



Late Dues and Nonpayment Policy

FINANCIAL rev 6-15-2022

This policy is constructed with the Board of Director members, OLE recorded documentation, and TN Code Annotated as guides. In the event of any legal conflict between this policy and the specifications, the recorded documentation, and applicable laws of the state of TN and Maury County TN shall prevail.

1. The due date for annual assessments (dues) is January 1 of each year. Annual statements are to be sent out by November 20 to allow the member a minimum of 30 days before due date.
2. Statements are to include but not limited to dues, fees, interest, and fines. Updated statements will be sent out every quarter to those with an overdue balance. Mailing charges of \$8 per statement will apply and be charged to the account for hard copy mailing.
3. Payments not received within thirty days after the due date shall be deemed in default. Payments in default shall be charged a late fee of \$30 for first 90 days past due date. If not paid within that 90-day period there will be an additional \$30 late fee imposed quarterly on the 1st day of each 90-day period, following until dues are paid.
4. Lake Access Key Cards will be deactivated for delinquent accounts, to be re-activated only when account is current.
5. Members with a signed payment agreement on file who meet the payment arrangements are considered in good standing. Late fees will not be assessed on member accounts that have a signed payment agreement on file unless the payment agreement goes into default.
6. If an agreement becomes default, the member is not in good standing until all payments under the arrangement are current. When a payment agreement becomes default, late fees will become retroactive to Feb 1 of the year due for the balance due.
7. During the final yearly meeting of the board the present list of delinquent assessments will be reviewed. At the Board's discretion, a lien may be filed against properties with excessive late dues owed.
8. The Board must vote to act to lien, foreclose or to table action on specific overdue accounts exceeding \$250. Circumstances may be considered with individual presentation of homeowner hardship. Late fees, at the discretion of the board, may be waived or reversed under presentation of extenuating circumstance or hardship.
9. The Board must notify mortgage lender and homeowner of intent to file lien, giving 90 days to satisfy the account. An additional \$10.00 administrative fee (ink, paper, env, postage) PLUS key fob deactivation \$10.00, PLUS advise of \$250.00 fee if lien is recorded.
10. Add recorded lien fees to homeowners account and update late charges and other fees
11. Upon Satisfaction of lien, release must be recorded within 15 days and notification sent to homeowners with a copy of County recorded lien release.

12. The HOA may bring an action of law against the owner and may foreclose a lien against the property *
Foreclosure proceedings cannot begin unless the amount due is at least ½ of the cost of the attorney
to represent proceedings.

* indicates this line is found in the declaration of Oak Lake Estates

The following is taken directly from the current TN CODE ANNOTATED 66-27-415. Lien for assessments.

- (a) (1) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.
- (2) Notwithstanding subdivision (a)(1), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5.
- (3) **3) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:**
- (A) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or
- (B) If to a lienholder, other interested party, or the nominee of record, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder, the other interested party, or the nominee may have on file with the association.
- (4) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 66-27-402(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.**
- (b) (1) A lien under this section is prior to all other liens and encumbrances on a unit, except:
- (A) Liens and encumbrances recorded before the recordation of the declaration;
- (B) A first or other contemporaneous mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- (C) Liens for real estate taxes and other governmental assessments or charges against the unit.
- (2) Upon a foreclosure action initiated by a lien holder or the association under title 35, chapter 5, the association shall be entitled to a priority in the proceeds from the foreclosure sale to satisfy the lien under subsection (a) up to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 66-27-414, which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, but not exceeding one percent (1%) of the maximum principal indebtedness of a lien secured by the first mortgage or deed of trust; provided, that, notwithstanding this subsection (b) or any law to the contrary:
- (A) Any foreclosure by the association of its lien for assessments shall be subject to any prior mortgage or deed of trust encumbering the property and shall not extinguish the lien of such mortgage or deed of trust;
- (B) Upon any foreclosure by the holder of a mortgage or deed of trust, the sale and foreclosure will be subject to the association lien up to the payment priority amount set forth in this subdivision (b)(2); and

(C) **Any right of foreclosure or priority of the association shall not be transferable and shall be extinguished if assigned or transferred to a third party.**

(3) This subsection (b) does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

(c) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.

(d) **(1) Recording of the declaration constitutes record notice of the lien. A lien for any delinquent assessment under this section up to the priority in payment provided in subdivision (b)(2) is perfected without recording. Any other delinquent amount above the priority of payment provided in subdivision (b)(2) is perfected by recording it in the lien book in the register of deeds office in the county where the real property is located and shall have priority over any subsequently filed liens.**

(2) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) if the owner of the unit or the holder of any mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date that six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.

(e) **A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.**

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the owner's unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

HISTORY: Acts 2008, ch. 766, § 1; 2016, ch. 866, §§ 1, 2.

Title 66 Property Chapter 21 Recording and Enforcement of Liens Part 1 General Provisions Tenn.

Code Ann. § 66-21-106 (2017) 66-21-106. Penalty for failure to release.

If the plaintiff, complainant, lienor or owner of any lien filed and registered pursuant to this part fails, neglects, or refuses to release a lien that is satisfied, within fifteen (15) days after written demand of the defendant or lienee, such person shall be liable to the penalty prescribed for failure to release a mortgage on demand after the payment of the debt secured.

HISTORY: Code 1932, § 8063; T.C.A. (orig. ed.), § 64-2106