The above decision must be based on the Iluka community interest and not on the interest of individual homeowner's. The Iluka Homeowners' Association can only use resources of the Association if it can be shown that there is a benefit to the community of Iluka as a whole. Where a matter only affects a small number of properties then it is a matter for those property owners to enforce their rights at their own expense.

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5.9 Second letter from Lawyer in the event of the IHOA joining the plaintiff.

In the event that the Association deems that a "Second Letter" is warranted, the Association may direct the IHOA preferred lawyer to send such letter.

5.9.1 Cost of letter from lawyer

The cost of the Second Letter is borne by the plaintiff. The Association may at its discretion, pay part or the whole of the legal costs for the Second Letter.

5.9.2 Discretion to impose fine(s).

Where the Association believes that it is in the community interest it may exercise its discretion to impose a fine(s) on the property.

5.10 Verification of non compliance.

Before proceeding to imposing a fine(s), the Association must verify that the alleged breach is still in existent.

5.11 Impose Fine(s).

In accordance with rule 3(h) of the IHOA Constitution the Association may assist to impose a fine(s) on the property. All fine(s) must be paid prior to any caveat being lifted for the purposes of transfer of land.

5.12 Communication Dishes, Television and Radio Antenna.

As cable TV services are not available in Iluka, a temporary general waiver may be voted on at AGMs. A temporary general waiver is in place to allow small Foxtel dishes but in the event that any cable TV provider installs a service, the waiver on communication dishes will be automatically rescinded.

Television and radio antenna and satellite dishes are not permitted unless contained wholly within the residence or within the roof space between the ceilings of the residence and to the underside of the roof of the residence.

5.13 Parking

In the case of "commercial vehicles" as defined by this policy; such commercial vehicles are not to be parked on the land or on the road or on any other land near or next to the land, anywhere in the suburb of Iluka unless parked on a temporary basis for a commercial activity in accordance with the Local laws of the City of Joondalup. Commercial vehicles include but not limited to trucks, utilities, caravans, trailers, boats or any other mobile machinery unless housed or contained wholly within a carport or garage on the land or are hidden or screened from public view.

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5.14 Commercial vehicles

For the purposes of the Constitution of the Iluka Homeowners' Association, any Iluka *Rules - Annexure "B"* document and this policy, a **commercial vehicle** takes the meaning of **heavy vehicle** as provided in section 3(1) of the *Road Traffic (Licensing) Regulations 1975*.

As of publication of this policy the *Road Traffic (Licensing) Regulations 1975* defines **heavy vehicle** as:

heavy vehicle means —

- (a) a vehicle with an MRC exceeding 4 500 kilograms that is an agricultural vehicle, a car or bus, a goods vehicle, a motor home, a prime mover or a special purpose vehicle; or
- (b) a heavy trailer;

section 3(1) also defines the following **vehicles** as:

goods vehicle means a motor vehicle built or modified to be used primarily to carry goods or materials used in any trade, business or industry;

motor home means a motor vehicle built for human habitation;

prime mover has the meaning given to that term in the *Road Traffic (Vehicle Standards) Regulations 2002*;

special purpose vehicle means a vehicle, other than a tow truck or an agricultural vehicle, built for a purpose other than carrying passengers or a load;

heavy trailer means a trailer, other than a towed special purpose vehicle, with an MRC exceeding 4 500 kilograms;

MRC is as defined in the *Road Traffic (Licensing) Regulations 1975*.

Pursuant to section 1.(3) Annexure "B" of the IHOA Constitution, "commercial vehicle" also includes caravans, boats trailers or any other mobile machinery.

5.14.1 Cars are exempt.

For the purposes of the definition of Commercial vehicles in section 5.14 a car is exempt.

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5.15 Caravans

This includes but is not limited to caravans, fold-up caravans, camping trailers, campervans, motorhomes, Winnebagos.

5.16 Trailers

This includes but is not limited to gardening trailers, truck trailers, semi-trailers, box trailers, enclosed trailers, horse floats, boat trailers, refrigerated trailers, motorcycle trailers, tradesmans trailers, brickies trailers, painters trailers, carpenters trailers, bobcat trailers, dogwash trailers.

5.17 Boats.

For the purposes of the Iluka *Rules - Annexure "B"*, a “boat” includes; any water or sea going craft of any size or shape used for any purpose.

5.18 Mobile machinery

This includes but is not limited to bobcats, trench diggers, tractors, cranes, concrete mixers, compressors.

5.19 Screened from public view.

Screened from public view means that any member of the public cannot see the object that is being screened. The screen must be a permanent structure constructed such that the object to be screened cannot be seen from by a member of the public, from any public space.

Covering with a tarpaulin or non-permanent structure is not regarded as being screened from public view.

5.20 Signs.

For the purposes of the Iluka *Rules - Annexure "B"*, unless exempted by the said *Rules - Annexure "B"*, a “sign” includes;

- (a) any commercial; logo, trademark or wordage, that promotes any commercial endeavour,
- (b) any surface, visible from any adjoining property, public space or street, containing wordage or symbols, drawing attention to that property promoting any issue including but not limiting to; commercial activity, business activity, sporting activity, gratuitous service or promotion, political notice or social activity.

5.20.1 Real Estate "For Sale Signs"

Pursuant to Rule 1.(6) of *Rules - Annexure "B"* of the IHOA Constitution, Real Estate "For Sale Signs" are exempt from this section and no other "For Sale Signs" are exempt.

5.21 Fine(s) for breach of Iluka *Rules - Annexure "B"*.

It is not the intention of the Association to benefit from fine(s) imposed for breaches of Iluka *Rules - Annexure "B"*. All fine(s) shall be accumulated in the *Rules - Annexure "B"* Management Fund. The *Rules - Annexure "B"* Management Fund shall only be used for the purpose of enforcing the Iluka *Rules - Annexure "B"*, including any form of legal action.

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5.22 The committee to set the value of fine(s).

The value of fine(s) to be imposed is to be set by the Iluka Homeowners' Association. In the case of parking commercial vehicles in breach of the Iluka *Rules - Annexure "B"* the value of fine(s) is not to be less than the commercial rate for storage at a local storage facility. That is, it is not to be cheaper to breach the Iluka *Rules - Annexure "B"* than to store the offending item at a commercial facility.

5.23 Grace Period to comply.

Where a resident has a genuine hardship and is unable to comply with a RFCL, the resident may apply in writing to the Association for a grace period. The Association may allow the resident a grace period to comply. A grace period shall not be any longer than 3 months. Additional grace periods may be granted at the discretion of the Association. When allowing a grace period, the Association shall take into consideration the effect of the breach on the neighbours of the resident and may seek their neighbour's comments. A resident who submits a request for a grace period with written consent from the neighbours of the property has a stronger case for grant of such a period.

5.24 Failure to pay fine(s).

All fine(s) owing to the IHOA are a debt to the IHOA and the IHOA may recover that debt by any means, including through a court of appropriate jurisdiction, at any time and in any manner that the IHOA deems fit. The Association shall contemplate legal action where necessary. The Association, or any person acting on behalf of the Association, shall refuse to lift any caveat on a property while there are any unpaid fine(s) lodged on that property. This will prevent settlement on the sale of a property until all outstanding fine(s) have been paid.

Fine(s) resulting from the conduct by tenants renting a property are imposed on the legal owner of that property. Breaches of the Iluka *Rules - Annexure "B"* by tenants of a rental property are deemed to be breaches by the property owner.

5.25 The cost of legal action.

The cost of legal action undertaken for breaches of the Iluka *Rules - Annexure "B"* that are not recoverable from the defendant shall be paid for by the IHOA.

5.26 Beaumaris Estate

In any IHOA document that refers to Beaumaris Estate it is taken to mean Iluka Estate.

5.27 *Rules - Annexure "B"*

The Iluka *Rules - Annexure "B"* are those as provided in the IHOA Constitution.

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5.28 Attachment A: First Letter Template.

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Email: ihoa@iluka.org.au

Property:

(Insert Address of property)

Our Ref: *(Insert reference number)*

Date.....

Dear ILUKA Homeowners' Association Member,

Thank you for choosing to live in ILUKA. ILUKA has a reputation for being a suburb which has a standard of properties far above the surrounding suburbs. It is this reputation that adds value to your property.

All property owners in the suburb of ILUKA are members of the ILUKA Homeowners' Association (IHOA). The IHOA committee comprises of volunteer residents, who work hard to implement the objectives of the association. Predominantly the objectives are aimed at; engendering good community spirit, organising community activities, managing maintenance services to public areas and protecting the interests of the ILUKA community as a whole. The objectives of the ILUKA Homeowners' Association are embedded in the IHOA constitution (Rules) and committee members are required to implement these objectives. The constitution may be viewed and downloaded from our website (<http://www.iluka.org.au>), if for any reason you are unable to access a copy of the constitution, please write to us at the above address and a copy will be posted to you.

Please note...

It has come to the Association's attention that there may be a breach of the IHOA constitution at this address. In order to comply with section 3(i) of the constitution, the Association must enquire into this matter. In a recent audit it was observed that your property was in breach the covenants relating to (insert breach)

If there has been an error or there is a good reason for it occurring, please write to us and let us know. The Association understands that you were possibly not aware of this breach and would like to thank you for attending to this matter in a timely fashion. If you have any questions on this matter or any other matter about the association, please e-mail or write to the Association at the above address.

It was also noted that your _____ *(Insert positive feature, i.e. garden/fence/lawn/house)* enhances your property and thus the suburb as a whole. Thank you for your contribution to our community.

If you have already attended to this breach we thank you and please disregard this letter. Further we hope to see you at the community events which the Association hosts from time to time.

Yours faithfully,

Annexure "B" Subcommittee

1st Notice