

# COLONIAL GREEN HOMEOWNERS ASSOCIATION

## POLICY RESOLUTION NO. 2017-1

### ASSESSMENT COLLECTION PROCEDURES

**WHEREAS**, Colonial Green Homeowners Association (the “Association”) is a property owners’ association organized and operating pursuant to the Amended and Restated Declaration of Covenants and Restrictions, (the “Declaration”), Supplemental Declaration of Covenants and Restrictions and Amendment to Declaration of Covenants and Restrictions for Colonial Green (the “Supplemental Declaration”), the Virginia Property Owners Association Act (“Act”), the Virginia Nonstock Corporation Act (the “Nonstock Act”) and Bylaws;

**WHEREAS**, Article III, Section 3(b) of the Declaration states that the Board of Trustees (the “Board”) shall have all of the powers and duties necessary for the administration of the affairs of the Association which are enabled by law or the Governing Documents and which are not specifically reserved to Members; and

**WHEREAS**, Article III, Section 3(b) of the Declaration provides the Board with the power and authority to fix, levy and collect assessments from Lot Owners; and

**WHEREAS**, Article II, Section 1 of the Amended Declaration provides that each Lot Owner shall pay to the Association all Assessments and other charges levied pursuant to the Declaration and that each Owner shall also be personally liable for all Assessments against such Owner’s Lot; and

**WHEREAS**, Article II, Section 1 of the Amended Declaration and §55-516 of the Act (Va. Code §§ 55-508, *et seq.*, the “Act”) provide that unpaid assessments, together with interest, costs and reasonable attorneys’ fees, are a charge and a continuing lien on the responsible Owner’s Lot; and

**WHEREAS**, Article V, Section 7 of the Declaration provides that any assessment, or installment thereof, not received within thirty (30) days after the due date shall be delinquent and may accrue a penalty in the amount to be set by the Board; and

**WHEREAS**, Article V, Section 7 of the Declaration provides that in the event any assessment installment is not paid within thirty (30) days after the due date, the Association may declare the entire balance of such Annual or Special Assessment due and payable in full; and

**WHEREAS**, §8.01-27.1 of the Virginia Code provides that the Association may impose a processing charge of up to \$50 and the protest or bad check return fee, if any, charged to the Association by its bank if an owner’s check is returned or rejected for insufficient funds or stopped payment; and

**WHEREAS**, §55-513.B of the Act and Article V, Section 7 of the Declaration empowers the Board to suspend a member's rights and privileges provided by or through the Association and the right to vote for any member for any period during which any Assessment against an Owner's Lot remains unpaid; and

**WHEREAS**, it is the intent of the Board of Trustees to establish a general assessment collection policy for the benefit and protection of the Association's lot owners by establishing procedures to ensure consistency of enforcement.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board hereby adopts the following assessment collection policies and procedures, which hereby supersede and replace any and all previous resolutions pertaining to the collection of assessments:

### **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 Owner is mailed notice of the Special Assessment. Unless otherwise specified by written notice from the Association, all other amounts assessed against an Owner are due and payable immediately upon assessment.

B. **Owners' Mailing Addresses**. All documents, correspondence and notices from the Association (or the Association's management agent ("Managing Agent"), if applicable) relating to assessments or charges shall be mailed or delivered to the Owner's address of record that appears on the books of the Association, which is the Owner's Lot address unless the Association is otherwise notified in writing by the Owner to change his/her address of record to a different mailing address. Owners have the responsibility of promptly informing the Managing Agent, in writing, of changes to their address of record.

C. **Invoices and Other Notices**. Invoices for assessments shall not be sent to Owners. Non-receipt of an invoice, payment coupon or other notice, therefore, shall in no way relieve the Owner of the obligation to pay the amount due by the due date.

### **II. Remedies For Nonpayment Of Assessment**

A. **Late Fee**. If payment of the total assessment, or any installment thereof, or charges due, including Additional, Individual, and/or Special Assessments and returned check charges, are not received within thirty (30) days of the due date by the Board or the Management Agent, the account shall be deemed late and a late fee of Twenty-Five Dollars (\$25.00) shall be added to the amount due and shall be a part of the continuing lien for assessments, as provided for in the Declaration, Bylaws, and the Act, until all sums due and owing shall have been paid in full.

B. **Interest**. If an Owner fails to timely pay an assessment or other charge, which continues for a period more than 30 days after the due date, then the unpaid assessment will be subject to interest at the rate of eighteen percent (18%) per annum, accruing from the due date

until paid. The failure of the Association to post interest charges on an Owner's account does not waive the Association's right to later charge, demand and collect interest from the applicable due date if the account is forwarded to legal counsel for collection, and the Association's legal counsel is hereby authorized to demand and collect interest on the overdue amounts accruing from the applicable due dates.

C. **Returned Checks.** If a check (or electronic debit, if applicable) is returned or rejected for insufficient funds or stop payment, 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 or its managing agent 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 for the remainder of that fiscal year to be made by certified check, cashier's check, or money order.

D. **Late Notice.** A "Late Notice" or other delinquency notice may be sent by the Association to Unit Owners who have not paid assessments or charges in full within thirty (30) days after the applicable 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 Managing Agent's discretion, prior to referral of an account to legal counsel. Once an account is referred to legal counsel for collection, however, no further late notices or other delinquency notices will be sent by the Managing Agent until the account is closed with legal counsel's office.

E. **Collection Costs and Attorneys' Fees.** In accordance with Article II, Section 1 of the Supplemental Declaration, all legal fees and costs of collection incurred by the Association as a result of the failure of an Owner to comply with the Association Documents shall be assessed against that Owner as they are incurred or as collection action is taken, without the need for a case-by-case vote by the Board. These expenses may include, for example, management administrative fees and mailing costs for delinquency notices, the cost of filing a lien and/or civil suit, attorneys' fees and other court costs, and any other collection-related costs. These collection costs shall be added to the Owner's assessment account and become part of the lien against the Owner's Lot and the personal obligation of the Owner.

F. **Acceleration.** If a Lot Owner fails to timely pay any assessment installments within thirty (30) days after the due date in a fiscal year, then the Board, by this Resolution and without the need for specific case-by-case direction from the Board, hereby authorizes the Association's management agent 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 Lot Owner.

G. **Referral to Legal Counsel.** If an Owner's account remains past due for more than sixty (60) days, then the Managing Agent is authorized to forward the Owner's delinquent account to the Association's legal counsel (or other collection agent designated by the Board) for collection, subject to any Board guidance regarding the minimum account balance required for

such forwarding. Once a delinquent Owner's account is forwarded to the Association's legal counsel for collection, all payments and other account-related communications between that Owner and the Association must occur through the Association's legal counsel, unless otherwise advised in writing by such legal counsel.

H. **Lien**. When an annual assessment, special assessment or other charge is assessed against a Lot, that assessment or other charge is deemed to be a lien against the Owner's Lot, and the Association (acting through its legal counsel) may record a Memorandum of Lien in the City's land records after mailing the Owner at least 10-days written notice (by certified mail, return-receipt requested) that a lien may be filed. Accelerated installments, late fees and other charges, including attorneys' fees and the costs associated with filing and releasing the Memorandum of Lien shall be included as part of the lien and added to the Owner's account. The 10-day notice referenced above shall be sent by the Association and/or the Association's legal counsel to the Owner's last known address, whether that be the Lot address, address of record (if different than the Lot address), or such other last known address of the Owner.

I. **Further Legal Action**. The Association's legal counsel is authorized to take other appropriate action to collect the amounts due, except as provided in Section J below or unless directed otherwise by the Board. Once a judgment is entered against an Owner, further 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 in its discretion may authorize foreclosure proceedings against the Owner's Lot within thirty-six (36) months of the date the lien was recorded (or within such other time period allowed by the Act, as amended).

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 an Owner alleging a significant personal hardship or as otherwise determined to be in the best interests of the Association. Any such relief granted to an Owner shall be appropriately documented in the Association's files with the conditions of the relief, if any. The Board may designate the President or other officer or the Association's legal counsel (or Management Agent, if applicable) as having the authority to grant waivers or payment plans on behalf of the Association between Board meetings, subject to any Board-established guidelines. If a payment plan request is granted for delinquent amounts, a condition of the payment plan may require, among other things, that the delinquent amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note.

L. **Application of payments**. Payments received from an Owner shall be credited in the following order:

1. Any collection costs for delinquent accounts, including, for example, administrative fees, 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 Lot Owner's 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.

**M. Suspension of Access to Common Area Facilities and Voting Rights.**

1. Use of Facilities and Services. In accordance with Article IV, Section 7 of the Declaration and pursuant to §55-513.B of the Act, for an Owner whose account is more than 60 days past due, that Owner's right to use any Common Area facilities or services provided by or through the Association shall be automatically suspended, for the duration of the period of indebtedness and/or default after first giving the defaulting Owner prior notice and opportunity for a hearing.

2. Voting Rights. In accordance with Article IV, Section 7 of the Declaration and pursuant to §55-513.B of the Act, the right of any Owner to vote as a member of the Association shall be automatically suspended if such Owner's assessment account is more than 60 days' past due. Such suspension continues in effect until the assessment account is paid in full, as confirmed by the Association.

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

**COLONIAL GREEN HOMEOWNERS ASSOCIATION**

**RESOLUTIONS ACTION RECORD**

Resolution Type: Policy No. 2017-1

Pertaining to: Collection of Assessments and Charges

Duly adopted at a meeting of the Board of Directors held 8/22/17, 2017.

Motion by: Joyce Graham Seconded by: Meredith Jones

VOTE:

YES	NO	ABSTAIN	ABSENT
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treasurer			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director			

ATTEST:

[Signature] 8/22/17  
Secretary Date  
President

Resolution effective 9/15, 2017.

CERTIFICATE OF MAILING

I hereby certify that on the 15<sup>th</sup> day of September, 2017, 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]  
Managing Agent