

MONTCLAIR PROPERTY OWNERS ASSOCIATION, INC.

RESOLUTION #21-001

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: "Except as provided immediately below, on or before the first day of each fiscal year, each owner shall pay to such Person at such place as the Board of Directors may direct, the annual assessment due for that fiscal year. Notwithstanding the foregoing and subject to the provisions of Section 10.2 (b) hereof, the Board of Directors may permit those Owners in good standing who elect to do so to pay the annual assessment in installments during the fiscal year. In such event, the annual assessment shall be due in such installments and on such dates as the Board of Directors may determine and shall be subject to such service fees, not exceeding five percent (5%) of each installment as the Board of Directors may fix from time to time. All sums collected by the Board of Directors with respect to assessments against the Lots or from any other source may be commingled into a single fund; 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 days after the due date shall be delinquent and shall accrue a late charge in such amount as may be determined from time to time by resolution of the Board of Directors in an amount not to exceed forty-five dollars (\$45.00) and shall be subject to the provisions of Section 10.2 (b) hereof, the Board of Directors shall take prompt action to collect any assessments for Common Expense due from any owner or member that remain unpaid for more than thirty days after the due date for payment thereof; and

WHEREAS, Article 10, Section 10.2 (h) of the Declaration provides that the Board of Directors shall have the power to suspend the use of any service, amenity or facility located on the Common Area, to suspend the right to vote in the Association (pursuant to Subsection 3.2 (d) of the Bylaws) or to impose charges not to exceed those authorized by Section 55-513 of the Code of Virginia 1950, as amended in any instance of an Owner found by the Board of Directors to be responsible for a violation of the Association Documents, including but not limited to nonpayment of assessments which are more than 60 days past due; 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. #21-001 supersedes all previously adopted resolutions involving collections and that the Board duly adopts the following assessment collection procedures:

1) Payment

The annual assessment payment due on the first day of May, as well as the monthly installment payments that are due on the first day of each month via a twelve (12) month installment plan (should an owner in good standing elect to pay in that manner), will be distributed to all owners via a coupon book mailed in April of each year. 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 covenant 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 and filed with the Secretary. 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) Due Date: All monthly installment payments are due on the first day of each of the twelve (12) months in which payment is due, beginning with May 1.
- 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 for insufficient funds, a fifty dollar (\$50.00) returned check charge shall be assessed against the account of the Owner responsible for payment.
- 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 funds.

2) Cost of Collection

Pursuant to Section 10.1(a)(I) of the Amended Declaration, all actual costs to the Association incurred as a result of a failure to comply with the Association Documents by any Owner shall be assessed against such Owner's lot, including but not limited to all service fees, late fees, administrative costs, management fees, certified mailing fees, and returned check charges.

3) Delinquent Accounts and Reminder Notice

- 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 thirty-five dollars (\$35). A Reminder Notice setting forth the amount of the late fee or any other past due amount(s) on an Owner's account will be sent to the Owner by the Management Company, immediately upon incurrence of a late fee or anytime an account achieves a negative balance greater than \$34.
- b) Interest shall also accrue on all unpaid assessments from the date due until paid at the rate of eighteen percent (18%) per annum.
- c) Upon notice by a Member of an account discrepancy or waiver request:
 1. If the Accounting Department cannot resolve an issue of a late and/or service fee with a Member, they will prepare a summary report and forward this report to the Treasurer, via the General Manager or other designee, with a recommended course of action;
 2. If the issue involves any adjustment to the Member's account, including any member requesting the removal of late and/or service fees from their account, the Treasurer shall have authority to credit accounts up to one hundred dollars (\$100.00). If a Member's account is delinquent and brought into "good standing," the General Manager has the

authority to allow the Member to revert from making an annual payment to monthly payments. The reasons for granting or not granting the request and the Accounting Department's report will be forwarded to the Board of Directors with the appropriate report from the General Manager and/or Treasurer.

3. If the issue or Member request for the waiving of late and/or service fees cannot be resolved then the open issues, along with the appropriate recommendations from the Accounting Department, General Manager, and/or Treasurer, shall be referred to the Financial Appeals Board (FAB), a standing committee of the Board for resolution.

4) Notice of Intent to Accelerate Assessment

If the delinquent assessment, or any installment thereof, is not received within forty (40) days from the due date, the Owner(s) shall be advised via a "Notice of Intent to Accelerate Assessment" letter (a second "Notice" to the Reminder Notice, reference paragraph 3.a. above) will be sent via regular first-class mail and certified-return receipt mail) stating 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. The Board of Directors shall review all accounts and vote on the next course of action. If the vote is to refer to the Association's Legal Counsel, the Management Company shall then make said referral within three (3) business days.

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 (reference paragraph 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) In any proceedings arising out of any alleged default by an owner, the Association shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

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 recreation identifications 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 the Common Area, including but not limited to recreational facilities and amenities, except those privileges excluded from suspension pursuant to Section 10.1 (g) of the Amended Declaration.
- Ability to make monthly assessment payments

d) In the event an Owner fails to pay any assessment or assessment installment within sixty (60) days of the Due Date, the Owner's rights and privileges, including those rights and privileged identified in para 7(c) of this Resolution, in accordance with Article 10.1(g) of the Amended Declaration and Article 4.1(14) of the Bylaws may be suspended. The suspension will apply to the Owner and the Owner's tenants, guests, visitors, agents, invitees and household members. Before, however, an Owner's privileges are suspended, an Owner shall be afforded the due process rights provided for in Article 10.1 (h) of the Declaration and Va. Code Ann. § 55-513 (8) of the Property Owners Association Act, which includes notice of the default, a reasonable opportunity to cure the delinquency prior to the suspension taking effect, and the right to request a hearing and to be represented by counsel (at the Owner's expense) before the Board of Directors. The Owner shall be notified of his/her default by certified mail, return receipt requested and that the Board intends to suspend the Owner's rights and privileges if the assessments are not promptly paid in full and will identify the specific privileges that the Board will consider suspending ("Notice of Intent to Suspend Privileges"). The notice shall also advise the Owner of a Board hearing that will be held, including the day, time, and location, to determine if the suspension should be imposed and the right to be represented at that hearing by counsel. This notice shall be sent by certified mail, return receipt requested at least fourteen (14) days prior to the hearing, Notice of the Board's decision at the hearing will be sent by certified mail, return receipt requested to the Owner within seven (7) days of the date of the hearing.

e) The Notice of Intent to Suspend Privilege shall be sent to all Owners that are more than sixty (60) days delinquent in the payment of any amount owed to the Association on March 1st of each year. In addition to the information indicated in para. 7(e) supra, such Notice shall advise the Owners of a hearing date before the Board to be held in April of each year, and that, if the Owner wants to participate in such hearing, the Owner must advise the Managing Agent no later than fourteen (14) days prior to the hearing date.

f) Once the suspension of privileges is imposed, the suspension will remain in effect in accordance with Article 10 including but not limited to annual assessments, monthly installments, attorney's fees as determined by the court, and all costs associated with the Owner's failure to comply with the Association Documents, have been paid in full to the Association. Further, the Owner will be required to pay the next annual assessment on May 1st and will not be permitted to pay in monthly installments for that fiscal year.

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, unless the Board or the Association's Legal Counsel determines it is appropriate to otherwise apply the payments received:

- 1) Any attorney's fees, as awarded by the court, or cost of collection including court costs;
- 2) Interest;

- 3) Late fees;
- 4) Returned check charges and resale disclosure fees;
- 5) All other charges and fees 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;
- 6) Any and all special assessments (oldest outstanding first);
- 7) Any and all additional assessments as defined in Article 4, Section 4.2 (c);
- 8) Monetary charges, including those assessed to enforce the Association's rules;
- 9) Annual assessment, with payment being applied to the oldest outstanding assessments first.
- 10) 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.

Adopted at the Board of Director's Meeting on May 12, 2021, effective June 15, 2021

MONTCLAIR PROPERTY OWNERS ASSOCIATION, INC.


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Tracy Hansen
President