

# **Pinewood Greens Homeowners Association**

## **Fiscal Policies and Procedures**

### **Resolution #4F**

#### **Assessment and Delinquent Account Action Policy**

**Effective August 1, 2013**

**Whereas**, Article VI, Section 1 of the Pinewood Greens Homeowners Association (the Association) Declaration of Covenants, Conditions, and Restrictions (the Covenants) requires each owner to pay the Pinewood Greens Homeowners Association (the Association): (1) annual assessments or charges, and (2) special assessments for capital improvements and that such annual and special assessments, together with such interest thereof and costs of collection thereof are a charge on the land, are a continuing lien upon the property against which each such assessment is made and are (together with such interest, costs, and reasonable attorney's fees) the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, and

**Whereas**, Article VI, Section 3 (a) of the Covenants states: "From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July," and

**Whereas**, Article VI, Section 7 of the Declaration of Covenants, Conditions, and Restrictions requires the Board of Directors to fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid," and

**Whereas**, Article VI, Section 8 of the Declaration of Covenants, Conditions, and Restrictions states: "Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, court costs, and 20% attorney's fees, whether or not court action becomes necessary. These resultant fees shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot, and

**Whereas**, Section 58.1-395 of the Code of Virginia states that, except to the extent that the Covenants or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee for any assessment or installment

thereof that is not paid within 60 days of the due date for payment of such assessment. Except to the extent that the Covenants provide otherwise, no such late fee shall exceed the 5% interest penalty provided in Section 58.1.3915 of the Code of the Commonwealth of Virginia, and

**Whereas**, Article III(b) of the Articles of Incorporation provides that the Association shall fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declarations; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property of the Association, and

**Whereas**, Article VI, Section 4 of the Declaration of Covenants, Conditions, and Restrictions provides that in addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting,” and

**Whereas**, Section 55.514 (A) of the VPOAA provides that in addition to all other assessments which are authorized in the Covenants, the Board of Directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interest of the Association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the Covenants , including capital expenditures, and

**Whereas** Section 55.514 (C) of the Virginia Property Owners Association Act provides that the failure of a member to pay the special assessment authorized by this section shall entitle the association to the lien provided by Section 55.516 of the VPOAA.

## **IT IS THEREFORE RESOLVED AS FOLLOWS:**

### **Section I. Assessments**

**Assessment Obligation.** Each Owner has an obligation to pay Association assessments as required in Article VI, Section 1 of the Covenants. Article VI, Section 8 of the Covenants states that assessments, together with interest, attorney’s fees, and court costs, are the personal obligation of each Owner and shall be added to the assessment.

**Annual and Special Assessments.** The amount of the annual assessment will be established by the Board of Directors (by a majority vote) in accordance Article VI, Section 3 of the Covenants which states that the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in

conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

Annual assessments together with special assessments (if any) as defined below will hereinafter be called Quarterly Assessments.

The amount of any special assessment for capital improvements as authorized by Article VI, Section 4 of the Covenants will be established in accordance with the Covenants and will be added to and become part of the Quarterly Assessment.

Special assessments established in accordance with Section 55.514 of the VPOAA require a majority vote of the Board of Directors and will be added to and become part of the Quarterly Assessment, subject to the provisions of Section 55-514 of the VPOAA.

**Assessment Due Dates.** Quarterly Assessments will be collected in equal installments with Due Dates of January 1, April 1, July 1, and October 1.

**Membership Notification of Increases in Quarterly Assessments.** As is required by Article VI, Section 7 of the Covenants, all homeowners must be notified of any increase in Quarterly Assessments no later than 30 days prior to the assessment period. Increases in the Quarterly Assessment effective on the first day (January 1) of the next fiscal year will be voted by the Board of Directors no later than the November Board meeting. For any increases voted at the November Board meeting, homeowners will be notified by mail no later than December 1 prior to the January 1 effective date of the assessment increase.

**Assessment Notices.** The Association will mail a notice to every Owner which will inform the Owner of the amount of the Quarterly Assessment.

However, no Owner will be excused of the obligation to pay the Quarterly Assessment if the notice is not received. Pursuant to Article VI, Section 8 of the Declaration, Conditions, and Restrictions, no Owner may exempt himself for liability for Quarterly Assessments by abandoning any Lot or by the abandonment of the use and enjoyment of the Common Area.

Non-resident Owners must furnish the Association with an address and telephone number, in writing, where they can be contacted. Otherwise all notices will be sent to the Lot address and the Owner is responsible for payment and all information contained in the notice. Each Owner has the responsibility of promptly informing the Association in writing of changes to their address of record.

**Assessment Receipt.** No Quarterly Assessment will be deemed paid until received at the Association office, which is 2731 Hyson Lane, Falls Church, Virginia 22043.

Post-dated checks will not be accepted. If a post-dated check is submitted, it will not be posted and will be returned to the Owner via regular mail at the address as specified in the Association records.

## **Section II. Interest on Delinquent Accounts**

If payment is not received at the Association office within 60 days of the Due Date for payment of the Quarterly Assessment, interest shall be imposed on the assessment at the rate of 6% per annum.

### **Section III. Collection of Delinquent Accounts**

#### **One Calendar Month Past Due Accounts**

Accounts that are 1 calendar month past the due date will be sent by regular mail a past due notice. Non-receipt of this past due notice will not exempt the owner from further action in this section.

#### **60 Days Past Due Accounts**

To initiate Warrant in Debt action against an Owner, the Board of Directors will vote (2/3 [two-thirds] majority required) to refer the delinquent account to the Association legal counsel.

**If payment is not received at the Association office within 60 days of the Due Date for payment of the Quarterly Assessment, a Warrant in Debt Notice will be mailed by the Association to inform the Owner that the account is delinquent and subject to issuance of a Warrant in Debt if the delinquent amount is not received or a signed payment plan established with the Association within 30 days of the date of the Notice.**

**The Notice will state that the Warrant in Debt will be brought against the Owner for the unpaid Quarterly Assessments, the balance of the Quarterly Assessments for the remainder of the calendar year including interest, attorney's fees, and court costs, in accordance with Article VI, Sections 1 and 8 of the Covenants.**

**Non receipt of this past due notice will not exempt the owner from further action in this section.**

No other Notices will be sent by the Association office prior to referring the delinquent account to the attorney's office for issuance of a Warrant in Debt.

No other notices will be sent by the attorney's office prior to the issuance of a Warrant in Debt.

Non-receipt of delinquency notices does not relieve the Owner of his or her obligation to pay the Quarterly Assessment or any other applicable charges.

After an account is referred to legal counsel, monthly statements may be sent by the Association until the account is closed with the legal counsel's office. The statements will indicate that interest as accrued is not reflected on the statement, but will be calculated and added to the account at the time the account is referred to legal counsel. Legal counsel, at its discretion, may send additional notices directly to the owner.

**Once a judgment is entered against an Owner, further legal action may include garnishment of wages, rent/and or bank accounts, and the attachment of vehicles or other assets.**

#### **Section IV. Collection of Delinquent Accounts: Other Possible Action.**

In addition to the Warrant in Debt, the Board of Directors may also vote (2/3 [two-thirds] majority required to refer the delinquent account to the Association legal counsel for the following legal action:

- **Memorandum of Lien.** A Memorandum of Lien for unpaid Quarterly Assessments, the balance of the Quarterly Assessments for the remainder of the calendar year, including interest, attorney's fees, and court costs, in accordance with Article VI, Sections 1 and 8 of the Declaration of Covenants, Conditions, and Restrictions may also be recorded by the Association attorney against the title to the Lot.
- **Foreclosure of Memorandum of Lien.** The Board may vote to authorize legal counsel to foreclose the memorandum of lien for the unpaid Quarterly assessments, the balance of the Quarterly Assessments for the remainder of the calendar year, including interest, attorney's fees and court costs, pursuant to the Declaration of Covenants, Conditions, and Restrictions, and in a manner provided by the laws of the Commonwealth of Virginia, including the Virginia Property Owners Association Act.

#### **Section V. Acceleration.**

If the account is 60 days past due the entire balance of the Quarterly Assessment for the remainder of the calendar year will be automatically declared immediately due and payable in full.

#### **Section VI. Method of Crediting Payments**

After an account becomes delinquent, payment received from an Owner will be credited to the account in the following order of priority:

- Attorney's fees and court costs.
- Returned check charges.
- All other repair or maintenance assessments or charges pursuant to the Declaration of Covenants, Conditions, and Restrictions for violation of the governing documents and/or of the rules and regulations adopted pursuant to the Declaration of Covenants, Conditions, and Restrictions by an Owner, his family, employees, agents, tenants, or licensees.
- Any other charges, assessments, and fees due and payable pursuant to the Declaration of Covenants, Conditions, and Restrictions and the Articles of Incorporation (Article III.b) as well as any other charges, assessments, or fees due and payable pursuant to the Virginia Property Owners Association Act that

have been added to the Owner's' assessment account pursuant to applicable law or Covenant requirement.

- The Quarterly Assessments, the oldest outstanding first.

#### **Section VII. Installment Plans for Payment of Delinquent Assessments**

The Board of Directors may allow a written installment payment plan with an owner for purposes of satisfying the delinquent account balance over a period of time. The following represents a minimum installment terms acceptable to the Board of Directors:

- A lump sum payment of 25% of the balance is due at the time the plan is implemented. Monthly payments of at least 25% of the delinquent balance are due on the first day of succeeding months. In addition to initial lump sum and monthly installment plan payments, the Quarterly Assessment must also be kept current. Failure of the owner to honor the terms and dates of the payment plan established between the Board of Directors and the Owner may result in immediate cancellation of the delinquency installment plan and legal action (as indicated under Sections II or III above) will be initiated.
- The Board of Directors can alter at its discretion the terms of the above installment plan for payment of delinquent assessments.

#### **Section VIII. Suspension of Privileges for Delinquent Assessments**

The Board may suspend certain rights, privileges, and benefits of membership if the account is delinquent. If imposed, the suspension shall continue until payment is received in full by the Association. Such suspension may include, but is not limited to revocation of the Owner's voting rights as well as the right to rent the community center and the right to use pool by the Owner, the Owner's family, all members of the household, and tenants, if any.

The Board may not suspend parking privileges of any Owner whose account is delinquent.

**Voting Rights.** Suspension of the right to vote is not addressed by the Virginia Property Owners Association Act. Article V, Section 1(d) of the Declaration of Covenants, Conditions, and Restrictions provides that an Owner may not vote for any period during which an assessment remains against the Lot remains unpaid. Suspension of the right to vote does not require notice and a hearing. The suspension of the right to vote applies to voting at an Annual Meeting of the Association, any special meetings of the Association, all Board of Directors meetings, and all committee meetings of the Association.

**Suspension of the Use of Facilities.** In accordance with Section 55-513 of the VPOAA and Article V, Section 1(d) of the Covenants, if an account is delinquent for sixty (60) days the Association may suspend an Owner's right to access to the pool and/or rent the community center. Suspension is subject to the notice and hearings provisions of the Section 55-513 of the VPOAA in accordance with the Resolution 3M of the Board of Directors Suspension Hearing Policy.

#### **Section IX. Appeals**

Appeals by homeowners concerning assessment payment will be made in writing to the Treasurer. The Treasurer will respond in writing within 60 days of the receipt of the homeowner appeal. If the appeal is rejected the homeowner may appeal in writing to the Board of Directors at either of the next two Board of Directors meeting. The homeowner may attend the meeting at which the appeal is considered.

**Section X. Forbearance**

Any forbearance will be for the convenience of the Association and shall in no event be deemed a waiver of the right to enforce payment of any amounts due and payable, irrespective of whether they are composed of the principal Quarterly Assessment or other charges due and payable.

Decisions to initiate collections (as well as timing of collections) may vary at the discretion of the Board of Directors. For example, for houses known to be in foreclosure, the Board may determine that collection procedures may not be cost effective, due to difficulty of collecting legal fees and delinquent assessments for foreclosure properties.

**Section XI. Other Fees that May Be Due and Payable**

Other fees that may be due and payable and that will be added to the Quarterly Assessment are enumerated in Pinewood Greens Board of Directors Resolution #3F, Schedule of Charges, Costs, and Reimbursements.

Adopted by

Board of Directors of  
Pinewood Greens Homeowners' Association

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

Attest:

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Member of the Board

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Date