

# NEWBERRY CONDOMINIUM UNIT OWNERS ASSOCIATION

## POLICY RESOLUTION NO. 2010-5

### ASSESSMENT COLLECTION PROCEDURES

**WHEREAS**, Article III, Section 2 of the Bylaws of the Newberry Condominium Unit Owners' Association ("Association") provides that the affairs of the Association are governed by the Association's Board of Directors and that the Board has all the powers and duties necessary for the administration of the Condominium, including the adoption of rules and regulations;

**WHEREAS**, Article III, Section 2(b), and Article V of the Bylaws provide the Board with the responsibility for making assessments against Unit Owners to defray the expenses of the Association, establishing the means and methods of collecting assessments, and enforcing the assessment obligations of Unit Owners; and

**WHEREAS**, the Board has determined that there is a need to establish amended policies and procedures for the collection of assessments.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board hereby adopts the following assessment collection policies and procedures as part of the Association's rules and regulations, which hereby rescind and supersede the 1988 Administrative Resolution ("Procedures Relative to Collection of Routine and Delinquent Assessments") and Policy Resolution No. 90-1 ("Increase of Late Fees") and any other previously adopted policies and procedures relating to assessment collections:

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

A. **Due Dates**. Each fiscal year's annual assessment shall be due and payable in advance, in monthly installments, on or before the first (1<sup>st</sup>) day of each month. Unless otherwise determined by the Board, all special assessments shall be due and payable on the first day of the next month after the Unit Owner is mailed notice of the special assessment, provided that at least ten (10) days' written notice is provided.

B. **Owners' Mailing Addresses**. All documents, correspondence and notices relating to assessments or charges shall be mailed or delivered to the Unit Owners' address of record that appears on the books of the Association, which is the Unit address unless the Association is otherwise notified in writing by the Unit Owner. Unit Owners have the responsibility of promptly informing the Association's community manager, in writing, of changes to their address of record.

C. **Invoices and Other Notices**. Non-receipt of an invoice, payment coupon or other notice shall in no way relieve the Unit Owner of the obligation to pay the amount due by the due date. If an Owner does not receive a notice within the expected or required time period, it is the Owner's responsibility to contact the Association's community manager immediately to obtain a copy of the notice and to confirm the Owner's correct mailing address.

## II. Remedies For Nonpayment Of Assessment

A. **Late Fees.** If payment of the assessment (or monthly assessment installment) is not received by the Association within fourteen (14) days after the applicable due date (e.g., by January 15<sup>th</sup> for the January monthly assessment installment), then a late fee of Thirty Dollars (\$30.00) shall automatically be added to the amount due and shall be a part of the lien against the Owner's Unit and the Owner's personal obligation for assessments, as provided for in the Bylaws, until all sums due and owing shall have been paid in full.

B. **Returned Checks.** If a check (or electronic debit, if applicable) is returned or rejected for insufficient funds, the Owner's account shall be assessed a returned check/debit processing charge of not more than Fifty Dollars (\$50.00), plus the bad check/debit return fee, if any, charged to the Association by the bank. If the Association receives from any Owner, in any fiscal year, two or more returned checks or rejected electronic debits, the Association may require all future payments to be made by certified check, cashier's check, or money order for the remainder of that fiscal year.

C. **Late Notice.** A "Late Notice" may be sent by the Association to Unit Owners who have not paid assessments or charges in full within fourteen (14) days after the due date. Non-receipt of such notice does not relieve the Unit Owner of his or her obligation to pay the assessment or the resulting late fees, costs, attorneys' fees or other applicable charges. Additional late notices or reminder notices may be sent to a delinquent Unit Owner, at the Board or community managers' discretion, prior to referral of an account to legal counsel.

D. **Collection Costs and Other Charges.** All costs of collection incurred by the Association caused by the failure of a Unit Owner to timely pay assessments shall be assessed against that Unit Owner. These expenses may include, for example, mailing costs for late notices, attorney's fees, and the cost of filing a lien and/or civil suit and other court costs. These collection costs shall be added to the Unit Owners' assessment account and become part of the lien against the Owner's Unit and the personal obligation of the Unit Owner. Other charges, such as violation charges, assessed pursuant to the Associations' Declaration, Bylaws and rules and regulations, or Section 55-79.80:2 of the Va. Condominium Act (the "Act") shall also be collected in the same manner as an assessment or as otherwise determined by the Board.

E. **Interest.** If a Unit Owner's failure to timely pay sums assessed against his account continues for more than 15 days after the due date, then the owner's account is subject to 12% per annum interest, accruing from the due date until paid. The failure of the Association to post interest charges on an account does not waive the Association's right to later charge, demand and collect interest from the due date if the account is forwarded to legal counsel for collection, and the Association's legal counsel is hereby authorized to collect interest on the overdue amounts accruing from the applicable due dates.

F. **Acceleration.** If a Unit Owner fails to pay an assessment installment within 10 days after written notice of the default (*i.e.*, nonpayment) is sent to the Unit Owner, then the Board, by this Resolution and without the need for specific case-by-case direction from the Board, hereby



authorizes the Associations' community manager and/or legal counsel, as the case may be, to automatically accelerate the remaining balance of the annual or special assessment for the entire fiscal year, making that entire remaining balance immediately due and payable in full upon written notice mailed to the Unit Owner.

G. **Legal Referral.** If an assessment installment or any other charge remains delinquent for more than 45 days after its due date, then the Association's community manager is authorized to forward the Unit Owners' delinquent account to the Associations' legal counsel for collection, subject to any Board guidance regarding the minimum account balance to forward.

H. **Lien.** As provided under the Bylaws and the Act, when an annual or special assessment or other sum is levied against a Unit, that assessment is deemed to be lien against the Owner's Unit, and the Association may record notice of that lien at any time thereafter by filing a Memorandum of Lien in the county's land records, with or without further warning or notice to the Unit Owner. In order to meet any statutory deadlines, the Associations' legal counsel may proceed directly with filing a Memorandum of Lien against the Owners' Unit prior to sending a demand letter to the delinquent Unit Owner. Accelerated installments (after notice is mailed), late fees, attorneys' fees, other charges, and the costs associated with filing and releasing the Memorandum of Lien shall be included as part of the lien and added to the Unit Owners' assessment account.

I. **Further Legal Action.** If an account remains delinquent after the initiation of legal action (for example, after filing of a lien or civil suit), the Associations' legal counsel is authorized to take other appropriate legal action to collect the amounts due, except as provided in Paragraph J below or unless directed otherwise by the Board. Once a judgment is entered against a Unit Owner, further legal actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.

J. **Foreclosure.** If a lien remains unpaid, the Board may authorize the Associations' legal counsel to institute foreclosure proceedings against the Owners' Unit within thirty-six (36) months of the date the lien was recorded (or within such other time period as may be authorized by the Act from time to time).

K. **Waivers.** The Board may, in its sole discretion, grant a waiver of any provision herein (except filing of Memoranda of Lien beyond the statutory deadline) upon written request by a Unit Owner alleging a significant personal hardship. Any such relief granted to a Unit Owner shall be appropriately documented in the Association's files with the name of the person or persons representing the Board who granted the relief and the conditions of the relief, if any. The Board may designate the community manager, President or any other officer or agent with authority to act on behalf of the Board in this regard if a decision is needed prior to the Board's next meeting. If the Board grants a payment plan request for delinquent amounts, then the Board may require that the delinquent amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note as a condition of the payment plan.

L. **Management Waiver.** The Associations' community manager is authorized to waive the imposition of late fees and/or interest if the delinquent Unit Owner had owned the Unit for three or fewer months at the time of the delinquency and, in the judgment of the community manager, the delinquency was the result of a misunderstanding of the correct procedures relative to

payment of the assessment. This type of waiver may be granted only once to any Unit Owner.

M. **Application of payments.** Payments received from a Unit Owner shall be credited in the following order:

1. Any collection costs for delinquent accounts, including, for example, certified mailing costs, lien filing/releasing costs, returned check charges, court costs and attorney's fees;
2. Any late fees and interest;
3. Any other charges assessed against the Unit Owners' account (for example, for violations of the Declaration, Bylaws and rules and regulations);
4. Annual and special assessments, applied to the oldest outstanding amount first.

N. **Suspension of Rights.**

1. **Use of Facilities and Services.** For assessment accounts that are more than 60 days past due, after first giving notice and an opportunity for a hearing pursuant to the requirements of Section 55-79.80:2 of the Act and any other related procedures that may be adopted by the Board from time to time, the Board may suspend the right of the Unit Owner to use Association-provided facilities and services, including but not limited to the use of any Common Element parking spaces. The suspension applies not only to the Unit Owner but also to all occupants of, and visitors to, the Owner's Unit. Suspensions remain in place until the account is paid in full, unless a different arrangement is agreed to by the Board as part of an approved payment plan to settle the debt. Once parking privileges are suspended and written notice of the suspension is delivered or mailed to the Unit Owner, vehicles in violation of the suspension become subject to immediate towing at the vehicle owner's sole risk and expense.

The remedies stated herein shall not constitute an election of remedies and all remedies shall be deemed cumulative.

NEWBERRY CONDOMINIUM UNIT OWNERS' ASSOCIATION

RESOLUTION ACTION RECORD

Resolution Type: Policy No. 2010-5

Pertaining to: Assessment Collection Procedures

Duly adopted at a meeting of the Board of Directors held on May 18<sup>th</sup>, 2010.

Motion by: Herbert Sharaf Seconded by: Linda Berend

VOTE:	YES	NO	ABSTAIN	ABSENT
<u>Linda Berend</u> Director	<u>X</u>	_____	_____	_____
<u>Herbert Sharaf</u> Director	<u>X</u>	_____	_____	_____
<u>Heriberto Briceno</u> Director	<u>X</u>	_____	_____	_____

ATTEST:

Herbert Sharaf  
Secretary

05/24/2010  
Date

FILE:

Book of Minutes - 2010

Book of Resolutions:

Resolution's effective date: June 1<sup>st</sup>, 2010

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of May, 2010, a copy of this Resolution was mailed (by first-class U.S. mail) to all Unit Owners as reflected in the Association's books and records.

[Signature]  
Secretary (or community manager)