

**AUTUMN CHASE HUNT HOMEOWNERS ASSOCIATION**

**RESOLUTION NO. 2014-02**

**PROCEDURES RELATIVE TO ASSESSMENTS**

Relating to collection of routine and delinquent assessments

**WHEREAS**, Section 4.1 of the Bylaws for Autumn Chase Hunt Homeowners Association ("Bylaws") provide that the Autumn Chase Hunt Homeowners Association ("Association") Board of Directors ("Board") shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not required by the Virginia Property Owners' Association Act ("Act") or the Association governing documents to be exercised and done by the Owners;

**WHEREAS**, Section 4.1(4) of the Bylaws empowers the Board to adopt and amend any reasonable Rules and Regulations not inconsistent with the Association Documents;

**WHEREAS**, Section 55-513 of the Act grants the Board the authority to establish, adopt, and enforce rules and regulations with respect to such other areas of responsibility assigned to the Association by the Declaration;

**WHEREAS**, Section 6.4 of the Declaration for Autumn Chase Hunt ("Declaration") provides that each Owner of a Lot shall pay to the Association all Assessments and other charges assessed by the Board pursuant to the provisions of the Declaration and that each Owner shall be personally liable for all Assessments against such Owner's Lot;

**WHEREAS**, Section 6.4 of the Declaration also provides that no Owner shall be exempted from liability for Assessment by reason of waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot or by temporary unavailability of the Common Area;

**WHEREAS**, Section 6.5 of the Declaration provides that any Assessment, or installment thereof, not paid within ten days after the due date shall be delinquent and may accrue a late charge in the amount of Fifteen Dollars per dwelling or such other amount as may be established from time to time by the Board of Directors;

**WHEREAS**, Section 12.1(c) of the Declaration provides that in any proceedings arising out of any alleged default by an Owner or any suit brought by an Owner against the association or any director or Officer, the prevailing party shall be entitled to recover the costs of such proceeding and reasonable attorneys' fees, even if the proceeding is settled prior to judgment;

**WHEREAS**, Section 12.2(b) of the Declaration provides that in any case where an Assessment against an Owner is payable in installments, upon default by such Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such Assessment may be accelerated, at the option of the Board of

Directors, and the entire balance of the Assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner;

WHEREAS, Section 12.1(h) of the Declaration provides the Association with the authority, after notice and the opportunity to be heard, to assess monetary charges for violations of the Declaration, the Bylaws, Association rules and regulations or the Act, and such monetary charges are to be collected as individual assessments;

WHEREAS, Section 55-515 B. of the Virginia Property Owners' Association Act ("Act") provides that in actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or such lot owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest, even if the proceeding is settled prior to judgment;

WHEREAS, the Association has retained the services of a *common interest community manager* ("Management Agent"), as that term is defined in Va. Code § 54.1-2345, responsible for the provision of management services, including, but not limited to, the collection of assessments and payments; 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 Management Agent, and Association Legal Counsel handle delinquent assessment accounts.

**NOW THEREFORE, BE IT RESOLVED** that the Board adopts the following assessment procedures, which shall supersede and replace any previously adopted policies or procedures relating to the same subject.

## **ARTICLE I**

### **ROUTINE COLLECTIONS**

A. The Annual Assessment levied by the Board shall be established by the Board through an adopted annual budget. For the convenience of Lot Owners, the annual assessment shall be payable in quarterly installments. Each installment of the annual assessment shall be due and payable in advance on the first day of each quarter ("Due Date"): January 1, April 1, July 1 and October 1. All special assessments shall be due and payable on the date specified on the notice of such special assessment provided to Lot Owners by the Board.

B. All documents, correspondence, and notices relating to annual and special assessments shall be mailed to the address which appears on the books of the Association or to such address as may be designated in writing by a Lot Owner. Notices of special assessment shall be sent to Lot Owners by regular U.S. mail. Non-resident Lot Owners must furnish the Board with an address where the Lot Owner will promptly receive mail and notices. If no alternate address is designated by a Lot Owner for the provision of notice, all notices shall be

mailed to the Lot address. The responsibility for providing a current address lies solely with Lot Owners.

C. Non-receipt of an invoice shall in no way relieve a Lot Owner of the obligation to pay the amount due by the Due Date.

## **ARTICLE II**

### **REMEDIES FOR NONPAYMENT OF ASSESSMENTS**

A. Late Charge. Any assessment or installment payment not received by the Association within thirty days of the Due Date shall incur a late charge in the amount of \$50.00 per month.

B. Returned Check Charge. When a Lot Owner's payment check is returned for insufficient funds or because the check is drawn on a closed account and an assessment or charge due and owing by the Lot Owner is not otherwise received by the Due Date, the Lot Owner's account shall be deemed past due and a \$ 25.00 returned check charge will be added to the assessment account. If the Association receives from any Lot Owner, in any accounting year, two or more returned checks for payment of assessments, the Board may require all future payments to be made by certified check or cashier's check or money order.

C. Waiver by Board. The Board may grant a waiver of any provision herein upon petition, in writing, by a Lot Owner alleging personal hardship. Such relief granted to a Lot Owner shall be appropriately documented in the files with the conditions of the relief.

D. Waiver of Late Fee by Managing Agent. The Board hereby authorizes the Managing Agent to waive the imposition of late charges on payments received by the Managing Agent after the thirtieth day of the month, if the delinquent Lot Owner has owned the Lot for less than six months at the time of delinquency, and in the judgment of the Managing Agent, the delinquency was a result of a misunderstanding of the correct procedures relating to the payment of the assessment. Waivers by the Managing Agent pursuant to this Section may be granted only once to a delinquent Lot Owner; further waivers must be approved by the Board.

E. Acceleration. Quarterly installment payments of the annual assessment are permitted for the convenience of Lot Owners. If a Lot Owner fails to pay two consecutive installments on or before their Due Date, the account is hereby accelerated by the Board after *Notice of Intent to Accelerate Installments* is sent by the Management Agent or Association Legal Counsel, and all remaining installments of the annual assessments are then due and owing.

F. Delinquent Violation Charge. Any monetary charge assessed against a Lot Owner for violation of the Declaration, Bylaws or Association rules and regulations or the Act shall be due within thirty days of the assessment of the monetary violation charge. If the Lot Owner chooses to contest the violation, and the violation is upheld, the monetary violation charge shall be added to the Lot Owner account and shall be due within thirty days of the conclusion of the hearing. If the monetary violation charge has not been paid in full within thirty

days of being assessed against the Lot Owners account, the Lot Owner shall be assessed a one-time late charge in the amount of \$50.00.

### **ARTICLE III**

#### **ADMINISTRATIVE PROCEDURE FOR NON-PAYMENT OF ASSESSMENTS**

A. Late Notice. The Association Managing Agent may send notification to Lot Owners who have not paid assessments, in full, within thirty days from the Due Date ("Late Notice").

B. Notice of Intent to Accelerate Installments. If payment in full, including late charges, is not received by the Association Managing Agent by the sixtieth day after the due date, a *Notice of Intent to Accelerate Installments* may be mailed to the Lot Owner by the Association Managing Agent. The *Notice of Intent to Accelerate Installments* may be sent to the Lot Owner by certified mail, return receipt requested or by first class mail.

C. Acceleration and Referral to Legal Counsel. In the event that an account arrearage is not paid in full within ten days from the sending of the *Notice of Intent to Accelerate Installments*, the account is hereby accelerated and the Board directs that the Association Managing Agent refer the account to Association Legal Counsel for legal action with the direction to send a *Notice of Intent to File Accelerated Lien* to the Lot Owner and file an accelerated Memorandum of Lien for Unpaid Assessments against the Lot and to commence legal action in the Fairfax County General District Court to collect the accelerated account balance due.

D. Acceleration (Commencement of New Fiscal Year). If the Lot Owner's account has been referred to Association Legal Counsel for legal action and a new fiscal year begins, the entire balance of the Annual Assessment for the new fiscal year is hereby accelerated and becomes due upon a default of the Lot Owner.

E. Bankruptcy/Foreclosure. The Association Managing Agent shall consult with Association Legal Counsel and immediately refer for collection any account not previously referred for legal action where the Lot Owner 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.

### **ARTICLE IV**

#### **LEGAL PROCEDURE FOR NON-PAYMENT OF ASSESSMENTS**

A. Contact with Delinquent Lot Owner. Once an account is referred for legal action, all contact with a delinquent Lot Owner related to the delinquent account shall be handled through the Association Legal Counsel. If the Lot Owner contacts an Association Officer or Director or any management personnel about the Lot Owner's delinquent account, such person shall direct the Lot Owner to communicate with Association Legal Counsel until the Lot Owner's assessment account has been brought current.

B. Authority to Receive Payments. Association Legal Counsel is authorized to receive payments on delinquent accounts until the account is no longer delinquent. Any payments made to the Association through Association Legal Counsel shall be made directly payable to the "Autumn Chase Hunt Homeowners Association." Payments made payable to Association Legal Counsel shall be deposited in Association Legal Counsel's client trust account. Payments shall be deemed to be received upon actual receipt of the payment by Association Legal Counsel, the Association Managing Agent or the Association, whichever occurs first.

C. Settlement and Payment Plans. If a written settlement offer and payment plan 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.

D. Attorneys' Fees and Costs. Pursuant to the Declaration and the Act, the costs of pursuing collection, including but not limited to, reasonable attorneys' fees, shall be assessed against each delinquent Lot and the Lot Owner only when such amounts are awarded by the Court.

E. Legal Action. 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 instructed by the Board, including, but not limited to, the actions described in Article III, Section C of this Resolution and one or more of the following:

1. Filing a Memorandum of Lien for Unpaid Assessments against the Lot Owner's property in the Clerk's Office of the Circuit Court of the Fairfax County in the full amount of the unpaid assessments, including acceleration;
2. Filing suit against the delinquent Lot Owner for money due pursuant to Section 55-515 of the Act, the governing documents and this Resolution;
3. Filing a proof of claim in bankruptcy court;
4. Instituting action for foreclosure to enforce an Association lien pursuant to Section 55-516 of the Act;
5. Engaging a firm to conduct a search to identify assets of the delinquent Lot Owner.

F. Payments Received. Payments received from a Lot Owner whose account is delinquent and has been referred to Association Legal Counsel will be credited in the following order of priority:

1. Charges for court-awarded attorneys' fees and court costs;
2. Returned check charges;

3. All other charges incurred by the Association as a result of any violation by a Lot Owner, Lot Owner's family member, employees, agents or licensees of the Declaration, By-Laws, Rules and Regulations or Resolutions;
4. The assessments for each Lot applied first to the oldest amount due;
5. Other Assessments.

G. Fair Debt Collection Practices Act. In an effort to minimize risk of claims under the federal Fair Debt Collection Practices Act ("FDCPA"), the Board authorizes Association Legal Counsel to waive any fees or charges which Association Legal Counsel determines may increase the potential for liability for Association Legal Counsel under the FDCPA.

#### **ARTICLE V**

#### **COMPLIANCE BY THE 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 above.

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

**AUTUMN CHASE HUNT HOMEOWNERS ASSOCIATION  
RESOLUTION ACTION RECORDED**

Resolution Type: Policy No. 2014-02

Pertaining to: Procedures Relative to Assessments

Duly adopted at a meeting of the Board of Directors held 2-25-14.

Motion by: Robin Michener Seconded by: Mark Richardson

	VOTE: YES	NO	ABSTAIN	ABSENT
Jeffrey M. Gontarek <u>[Signature]</u>	<input checked="" type="checkbox"/>			
President <u>Michener</u>	<input checked="" type="checkbox"/>			
Vice-President <u>William Cronmiller</u>	<input checked="" type="checkbox"/>			
Secretary <u>[Signature]</u> <u>MARK D. RICHARDSON</u>	<input checked="" type="checkbox"/>			
Treasurer				
Director				

ATTEST:

William Cronmiller  
Secretary

2/25/2014  
Date

FILE:

Book of Minutes - 20 14

Book of Resolutions:

	Book No.	Page No.
<u>Policy</u>	_____	_____
Administrative	_____	_____
Special	_____	_____
General	_____	_____

Resolution effective: March 31, 2014  
\_\_\_\_\_, 20 14.

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