

**OLDTOWNE COMMONS\_\_HOMEOWNERS ASSOCIATION**

**POLICY RESOLUTION NO. 2021-3\_**

**ASSESSMENT COLLECTION POLICIES AND PROCEDURES**

**WHEREAS**, Article III Section 1, and Article VIII Section 1 of the Association’s Deed of Dedication (“Deed”) provide that the Association’s Board of Directors (“Board”) shall have all powers necessary for the conduct of the affairs of the Association to the extent not specifically reserved to the Association’s members by the Declaration, Bylaws or the Articles of Incorporation, including the Board’s power to adopt, publish and enforce rules and regulations;

**WHEREAS**, Article V, Section 3C of the Deed or Declaration provides the Board (acting on behalf of the Association) with the responsibility for making assessments against Owners and enforcing the assessment obligations of Owners;

**WHEREAS**, Article V, Section 1 of the Deed or Declaration provide that assessments, including interest and collection costs (including attorney’s fees), are a lien on the responsible Owner’s Lot and the personal obligation of that Owner; and

**WHEREAS**, Article V, Section 1 of the Deed or Declaration provides authority to charge late fees and interest, and to suspend Owners’ privileges as a result of becoming delinquent in the payment of assessments;

**WHEREAS**, the Board has determined that there is a need to establish amended policies and procedures for the collection of assessments.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board hereby adopts the following assessment collection policies and procedures, which hereby supersede and replace any previously adopted policies or procedures related to the collection of assessments.

**ARTICLE I**

**Routine Collections**

- A. **Due Dates**. Each fiscal year’s Annual Assessment shall be due and payable January 1. All Special Assessments shall be due and payable as specified in the assessment notice mailed to Owners. Unless otherwise specified by written notice from the Association, all other amounts assessed against an Owner are due and payable immediately upon assessment.
- B. **Owners’ Mailing Addresses**. All documents, correspondence and notices from the Association or the Association’s management agent (“Managing Agent”) relating to assessments or other charges shall be mailed or delivered to the Owner’s “address of record” that appears on the books of the Association, which is the Owner’s Lot address unless otherwise notified in writing by the Owner to change his/her address of record to a different mailing address. Owners have the responsibility of promptly informing the Association’s Managing Agent, in writing, of changes to their “address of record.”
- C. **Invoices and Other Notices**. Non-receipt of an invoice, payment coupon or other notice shall in no way relieve the Owner of the obligation to pay the amount due by the due date. If an Owner



does not receive a notice within the expected or required time period, it is the Owner's responsibility to contact the Association's Managing Agent immediately to obtain a copy of the notice and to confirm the Owner's correct mailing address.

## **ARTICLE II**

### **Remedies For Nonpayment Of Assessment**

- A. **Late Fees.** If payment of an assessment, or assessment installment, is not paid within 30 days after the applicable due date (e.g., by January 31<sup>st</sup> for the January 1<sup>st</sup> Annual Assessment, Quarterly Assessment, if applicable), a late fee of 12% Interest per annum shall be assessed and added to the Owner's assessment account as part of the balance owed and shall be immediately due. An assessment (or installment) is deemed to be paid on the date that the Association actually receives payment of that amount.
- B. **Returned Checks.** If a check (or electronic debit, if applicable) is returned or rejected for insufficient funds or stop payment, the Owner's account may be assessed a returned check/debit processing charge of not more than Fifty Dollars (\$50.00), plus the bad check/debit return fee, if any, charged to the Association by the bank. These charges shall be added to the Owner's assessment account as part of the balance owed and shall be immediately due. If the Association receives from any Owner, in any fiscal year, two or more returned checks or rejected electronic debits, the Association may require all future payments for the remainder of that fiscal year to be made by certified check, cashier's check, or money order.
- C. **Late Notice.** A "Late Notice" or other delinquency notice may be sent by the Association to Owners who have not paid an assessment (or installment thereof) or other charges in full within 30 days after the applicable due date. Non-receipt of such notice does not relieve the Owner of his or her obligation to pay the assessment or the resulting late fees, costs, attorney's fees or other applicable charges assessed against the Owner's account as a result of the delinquency. Additional late notices or reminder notices may be sent to a delinquent Owner, at the Board or Managing Agent's discretion, prior to referral of an account for collection.
- D. **Notice of Intent to File Lien.** If payment in full of an assessment (or applicable installment), including late fees and other charges, is not received by the Managing Agent by the 30<sup>th</sup> day after the applicable due date, the delinquent Owner may be mailed (by certified mail, return receipt requested) a notice of intent to file a Memorandum of Lien.

Notwithstanding anything to the contrary in this Resolution, once an account has been forwarded to the Association's legal counsel for collection, no further late notices or other delinquency-related notices will be sent by the Managing Agent until the account is closed with legal counsel.

- E. **Collection Costs / Attorney's Fees.** All costs of collection incurred by the Association as a result of the failure of an Owner to timely pay assessments or other charges shall be assessed against that Owner as they are incurred or as collection action is taken, without the need for a case-by-case vote by the Board. These costs shall be added to the Owner's assessment account as part of the balance owed and shall be immediately due. These expenses may include, for example, management administrative fees and mailing costs for delinquency notices, the cost of filing a lien and/or civil suit and other court costs, attorneys' fees, and any other collection-related costs. All such collection costs shall be added to the Owner's assessment account and become part of the lien against the Owner's Lot and the personal obligation of the Owner.





- F. **Acceleration.** If an Owner fails to pay a delinquent assessment installment within 30 days after the applicable due date, then the remaining balance of the applicable Annual or Special Assessment may be accelerated by the Board, making the entire balance of that assessment immediately due and payable in full. In addition, for accounts not already accelerated when the Owner's delinquent account is forwarded to the Association's legal counsel for collection, then if that Owner has failed or subsequently fails to pay an assessment installment so that it is received by the Association within 30 days after its due date, then the remaining installments of the delinquent assessment shall be accelerated for the remainder of the applicable fiscal year, without the need for specific case-by-case vote from the Board, and is immediately due and payable in full upon notice. The Association's legal counsel is authorized to include such accelerated amounts in the balance being collected.
- G. **Interest.** If payment of an assessment, or assessment installment, is not received by the Association within *30 days after the applicable due date, then the Owner's account is subject to being assessed interest at the rate indicated in the association Deed of 12% per annum. Interest accrues on the principal amount of the debt, including but not limited to, Annual Assessments, Special Assessments and other assessments such as late fees, violation charges and collection costs (not including court costs or attorney's fees).* The failure of the Association to post interest charges on an account does not waive the Association's right to later charge, demand and collect interest from the applicable due date(s) if the account is forwarded to legal counsel for collection, and the Association's legal counsel is hereby authorized to demand, sue for and collect interest.
- H. **Referral of Account for Collection.** If a Owner's account remains past due for more than 90 days, then the Managing Agent is authorized to forward the Owner's delinquent account to the Association's legal counsel (or other collection agent designated by the Board) for collection, subject to any Board guidance regarding the minimum account balance to forward. Once a delinquent Owner's account is forwarded to the Association's legal counsel for collection, all payments and other account-related communications from that Owner must be sent to the Association's legal counsel unless otherwise advised in writing by such legal counsel.
- I. **Lien.** When an Annual Assessment, Special Assessment or other charge is assessed against a Lot, the Association (acting through its legal counsel) may record a Memorandum of Lien in the county's land records after the Owner is mailed at least 10-days written notice (by certified mail, return-receipt requested) that a lien may be filed. Past due and accelerated installments, late fees, interest, and collection costs, including attorney's fees and costs associated with filing and releasing the Memorandum of Lien shall be included as part of the lien and added to the Owner's account. The 10-day notice referenced above shall be sent by the Managing Agent or the Association's legal counsel to the Owner's last known address, whether that be the Lot address, address of record (if different than the Lot address), or such other last known address.
- J. **Further Legal Action.** The Association's legal counsel is authorized to take appropriate action to collect the amounts due, except as provided in Section K below or unless directed otherwise by the Board. Once a judgment is entered against an Owner, further actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.
- K. **Foreclosure.** If one or more liens remain unpaid, the Board may authorize a foreclosure proceeding against the Owner's Lot within thirty-six (36) months of the date the lien was



recorded (or within such other time period as may be authorized by the Act or other applicable law from time to time).

- L. **Waivers.** The Board may, in its sole discretion, grant a waiver of any provision herein, except filing of Memoranda of Lien beyond the statutory deadline, upon written request by an Owner alleging a significant personal hardship or as otherwise determined to be in the best interests of the Association. Any such relief granted to an Owner shall be appropriately documented in the Association's files with the name of the person or persons representing the Board who granted the relief and the conditions of the relief, if any. The Board may designate the Managing Agent, the president or other officer of the Association, or the Association's legal counsel as having the authority to accept settlement offers or payment plans on behalf of the Association between Board meetings, subject to any Board-established guidelines. If a payment plan request is granted for delinquent amounts, a condition of the payment plan may require, among other things, that those amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note.
- M. **Management Waiver.** The Association's Managing Agent is authorized to waive the imposition of late fees and/or interest if the delinquent Owner had owned the Lot for three or fewer months at the time of the delinquency and, in the judgment of the Managing Agent, the delinquency was the result of a misunderstanding of the correct procedures relative to payment of the assessment. This type of waiver may be granted only once to any Owner.
- N. **Application of payments.** Payments received from an Owner shall be credited in the following order:
1. Any collection costs posted to the delinquent account, including, for example, administrative fees, certified mailing costs, lien filing/releasing costs, returned check charges, court costs and attorney's fees;
  2. Any late fees and interest;
  3. Any other charges assessed against the Owner's account arising from enforcement of the provisions of the Declaration or the Association's rules and regulations; and
  4. Other assessments against the Owner's account (e.g., Annual Assessments and Special Assessments), applied to the oldest outstanding amounts first.
- O. **Suspension of Rights.**
1. **Right to Vote as Member of the Association/Eligibility to Serve on Board.** Pursuant to Article IV, Section 1(B) of the Deed or Declaration and Article III, Section 3.02 of the Bylaws, if an Owner's assessment account remains unpaid, then that Owner's right to vote on Association matters and therefore eligibility to be a director on the Board shall be automatically suspended without further notice other than this Resolution, with such suspensions continuing until that Owner's assessment account is brought current.

The remedies stated herein shall not constitute an election of remedies and all remedies shall be deemed cumulative.

**EFFECTIVE DATE OF RESOLUTION**

The effective date of this Resolution shall be January 2, 2023.  
***OLDTOWNE COMMONS HOMEOWNERS ASSOCIATION***





RESOLUTION ACTION RECORD

Resolution Type: Policy

Pertaining to: Collections

Duly adopted at a meeting with the Board of Directors held on 12-2, 2021.

Motion by: Keith Ogive Seconded by: Ron Mislowsky

VOTE: YES NO ABSTAIN ABSENT

Ronald Mislowsky ✓ \_\_\_\_\_  
*name here* President/Director

CKOGILWIEJR ✓ \_\_\_\_\_  
*name here* Vice President/Director

\_\_\_\_\_  
*name here* Secretary/Director

\_\_\_\_\_  
*name here* Treasurer/Director

\_\_\_\_\_  
*name here* Member/Director

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

Resolution Effective: January 2, 2022.