

IV KEENE MILL VILLAGE HOMEOWNERS ASSOCIATION

POLICY RESOLUTION NO. 2011-11-1

PROCEDURES RELATIVE TO ASSESSMENTS

(Relating to collection of annual and special assessments and charges)

WHEREAS, Article VII, Section 1(c) of the By-Laws of IV Keene Mill Village Homeowners Association (“By-Laws”) provide that the Board of Directors (“Board”) shall have the power to exercise for IV Keene Mill Village Homeowners Association (“Association”) all power, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the By-Laws, the Articles of Incorporation or the Declaration of Covenants, Conditions and Restrictions for IV Keene Mill Village Homeowners Association (“Declaration”);

WHEREAS, Section 55-513.A of the Virginia Property Owners’ Association Act (“Act”) authorizes the board of directors to establish, adopt and enforce rules and regulations with respect to such areas of responsibility assigned to the Association by the declaration except where expressly reserved by the declaration to the homeowners;

WHEREAS, Article VI, Section 1 of the Declaration provides that an owner of a lot is deemed to covenant to pay the Association annual assessments and charges, special assessments for capital improvements, and the such annual and special assessments together with interest, costs and reasonable attorneys’ fees will be a continuing lien upon the property and the personal obligation of the owner of such property at the time when the assessments fell due;

WHEREAS, Article VI, Section 8 of the Declaration provides that any assessment not paid within thirty days after the due date will bear interest from the due date at the rate of six percent per annum;

WHEREAS, Article VI, Section 8 of the Declaration also provides that the Association may bring an action at law against the owner personally obligated to pay the assessment or foreclose the lien against the property;

WHEREAS, Article V, Section 1(d) of the Declaration provides that the every member shall have the right and easement of enjoyment in and to the Common Area subject to the right of the Association to suspend the voting rights and right to use the recreational facilities by a member for any period during which any assessment against his lot remains unpaid;

WHEREAS, Section 55-513.B of the Act provides that the board of directors shall have the power, to the extent that the declaration and rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member’s right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than sixty days past due and (ii) assess charges against any member for any violation of the

declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible;

WHEREAS, Section 55-513.B of the Act further provides that before any such charge or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors;

WHEREAS, Section 55-516 of the Act provides that once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration; and,

WHEREAS, the Board deems it to be in the best interest of the Association to adopt a uniform and systematic procedure for the manner in which the Association, the Managing Agent, and Association legal counsel handle delinquent assessment accounts.

NOW, THEREFORE, BE IT RESOLVED that the Board duly adopts the following policies and procedures for the collection of delinquent accounts.

I. ROUTINE COLLECTIONS

A. Annual Assessments. The Annual Assessment levied by the Board shall be established through the adopted annual budget. For the convenience of the owners, Annual Assessments shall be payable in quarterly installments ("Due Dates") equal to one-fourth of the homeowner's share of the Annual Assessment payable by such homeowner. The Due Date for each quarterly installment shall be the first day of the first month of the quarter, unless otherwise determined by the Board.

B. Other Assessments. In addition to Annual Assessments, the Association may levy other assessments as specifically authorized in the Declaration, as the Board may deem appropriate, including special assessments.

C. Correspondence. All documents, correspondence and notices relating to assessments or charges shall be mailed to the address which appears in the books of the Association or to such other address as is designated in writing by the homeowner. It is the sole responsibility of the homeowner to ensure the books of the Association reflect the proper address for receiving correspondence. Non receipt of an invoice or coupon book shall in no way relieve the homeowner of the obligation to pay the amount due by the due date.

D. Charges. Charges assessed by the Board pursuant to Section 55-513.B of the Act shall be collected as an assessment or in such manner as shall be determined by the Board.

II. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS

A. **Interest.** Any assessment not paid within thirty days after the Due Date shall bear interest from the Due Date at a rate of six percent *per annum*. Such interest shall be part of the continuing lien established pursuant to Section 55-516 of the Act.

B. **Returned Check Charge.** When a homeowner's payment check is returned for insufficient funds or for any other reason, and an assessment or charge due and owing by the homeowner is not otherwise received by the Due Date, the homeowner's account shall be deemed past due, and a \$35.00 returned check charge will be added to the assessment account. Such charge shall be part of the continuing lien established pursuant to Section 55-516 of the Act. If the Association receives from any homeowner, in any fiscal year, two or more returned checks for payment of assessments or charges, the Board may require all future payments to be made by certified check or money order for the remainder of the fiscal year.

C. **Other Costs.** All costs incurred by the Association as a result of any violation of the Declaration, By-Laws, Rules and Regulations or Resolutions of the Association by a homeowner, his family, employees, agents or licensees, shall be assessed against such homeowner and are collectible in the same manner as other assessments imposed against a lot pursuant to Section 55-516 of the Act.

III. ADMINISTRATIVE PROCEDURE FOR NON-PAYMENT OF ASSESSMENTS

A. **Reminder Notice.** Within fifteen days following a Due Date, the Association Managing Agent may send a reminder notice to all homeowners who have not paid their assessment obligations on or before the Due Date.

B. **Late Notices.** The Association Managing Agent shall send notification to homeowners who have not paid assessments or charges, in full, within thirty days from the day such assessments are due. The notice shall advise the homeowner of any interest charges assessed to the homeowner's account and the intent to refer the account to the Association legal counsel for the filing of a Memorandum of Lien for Unpaid Assessments in the Clerk's Office of the Circuit Court of Fairfax County, Virginia. Such notice shall be substantially in the form attached as Exhibit 1 to this Resolution.

C. **Legal Remedies Upon Default.** In the event that an account is not paid in full for one hundred and twenty days, the Board hereby directs that the account be referred to Association legal counsel for legal action with the direction to file a Memorandum of Lien for Unpaid Assessments against the lot and commence legal action in Fairfax County General District Court to collect the sums due.

D. **Bankruptcy/Foreclosure.** The Managing Agent shall consult with Association legal counsel and immediately refer for collection any account not previously referred for legal action where the homeowner files or is the subject of a petition for relief in bankruptcy or where a deed of trust beneficiary or any other party has commenced foreclosure proceedings against the property.

IV. LEGAL PROCEDURE FOR NON-PAYMENT OF ASSESSMENTS

A. Contact with Delinquent Homeowner. Once an account is referred for legal action, all contact with a delinquent homeowner regarding the delinquent account shall be handled through Association legal counsel. If the homeowner contacts any Association officer or trustee or any management personnel about the homeowner's delinquent account, such person shall direct the homeowner to communicate with Association legal counsel.

B. Authority to Receive Payments. Association legal counsel is authorized to receive payments for delinquent accounts until the account is no longer delinquent. Any payments made to the Association through legal counsel shall be made directly payable to the "IV Keene Mill Village Homeowners Association."

C. Attorneys' Fees and Costs. The prevailing party, in any legal action to collect assessments, is entitled to recover the costs of collection, including court costs and reasonable attorneys' fees as awarded by the Court. The amount shall be credited against the fees and costs incurred in the collection of a delinquent account, shall be assessed against the delinquent homeowner's property, and shall be collectible as an assessment as provided in the Act.

D. Notice of Intent to File a Memorandum of Lien. Association legal counsel shall mail a "Notice of Intent to File a Memorandum of Lien" (the "Notice Letter") to the delinquent homeowner stating that, if the delinquent account is not brought current within ten days from the date of the Notice Letter, or if an agreement satisfactory to the Board with respect to payment is not reached in that period, a Memorandum of Lien may be filed against the delinquent homeowner's property in the full amount of the past due assessments plus costs, interest, and attorneys' fees and an action may be instituted against the homeowner in the General District Court for Fairfax County, Virginia.

E. Legal Action. At the expiration of the period specified in the Notice Letter, if an account remains delinquent and no payment plan has been accepted or, if accepted, is in default, Association legal counsel is authorized to take such action as they, in consultation with the Association Managing Agent, believe to be in the best interest of the Association, including, but not limited to, one or more of the following:

1. Filing a Memorandum of Lien against the homeowner's property in the Clerk's Office of the Circuit Court for Fairfax County in the full amount of the past due assessments, plus costs, interest and attorneys' fees, pursuant to Section 55-516 of the Act;
2. Filing suit against the delinquent homeowner for money due pursuant to Section 55-515 of the Act;
3. Filing a proof of claim in bankruptcy court;
4. Instituting action for foreclosure of the Association's lien pursuant to Section 55-516 of the Act.

F. Payments Received. Payments received from a homeowner whose account is delinquent and has been turned over to Association legal counsel will be credited in the following order of priority:

1. Attorneys' fees and court costs awarded by the Court.
2. Interest accrued and returned check charges.
3. All other charges incurred by the Association as a result of any violation by a homeowner, his family, employees, agents or licensees of the Declaration, By-Laws, Rules and Regulations or Resolutions, including charges assessed pursuant to Section 55-513.B of the Act.
4. The assessments for each lot applied first to the oldest amount due.
5. Other assessments.

V. COMPLIANCE BY BOARD, ASSOCIATION OR AGENTS

A. Compliance. Failure of the Board, the Association or any agents thereof, to comply with the requirements contained in this Resolution shall not affect the validity of any of the remedies set forth in Section II above.

B. Waiver. The Board may grant a waiver of any provision herein upon petition in writing by a homeowner alleging a personal hardship. Such relief granted to a homeowner shall be appropriately documented in the files with the name of the persons representing the Board granting the relief and the conditions of the relief.

C. Settlement and Payment Plans. If a written settlement offer or payment plan is presented to Association legal counsel, the settlement offer or payment plan will be forwarded to the Association Managing Agent for review and a decision on acceptance or denial of the settlement offer or payment plan by the Board.

VI. SUSPENSION PRIVILEGES AND MONETARY CHARGES

A. Where it has been determined that a homeowner is more than ninety days delinquent in the payment of common expenses, the Board may, upon proper notice to the homeowner, conduct a hearing to determine whether to suspend a member's right to use facilities or services, including use of common area parking lots, suspend a member's voting rights and/or impose monetary charges pursuant to Section 55-513.B of the Act.

B. The Managing Agent shall notify the delinquent homeowner, in writing, of the Board's decision. In the event that a tenant occupies the lot, a notification letter regarding any suspension of rights to use facilities or services will also be mailed to the tenant.

Sanctions will be lifted immediately upon confirmation of payment in full.

**IV KEENE MILLAGE HOMEOWNERS ASSOCIATION
Resolution Action Record**

Resolution Type: Administrative Policy No. _____

Pertaining to: Assessment Collections

Duly adopted at a meeting of the Board of Directors held September 14, 2011.

Motion by: Joe Wells Seconded by: Bill Casey

	VOTE:			
	YES	NO	ABSTAIN	ABSENT
<u>Mary Margaret McKinney</u> Mary Margaret McKinney, President	<u>X</u>	_____	_____	_____
<u>Joe Wells</u> Joe Wells, Vice President	<u>X</u>	_____	_____	_____
<u>Bill Casey</u> Bill Casey, Member at Large	<u>X</u>	_____	_____	_____

ATTEST:
Bill Casey
Bill Casey, Member at Large

9/14/2011
Date

Resolution effective: _____, 2011.

CERTIFIED MAIL

Return Receipt Requested

(Date)

Homeowner
IV Keene Mill Village Homeowners Association

Fairfax, Virginia

Re: IV Keene Mill Village Homeowners Association

Account: _____

Dear _____ Homeowner:

In spite of the notice sent to you on _____, 20____, assessments and/or interest due against your lot in IV Keene Mill Village Homeowners Association remain unpaid for the _____, 20____, - _____, 20____, quarter.

Article VI, Section 1 of the Declaration of Covenants, Conditions and Restriction for IV Keene Mill Village Homeowners Association ("Declaration") requires all lot owners to pay their assessments in a timely fashion. The Board of Directors is charged under the Declaration, with the responsibility of taking measures to ensure the collection of assessments.

Therefore, unless the outstanding balance of \$_____ is paid within 10 days, the Association legal counsel may file a memorandum of lien against your property. The lien may include the assessment and/ or costs and attorney fees incurred to collect this debt. The Board of Directors may convene a hearing to determine whether to suspend your right to use the Common Area, voting right and/or impose additional monetary charges.

Please remit this payment to: IV Keene Mill Village Homeowners Association, c/o National Realty Partners, 365 Herndon Parkway, suite 111 Herndon, VA 201701

Sincerely,

Managing Agent

cc: File
Enclosure
#58678-2