

**MONTCLAIR PROPERTY OWNERS ASSOCIATION, INC.**

**RESOLUTION 09-165**

**Policies and Procedures Relative to the Collection of Routine and Delinquent Assessments**

WHEREAS, Article 4, Section 4.1, paragraph (c), of the Amended Deed of Dedication Agreement and Declaration of Covenants, Conditions and Restrictions For Montclair Property Owners Association, Inc. (the "Declaration") states that "The Board of Directors shall establish the annual assessment against each Lot for Common Expenses"; and

WHEREAS, Article 4, Section 4.2, paragraph (a) of the Declaration states: " On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay...that installment of the annual assessment which is due during such period. The Board of Directors shall establish one or more payment periods and the due dates for each such payment...."; and

WHEREAS, Article 4, Section 4.4, paragraph (a) of the Declaration states: "Each owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses, and other charges assessed by the Board of Directors pursuant to the provisions of this Declaration"; and

WHEREAS, Article 10, Section 10.2, paragraph (a) of the Declaration states: "The total annual assessment of each Owner for Common Expenses, or any additional assessment, any special assessment or any other sum duly levied (including without limitation interest, late charges, attorney's fees, costs, etc.), made pursuant to the Association Documents, is ... declared to be a lien levied against any Lot owned by any Owner"; and

WHEREAS, Article 10, Section 10.2, paragraph (c) of the Declaration provides that the lien for assessments may be enforced and foreclosed in any manner permitted by laws of Virginia; and

WHEREAS, Article 10, Section 10.2, paragraph (b) of the Declaration provides that in any case where an assessment is payable in installments, upon the default by such Owner in the timely payment of any installment, the Board of Directors may declare the remaining total of the unpaid installments due and payable in full; and

WHEREAS, Article 10, Section 10.1, paragraph (d) of the Declaration provides that in the event of default by any Owner in paying any sum assessed against the Owner's Lot, which continues in excess of ten (10) days, interest at the rate of eighteen percent (18%) from the due date may be imposed by the Board of Directors; and

WHEREAS, Article 4, Section 4.5 of the Declaration provides that any assessment or installment thereof, not paid within ten (10) days after the due date, shall be delinquent and shall accrue a late charge in an amount determined by the Board of Directors; and

WHEREAS, Article 10, Section 10.1 of the Declaration and Section 55-513 of the Virginia Property Owners Association Act authorize the Board of Directors to suspend an Owner's voting rights and/or use of the facilities and services for any Owner who is delinquent in the payment of assessments; and

WHEREAS, Article 4, Section 4.1, paragraph (16) of the Bylaws of Montclair Property Owners Association, Inc., empowers the Board of Directors to "make assessments against the Owners to defray the Common Expenses of the Association, establish the means and methods of collecting such assessments from the Owners and cause the annual assessment for Common Expenses to be paid quarterly or in such other periods as the Board may determine"; and

WHEREAS, the Board of Directors desires to clarify the policy for Montclair Property Owners Association, Inc. (the "Association") with respect to collections.

NOW, THEREFORE, BE IT RESOLVED that Resolution No. 09-165 supersedes all previously adopted resolutions involving collections and that the Board duly adopts the following assessment collection procedures:

### **1) Payment**

The assessments shall be collected annually, in advance, due and payable on the first day of May of each year. However, beginning in fiscal year 2009-2010, Owners in good standing may elect to pay the annual assessment in Ten (10) monthly installments of equal amounts. To be in good standing, the Owner must have a zero balance or credit balance on his/her assessment account and have no outstanding covenants or rules violation(s) or outstanding legal fees from past covenants or rules violation(s).

- a) All documents, correspondence, and notices relating to the assessments shall be mailed to the address that appears on the books of the Association or to such other address as is designated in writing by the Owner. Non-Resident Owners shall furnish the Board of Directors with a phone number and an address where mail shall be promptly received by the Owner.
- b) Non-receipt of payment coupons, billing statements, or such other devices shall in no way relieve the Owner of the obligation to pay the amount due by the due date.
- c) All payments shall be made payable to the Montclair Property Owners Association (MPOA). Payments may be mailed to the address indicated in the assessment coupon booklet or delivered to the MPOA office.
- d) All monthly installment payments are due on the first day of each month, beginning with May 1. Owners who elect to make monthly installments will be charged a \$2.00 monthly service fee for each month for which a balance remains.
- e) Payments may be made by check, money order, or direct debit. Cash payments will not be accepted.
- f) In any instance where a check payable to the Association, its agent or attorney is returned dishonored, a fifty dollar (\$50.00) returned check charge shall be assessed against the account of the Owner responsible for payment.<sup>1</sup>
- g) If an Owner has had two (2) or more payments returned for insufficient funds within the past year, monthly payments will only be allowed if a direct debit account is established. If a direct debit transfer is rejected, payment may be made only by certified check.

### **2) Cost of Collection**

All costs incurred by the Association for collection of monthly installments of the annual assessment and delinquent accounts shall be charged to the Owner's account and shall become part of the assessment, which shall include but not be limited to service fees, late fees, administrative costs, certified mailing fees and returned check charges.

### **3) Delinquent Accounts and Reminder Notice**

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<sup>1</sup> The recoverable fee was increased by the 2008 Virginia General Assembly.

a. The annual assessment is due on the first day of May for each fiscal year. All installments of the annual assessments payable on a monthly basis shall be due and payable on the first day of the applicable month. Any assessment or installment thereof that is not paid within ten (10) days of the due date shall be delinquent and shall incur a late fee in the amount of forty-five dollars (\$45). A Reminder Notice setting forth the amount of the late fee or any other past due amount on an Owner's account which is above \$5.00 may be sent to the Owner by the Management Company by regular first class mail.

#### 4) Notice of Intent to Accelerate Assessment

If the delinquent assessment, or installment, is not received within forty (40) days from the due date, the Owners shall be advised via a *Notice of Intent to Accelerate Assessment* letter (**a second "Notice" to the Reminder Notice, ref. para 3.a above that will be sent via regular first class mail and certified-return receipt mail (55-516.C)**) that if the outstanding installments, late fees and any other current charges to the account are not paid in full within fifteen (15) days from the date of this Notice of Intent, the remaining assessment installments, if any, will be accelerated through the end of the fiscal year and will be due and payable in full.

#### 5) Acceleration of Annual Assessment Installments

If payment in full by check or money order, is not received within fifteen (15) days of the date of the *Notice of Intent to Accelerate Annual Assessment Installments*, the remaining monthly installments of the annual assessment shall be automatically accelerated, without further action of the Board of Directors and/or the Association, and the account shall be automatically referred to legal counsel for collection by the Management Company.

#### 6) Referral to Attorney

- a) Upon being notified by the Management Company of a delinquent account that has gone through the *Acceleration of Annual Assessment Installments process where appropriate* (ref para 5 above), Legal Counsel shall send a notice of the intent to file a lawsuit and file a lien by regular first class mail and certified-return receipt mail to the Owner where appropriate. If full payment of assessments, together with attorney's fees, late fees, collection costs, interest and returned check fees have not been received within thirty three (33) days from the date of the Notice, legal counsel shall initiate appropriate legal action. Such legal action may include, but not be limited to, the filing of memoranda of liens, suits for personal judgments, garnishments, levies, enforcement of memoranda of liens by non judicial or judicial foreclosure of memoranda of liens.
- b) All attorney's fees and costs incurred by the Association in connection with the collection of the delinquent account along with accrued interest, shall become an assessment and be assessed against the Owner's account.

#### 7) Suspension of Rights, Privileges, and Benefits

- a) The Board of Directors may suspend an Owner's rights, privileges, and benefits of membership for failure to pay a delinquent assessment or installment in accordance with Article 10, Section 10.1 of the Declaration.
- b) In the event a suspension is imposed, the Owner will be notified at which time the Owner will be required to return any beach tags that have been issued.
- c) Suspension of an Owner's rights, privileges, and benefits of membership may include, but is not limited to, the following:
  - Voting rights

- Use of all MPOA recreational facilities
  - Use of all MPOA amenities
  - Use of services
  - Ability to make monthly assessment payments
- d) Once imposed, the suspension will remain in effect until all delinquent assessments and all other charges or fees have been paid in full to the Association. Owners whose rights, privileges, and benefits have been suspended shall be responsible for all costs and legal fees, which the Association incurs while effectuating the suspension and/or reinstatement of the rights, privileges, and benefits of membership.

#### 8) Order of Crediting Payments

Payments received by the Association from an Owner with a delinquent account, or any Owner who has or had a covenant violation for which additional assessments, legal fees and/or court costs remain outstanding, shall be credited in the following order of priority:

- 1) Any attorney's fees or cost of collection including court costs;
- 2) Late fees;
- 3) Returned check charges and resale disclosure fees<sup>2</sup>;
- 4) All other charges and fees incurred by the Association as a result of any violation by a member, his/her family, employees, agents, tenants, or licensees of the Governing Documents including the rules and regulations of the Association;
- 5) Any and all special assessments (oldest outstanding first);
- 6) Any and all additional assessments as defined in Article 4, Section 4.2 (c);
- 7) Monetary charges, including those assessed to enforce the Association's rules;
- 8) The annual assessment for each lot (oldest outstanding first).

Adopted at the Board of Director's Meeting on July 8, 2009. Effective September 1, 2009.



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Catherine Kudrick, President

December 10, 1997: 97-249

Amended:

March 8, 2000: 00-063

Amended:

November 10, 2004: 04-208

Amended:

May 11, 2005: 05-122

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<sup>2</sup> The cost of a resale disclosure packet can no longer be collected in exchange for the resale packet, and is merely an unpaid fee for 90 days, and then becomes an assessment.

Amended:

April 9, 2008: 08-059

Amended:

July 8, 2009: 09-165