

UNIT OWNERS ASSOCIATION OF WATER'S EDGE, A CONDOMINIUM

POLICY RESOLUTION NO. 2014- 02

PROCEDURES RELATING TO COLLECTION OF ROUTINE AND SPECIAL ASSESSMENTS AND DELINQUENT PAYMENTS

WHEREAS, Article III, Section 5 of the Unit Owners Association of Water's Edge, a Condominium's ("Association") Bylaws provides that "[t]he Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all acts and things as are by the Condominium Act, the Declaration or these Bylaws directed to be done by the Unit Owners' Association;" and

WHEREAS, Article III, Section 5(f) of the Association's Bylaws states that the Board of Directors shall have the power to make and amend "Rules and Regulations respecting the use and enjoyment of the Condominium in accordance with the provisions of these Bylaws;" and,

WHEREAS, Article III, Section 5(b) of the Association's Bylaws states that the Board of Directors shall have the power to levy assessments "against Unit Owners to defray the Common Expenses, establishing the means and methods of collecting such assessments from the Unit Owners, and establishing the period of the installment payment of such assessments;" and,

WHEREAS, Article V, Section 4 of the Association's Bylaws provides that "[t]he total amount of the estimated Common Expenses (including reserves) as set forth in the budget or budgets of the Condominium for any fiscal year shall be assessed equally against all Units....On or before the first day of each fiscal year, and the first day of each of the succeeding eleven (11) months in such fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the Managing Agent [] one-twelfth (1/12th) of the assessment for Common Expenses for such fiscal year;" and,

WHEREAS, Article V, Section 6 of the Association's Bylaws states that "[i]f reserves established and maintained in accordance with this Article shall be inadequate for any reason, including the non-payment of any Unit Owner's assessment, the Board of Directors may at any time or from time to time assess a special assessment in order to defray, in whole or in part, extraordinary expenditures, or the cost of any construction, reconstruction or replacement of the Common Elements...All Unit Owners shall be obligated to pay the adjusted monthly amount or, if the special assessment is not payable in installments, the amount of such assessment;" and,

WHEREAS, Article V, Section 8 of the Association's Bylaws provides that "[e]ach Unit Owner shall be obligated to pay the Common Expenses assessed by the Board of Directors pursuant to [the] Bylaws. No Unit Owner may be exempted from liability to contribute toward payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his or her Unit;" and,

WHEREAS, Article V, Section 9 of the Association's Bylaws states that "[t]he total annual assessment against each Unit Owner for Common Expenses and any special assessment levied pursuant to these Bylaws is hereby declared to be a lien against the Condominium Unit of

such unit within the purview of the Condominium Act, which lien shall be effected as provided by law. In any case where an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid assessments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance then owing may be declared due and payable in full by the service of notice to such effect upon the defaulting Unit Owner and his or her Mortgagee by the Board of Directors or the Managing Agent;" and,

WHEREAS, Article V, Section 11 of the Association's Bylaws provides that the "Board of Directors, of the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof;" and,

WHEREAS, Article V, Section 12 of the Association's Bylaws states that "[i]n the event of a default by any Unit Owner in paying any Common Expenses or any other sum assessed against the Unit Owner which default continues for a period in excess of fifteen (15) days, such Unit Owner shall be obligated to pay a late payment penalty in such amount as from time to time shall be determined by the Board of Directors, provided such amount shall not exceed the highest interest rate permitted by law;" and,

WHEREAS, Article XI, Section 2 of the Association's Bylaws provides that "[a]n action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of assessments, any other relief provided for in these Bylaws or in the Declaration, or any combination thereof, and any other relief afforded by a court of competent jurisdiction, may be sought;" and,

WHEREAS, Article XI, Section 3 of the Association's Bylaws states that "[i]n any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the court and under Virginia law;" and,

WHEREAS, Article II, Section 10(b) of the Association's Bylaws provides that "[n]o Unit Owner may vote at any meeting of the Unit Owners' Association if a lien in favor of the Unit Owners' Association pursuant to Section 9 of Article V of these Bylaws has been perfected against such Owner's Unit, or action therefor has been instituted, and the amount necessary to release such lien has not been paid at the time of such meeting;" and,

WHEREAS, Article 7 of the Declaration for Water's Edge, a Condominium states that all Unit Owners have an exclusive easement for the use and enjoyment of the Association's recreation facilities, but that such easement is subject to the obligation of the Unit owners to bear their pro rata share of all costs of operating, maintaining and repairing such facilities;" and

WHEREAS, § 55-79.83H of the Virginia Condominium Act states that "[e]xcept to the extent that the condominium instruments 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 condominium instruments provide otherwise, no such late fee shall exceed the penalty provided in § 58.1-3915;" and

WHEREAS, Section 55-79.80:2(B) of the Act further provides that "before any action authorized in subsection A is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted thereto specify. Notice of such hearing, including the actions that may be taken by the unit owner's association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings;" and,

WHEREAS, the Board of Directors believes that it is in the best interest of the Association to adopt uniform procedures for assessment collection and delinquent accounts.

NOW THEREFORE, BE IT RESOLVED that the following assessment procedures be adopted:

A. ROUTINE COLLECTIONS

(1) Due Date. All installments of the annual assessments for the Association shall be due and payable on the first day of each month, and all special assessments shall be due and payable on the date(s) specified on the notice of special assessment (hereinafter "Due Date").

(2) Installment Payments. Unit Owners shall pay the annual assessment in twelve (12) equal monthly installments by the due dates set forth above. Unit Owners may make arrangements with the Association's management agent to pay the assessments through a direct debit program.

(3) Address of Unit Owners – Notices. All notices, demands, bill statements or other communication relating to assessments and charges shall be mailed to the address which the Unit Owner shall designate in writing and file with the management agent (as agent for the Association), or if no such address is designated by the Unit Owner, at the address of the Unit. It is the Unit Owner's responsibility to make sure that his/her address of record with the Association is current and correct at all times.

(4) Non-Receipt of Notices and Other Communications. Non-receipt of a notice, bill statement, invoice, payment coupon or other communication relating to assessments and charges shall in no way relieve a Unit Owner of the obligation to pay any assessment payment amount due by the Due Date.

B. REMEDIES FOR NONPAYMENT OF ASSESSMENT

(1) Late Charges, Interest, Acceleration, and Notices to Unit Owners:

(i) Late Charges. If any monthly payment is not received by the management agent within thirty (30) days after the due date, the account shall be deemed "in default." The Board will impose a late fee of five percent (5%) for any monthly assessment that is not paid within sixty (60) days of the due date for payment of such assessment. These amounts thereafter shall be a part of the continuing lien for assessments as provided for in the Bylaws until all sums due, including such late charges, shall have been paid in full.

(ii) Interest. If a Unit Owner fails to timely pay any sum owed to the Association for a period in excess of fifteen (15) days from the Due Date, interest at the rate of 12% per annum shall accrue on the principal delinquent amount from the Due Date until paid in full.

(iii) Late Notice. A "Late Notice" shall be sent to Unit Owners who have not paid their assessments in full by the thirtieth (30th) day of the month. Failure of the Association and/or its management agent to send any notices required hereunder shall not be deemed to restrict or limit the Association's authority to proceed with any and all collection actions. Any notice described herein shall not be deemed a condition precedent to the taking of any other actions by the Association.

(iv) Second Notice and Acceleration. A Second Late Notice shall be sent to the Unit Owners who have not paid their assessments, or installments thereof, in full within sixty (60) days after the Due Date. The Second Notice Letter shall show the amount of past due assessments and interest (if any). If the Unit Owner is delinquent in the payment of two consecutive installments, the Second Notice Letter shall also inform the delinquent Unit Owner that the remaining assessment installments have been automatically accelerated for the remainder of the fiscal year. A copy of the Second Notice Letter shall also be sent to the Unit Owner's Mortgagee.

(2) Referral to Legal Counsel: If an account is more than one-hundred twenty (120) days past due, the management agent shall refer the account to legal counsel for collection efforts. The management agent shall automatically, on behalf of the Board of Directors, refer the account to the Association's legal counsel for collection actions to protect the interests of the Association, unless the Board of Directors by majority vote decides not to.

(3) Legal Action. Legal counsel is authorized to pursue legal action, in consultation with the Management Agent, as it determines is in the best interest of the Association, including, but not limited to:

- (i) Sending a balance due letter and/or notice of acceleration letter to the Unit Owner;

- (ii) Filing a Memorandum of Lien against the Unit Owner's Unit in the Clerk's Office of the Circuit Court of Fairfax County pursuant to Section 55-79.84 of the Act;
- (iii) Filing suit against the delinquent Unit Owner for assessments, attorneys' fees, costs of collection and court costs;
- (iv) Filing a proof of claim in bankruptcy court;
- (v) Instituting action for foreclosure of the Association's lien;
- (vi) Engaging a firm to conduct a search to identify assets of the delinquent Unit Owner; and,
- (vii) Pursuing post-judgment collection actions, including, but not limited to, debtor's interrogatories, garnishments, and foreclosure.

(4) Legal Fees and Costs. In the event that the Association's legal counsel must file a lawsuit against a delinquent Unit Owner for assessments, the Association's legal counsel will assert on behalf of the Association a claim for the costs of pursuing collection, including but not limited to, reasonable attorneys' fees, collection costs, and court costs.

(5) Waiver. The Board may grant a waiver of any provision herein upon petition in writing by a Unit Owner alleging a personal hardship. Such relief granted to a Unit Owner shall be appropriately documented in the Association's files with the name of the person(s) representing the Board granting relief and the conditions of such relief.

(6) Bankruptcy and Foreclosure. The Management Agent shall consult with Association legal counsel and immediately refer for collection any account not previously referred for legal action where the Unit 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.

(7) Returned Checks and Failed Direct-Debits. If the Association receives from any Unit Owner, in any fiscal year, one or more returned checks for insufficient funds or failed direct-debits for insufficient funds for payment of any sum assessed against the Unit Owner, the Board may require all future payments to be made by certified check or money order for the remainder of the fiscal year. A reasonable charge of \$25.00, or other such amounts as permitted under Virginia law, will be charged to the Unit Owner for any returned checks or failed direct-debits.

C. SUSPENSION OF VOTING PRIVILEGES

(1) When the Association has filed a lien against a delinquent Unit Owner and/or when the Association has instituted a legal proceeding against a delinquent Unit Owner and the

Unit Owner remains delinquent, the Board of Directors or Managing Agent shall issue a citation to the Unit Owner (“Initial Notice of Violation”). The Initial Notice of Violation shall be in writing and delivered in accordance with the notice provision in Article XII, Section 2 of the Bylaws and Va. Code Ann. § 55-79.80:2. The Initial Notice of Violation shall advise the Unit Owner of his or her delinquency, specify that payment in full must be received, and state the number of days within which the Unit Owner must submit full payment.

(2) Where the Unit Owner has been given a reasonable opportunity to correct the alleged violation after the Initial Notice of Violation and the Unit Owner’s account remains delinquent, the Board of Directors or its Managing Agent shall issue a Hearing Notice. The Hearing Notice shall advise of the set time, date and place of the hearing before the Board of Directors with reasonable consideration given to the scheduling concerns of the Unit Owner, and also provide notice to the Unit Owner of possible suspension of voting privileges. The Hearing Notice shall also inform the Unit Owner his/her opportunity to be heard and to be represented by counsel before the Board. The Hearing Notice shall comply with the requirements set forth in Va. Code § 55-79.80:2 as amended (1950).

(3) The hearing results shall be hand delivered or mailed by registered or certified mail, return receipt requested to the Unit Owner at the address of record with the Association within seven (7) days of the hearing.

(4) Such suspension of voting privileges will be lifted immediately upon receipt of payment in full by certified funds of the delinquent amounts due, including costs and fees owed to the Association. In the event payment in full is made by personal check such sanctions will be lifted upon check clearance.

D. SUSPENSION OF RECREATION FACILITY PRIVILEGES

(1) In the event a Unit Owner fails to pay any assessments, including installment payments thereof, within sixty (60) days of the Due Date, the Unit Owner’s rights and privileges to use the Association’s recreation facilities shall be suspended, in accordance with Section 55-79.80:2 of the Virginia Condominium Act. The suspension will apply to the Unit Owner and the Unit Owner’s tenants, guests, visitors, agents, invitees and household members. The Board of Directors or Managing Agent shall issue a citation to the Unit Owner (“Initial Notice of Violation”). The Initial Notice of Violation shall be in writing and delivered in accordance with the notice provision in Article XII, Section 2 of the Bylaws and Va. Code Ann. § 55-79.80:2. The Initial Notice of Violation shall advise the Unit Owner of his or her delinquency, specify that payment in full must be received, and state the number of days within which the Unit Owner must submit full payment.

(2) Where the Unit Owner has been given a reasonable opportunity to correct the alleged violation after the Initial Notice of Violation and the Unit Owner’s account remains delinquent, the Board of Directors or its Managing Agent shall issue a Hearing Notice. The Hearing Notice shall advise of the set time, date and place of the hearing before the Board of Directors with reasonable consideration given to the scheduling concerns of the Unit Owner, and also provide notice to the Unit Owner of possible suspension of recreation facility privileges.

The Hearing Notice shall also inform the Unit Owner his/her opportunity to be heard and to be represented by counsel before the Board. The Hearing Notice shall comply with the requirements set forth in Va. Code § 55-79.80:2 as amended (1950).


(3) The hearing results shall be hand delivered or mailed by registered or certified mail, return receipt requested to the Unit Owner at the address of record with the Association within seven (7) days of the hearing.

(4) Such suspension of recreation facility privileges will be lifted immediately upon receipt of payment in full by certified funds of the delinquent amounts due, including costs and fees owed to the Association. In the event payment in full is made by personal check such sanctions will be lifted upon check clearance.

The Effective Date of this Resolution is December 1, 2014. It supersedes and replaces any and all previous collection policy resolutions.


**UNIT OWNERS ASSOCIATION OF WATER'S
EDGE, A CONDOMINIUM**

By: 
President

By: 
Secretary

CERTIFICATE OF MAILING

I certify that a copy of this Policy Resolution No. 2014- 02 was furnished to all Unit Owners via first class mail, prior to the Effective Date of the resolution on this 25 day of November, 2014.



Kristine A. Caraway, Community Manager

**UNIT OWNERS ASSOCIATION OF WATER'S EDGE, A CONDOMINIUM
RESOLUTION ACTION RECORD**

Resolution Type: POLICY
 Pertaining to: Collection Policy Resolution

No. 2014-02

Duly Adopted at a meeting of the Board of Directors held September 25, 2014,
 Motion By: David Dumrych Seconded by: Kathy Younger

VOLE:	YES	NO	ABSTAIN	ABSENT
<u>[Signature]</u> Director	<u>X</u>	—	—	—
<u>[Signature]</u> Director	<u>X</u>	—	—	—
<u>Kathy Younger</u> Director	<u>X</u>	—	—	—
<u>[Signature]</u> Director	<u>X</u>	—	—	—
<u>[Signature]</u> Director	<u>X</u>	—	—	—

ATTEST
[Signature]
 Secretary

FILE:

Book of Minutes 2014

Book of Resolutions: 2014-02