

**Montclair Property Owners Association, Inc.**

**Policy Resolution No. 23-003**

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

WHEREAS, the Amended Declaration for Montclair (the "Declaration"), as amended, the Bylaws of Montclair Property Owners Association, Inc. (the "Bylaws") and the Restated Articles of Incorporation for Montclair Property Owners Association, Inc. (the "Articles of Incorporation"), collectively known as the Association Documents, provide that the Lots are subject to the Association Documents and the Rules and Regulations of the Association; and

WHEREAS, Article 4, Sections 4.2 and 4.4(a) of the recorded Declaration create an obligation for an Owner to pay Annual Assessments, Additional Assessments, Optional Expenses, including Trash and Recycling Collection Services, and Special Assessments ("Assessments"); and

WHEREAS, the Association Documents of Montclair Property Owners Association, Inc. (the "Association") provide that the Board of Directors (the "Board") is empowered to implement procedures for collection of the Assessments from the Owners; and

WHEREAS, Article 4, Section 4.2 of the Declaration empowers the Board to establish the installment period and due dates for the payment of the Assessments by the Owners in good standing and, if an Assessment is paid in installments, subject it to a service fee of not more than five percent (5%) of each installment, as determined by the Board; and

WHEREAS, Article 4, Section 4.2, Article 10, Section 10.1 (f) and Section 10.2(a) and (c) of the Declaration empower the Association to bring suit, file a lien, or foreclose a lien if Assessments are not paid when due; and

WHEREAS, pursuant to Article 4, Section 4.5 of the Declaration, any Assessment or installment thereof that is not paid within ten (10) days of its due date shall be delinquent and accrue a late charge of no more than forty-five dollars (\$45.00), as determined by the Board; and

WHEREAS, pursuant to Article 10, Section 10.2(b) of the Declaration, when an Assessment is payable in installments, upon default by the Owner in the timely payment of any installment, the Board is authorized to accelerate the remaining unpaid installments of the Assessment so that the entire balance for the remaining fiscal year shall become due and payable upon notice to the Owner; and

WHEREAS, pursuant to Article 10, Section 10.1(a)(1) and (b) of the Declaration and Section 55.1-1828 of the Property Owners' Association Act (the "POAA"), the Board may assess the costs of collection, including reasonable attorney's fees, incurred by the Association as a result of the Owner's failure to comply with the Association Documents; and

WHEREAS, the Board is authorized pursuant to Article 10, Section 10.1(d) of the Declaration to assess interest at a rate not to exceed the lesser of the maximum permissible interest rate which may be charged by a Mortgagee under a Mortgage at such time or eighteen

percent (18%) per annum from the due date if an Assessment is not paid within ten (10) days of its due date; and

WHEREAS, Article 4, Section 4.1(2) of the Bylaws provide that the Association shall have all of the powers to hire a General Manager and all other required personnel to provide for the upkeep of the Common Area and to administer the affairs of the Association; and

WHEREAS, Article 10, Section 10.1(g) and (h) of the Declaration and Article 3, Section 3.2(d) of the Bylaws empower the Board to suspend an Owner who is delinquent in the payment of his Assessments for more than sixty (60) days from the use of any service, amenity or facility on the Common Area and the right to vote for any period during which any Assessment remains unpaid, subject to due process; and

WHEREAS, Article 4, Section 4.2 of the Declaration states that the Board shall take prompt action to collect any assessment for Common Expenses which remains unpaid for more than thirty (30) days from the Due Date; and

WHEREAS, there is a need to establish orderly procedures for the billing and collection of Assessments;

NOW THEREFORE, it is hereby RESOLVED THAT the Board duly adopts the following Assessment collection procedures:

#### **I. Routine Collections**

A. The Annual Assessment is due on May 1; however, the Annual Assessment can be paid in equal monthly installments by Owners in good standing, with payment due on the first day of each month of the fiscal year (the "Due Date"). The due dates for all other Assessments shall be as determined by the Board. In accordance with Article 4, Section 4.1 (a) of the Declaration and Article 8, Section 8.4 of the Bylaws, the fiscal year of the Association shall be the twelve month period beginning May 1 and ending April 30 of each year.

B. Pursuant to Article 10, Section 10.1(a)(2) of the Declaration, an Owner is required to provide the Secretary of the Board with their name and address within thirty (30) days of acquiring title; otherwise, all notices shall be sent to the Lot address or address on record with the Association. Non-receipt of a payment coupon, coupon books, notices, or other such documents relating to the payment of Assessments shall not excuse an Owner from the obligation to pay their Assessments. Pursuant to Article 4, Section 4.4(a) of the Declaration, no Owner is exempt for liability for the Assessments by abandoning any Lot or by the abandonment of the use and enjoyment of the Common Area.

#### **II. Remedies for Nonpayment of Assessments**

A. Definition of "Received". As referenced herein, the term "Received" is defined as the date during normal business hours that a payment is physically or electronically available for processing by the Association through the Managing Agent. For purposes of clarification and by way of example only, "Received" does not include the following: (1) the date the Owner submits the request for payment to the Association through a bill pay system; (2) a payment that is sent to the incorrect address; (3) a payment that fails to provide identifying information for posting; or (4) the date the Owner mails the payment to the Association. It is the Owner's sole responsibility to ensure that mailed payments or payments processed electronically or through a

bill pay system are Received by the Association through the Managing Agent prior to the Due Date to avoid the imposition of a late charge, collection cost or the referral to collection counsel for further collection action. The Owner assumes the risk of any delay by third parties, even if at no fault of the Owner, for failure of the Association through Managing Agent to Receive a payment by the Due Date.

B. Late Charge. If a monthly installment of the Annual Assessment is not paid and Received within ten (10) days of the Due Date, a late fee of thirty-five dollars (\$35.00) shall be automatically imposed on the account by the Managing Agent.

C. Interest. If an Assessment or installment thereof is not Received within ten (10) days of the Due Date, interest shall accrue from the Due Date at eighteen percent (18%) per annum.

D. Collection Costs. The costs of collections charged to the Association shall be assessed to the delinquent Owner's account. Such amounts may include, but are not limited to, the reminder notice, the demand letter, postage, and any other charges authorized by the POAA, as amended.

E. Notice of Delinquency. If payment is not Received by the Managing Agent within ten (10) days of the Due Date, a Notice of Delinquency may be sent, by regular mail, by the Managing Agent to the delinquent Owner demanding payment of the delinquent installment of the Assessment, the late fee and collection costs incurred by the deadline provided in the Notice of Delinquency. As the Association Documents of the Association do not require reminder notices to commence legal action, an Owner's failure to receive said notices shall not prohibit the ability of the account to be referred to legal counsel for collection action.

F. Notice of Acceleration. If payment is not Received by the Managing Agent within forty (40) days from the Due Date, a Notice of Acceleration may be sent by regular mail and certified mail, return receipt requested by the Managing Agent to the delinquent Owner demanding payment of the delinquent installments of the Assessment, late fees and collection costs. The Final Notice will place the Owner on notice that if payment in full is not Received by the Managing Agent within fifteen (15) days from the date of the Notice of Acceleration, the remaining installments of the Assessment will be due and payable in full.

G. Notice of Turnover to Legal Counsel. At the time of referral of the account to legal counsel, a Notice of Turnover to Legal Counsel will be sent to the delinquent Owner notifying them of the turnover of their account to legal counsel, that they can no longer make payments to the Association to their onsite office or management company, and that all communications should be made through legal counsel, not management.

H. Notice of Suspension. The Board or Managing Agent, as authorized by the Board, may elect to suspend the use of any service, amenity or facility on the Common Area and the right to vote. The Owner shall be mailed a written notice after he is sixty (60) days delinquent providing a reasonable opportunity for Owner to cure the delinquency to avoid the commencement of the suspension or limitation of use of the use of any service, amenity or facility on the Common Area and the right to vote as further detailed in Section III(B) herein. If imposed, the suspension shall continue until payment is Received in full by the Association.

I. Returned Check Charge. If the Association receives a check from an Owner which fails to clear the Owner's personal banking account, the Association shall charge the Owner a returned check charge of \$50.00, or the maximum amount permitted by law, whichever is greater. If the Association receives from any Owner, in any fiscal year, one or more returned checks for payment of an Assessment or installment thereof, all future payments may be required to be made by certified funds, money order or cashier's check for the remainder of the fiscal year.

J. Referral to Legal Counsel. The manager shall prepare a monthly report of delinquent owner accounts who meet the threshold as established by the Board for referral to legal counsel for collection action. Once the Board has approved the delinquent accounts for referral to legal counsel:

1. The account shall be referred to legal counsel for prompt action.

2. Legal counsel is authorized, without further action of the Board, to take the following action: If the account remains delinquent after a demand letter is sent to the Owner, a Memorandum of Lien for Unpaid Homeowner Association Assessments may be recorded against the title to the Lot and a civil action for judgment may be brought against the Owner for unpaid Assessments, interest, late fees, attorney's fees and collection costs. Legal counsel is authorized to take post-judgment action to collect the unpaid Assessments, interest, late fees, attorney's fees and collection costs as awarded by the Court.

3. The Board may choose to authorize legal counsel to foreclose the memorandum of lien for unpaid homeowner association Assessments, in the manner provided by the laws of the Commonwealth of Virginia, including the POAA.

K. Method of Crediting Payments. Payment received from an Owner will be credited to the account in the following order of priority:

a. Charges for attorney's fees and collection costs.

b. Late fees, interest, management fees, resale disclosure packet fees (and delivery), case opening or transfer fees, and returned check charges.

c. All other repair Assessments or charges (pursuant to Article 5, Section 5.2 and Article 10, Section 10.1(h) of the Declaration and Section 55.1-1819) for violation by an Owner, his family, employees, agents, tenants or licensees of the Association Documents and Rules and Regulations of the Association.

d. Any and all installments of the Additional Assessments, oldest outstanding first.

e. Any and all installments of the Special Assessments, oldest outstanding first.

f. Any and all installments of the Optional Expenses, including Trash and Recycling Collection Services, oldest outstanding first.

g. The monthly installments of the Annual Assessments, oldest outstanding first.

### III. Suspension

A. Suspension of the Use of Any Service, Amenity or Facility on the Common Area and the Right to Vote. Once an account is delinquent for sixty (60) days, the responsible Owner shall no longer be a Member in good standing of the Association. Such Owner may not be entitled to the use of any service, amenity or facility on the Common Area and the right to vote. Suspension is subject to the notice and hearing provisions of the POAA as follows:

1. Before any suspension, the Owner shall be given a reasonable opportunity to correct the delinquency as set forth in Section II (H), above. This notice period shall not prohibit the collection action of legal counsel.

2. If the delinquency is not cured within the specified time stated set forth in the Notice of Suspension referred to in Section II (H) , the Owner shall be given an opportunity to be heard, to present witnesses, and to be represented by counsel before the Board or other tribunal specified in the Governing Documents and rules and regulations of the Association.

3. Notice of the hearing shall be hand delivered or mailed by certified mail, return receipt requested to the Owner at the address of record with the Association, at least fourteen (14) days prior to the hearing.

4. The Notice of the hearing shall contain a description of the amount of the unpaid assessments and the provisions of the Governing Documents and rules and regulations of the Association alleged to have been violated.

5. The Board decision shall be hand delivered or mailed by certified mail, return receipt requested, to the Owner at the address of record with the Association within seven (7) days of the hearing.

This Resolution is effective October 11, 2023 and supersedes and replaces any previously adopted Policy Resolutions for the Procedures Regarding Delinquent Assessment Payments.

The Board directs that this Resolution shall be reasonably published or distributed to the Owners of the Association.

Montclair Property Owners Association, Inc.

By:   
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President

ATTEST:   
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Secretary