

**CARISBROOKE HOMEOWNERS ASSOCIATION**

**RESOLUTION NO. 2009-2**

**Policy Resolution Regarding Delinquent Assessment Payments**

WHEREAS, the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Carisbrooke Homeowners Association (the "Declaration"), the By-Laws of Carisbrooke Homeowners Association (the "By-Laws") and the Articles of Incorporation of Carisbrooke Homeowners Association (the "Articles of Incorporation"), as amended, collectively known as the Governing Documents, provide that the Lots are subject to the Governing Documents and the rules and regulations of the Association; and

WHEREAS, Section 4.1 of the Declaration and Article 2.1.3 of the Articles of Incorporation provide that the Association shall have all of the powers conferred by the laws of Virginia, including Virginia Property Owners' Association Act (the "POAA"), the Virginia Nonstock Corporation Act; and

WHEREAS, Section 5.4 provides that the Association may enter into an agreement with any person for such person to provide management services to the Association ("Management Agent" or "Agent"); and

Whereas, Section 6.1 of the Declaration authorizes the Association the right to levy assessments against each Owner and his respective Lot; and

WHEREAS, Section 6.3 of the recorded Declaration creates an Annual Assessment and Special Assessment obligation for an Owner; and

Whereas, Section 6.4 of the Declaration gives the Board authority to permit any Assessment be paid to the Association in monthly or other installments in accordance with a schedule determined by the Association.

WHEREAS, Section 6.6 of the Declaration authorizes the Association to levy a late charge of \$20.00, or such other amount as ay be predetermined by the Board of Directors, for each installment which is not paid within thirty (30) days of the Due Date; and

WHEREAS, Section 6.6 of the Declaration authorizes the Association to assess interest on its unpaid balance, until paid, from the thirtieth (30<sup>th</sup>) day after which an assessment is due; and

WHEREAS, Section 6.5 of the Declaration authorizes the Association to declare the entire balance of any Annual Assessment or Special Assessment due and payable upon a default by an Owner in the timely payment of any two consecutive installments; and

WHEREAS, Section 6.5 of the Declaration provides that the Association may take legal action to collect the Annual Assessment or Special Assessment that remains unpaid, including recording of a lien against the Lot; and

WHEREAS, Section 6.5 of the Declaration provides that an assessment lien may be enforced and foreclosed in any manner permitted by the laws of Virginia; and

WHEREAS, Section 6.7 of the Declaration and Section 55-513 and Section 55-515 of the POAA provide that a delinquent Owner shall be responsible for the recovery costs of collection, including but not limited to late fees, interest, and reasonable attorney fees;

NOW THEREFORE, it is hereby RESOLVED THAT the Board of Directors (“Board”) of the Carisbrooke Homeowners Association, (“Association”) duly adopts the following assessment collection procedure:

I. **ROUTINE COLLECTIONS**

A. The amount of the Annual Assessment shall be established by the Board of Directors and collected monthly, in equal installments, with payment due on the first day of each month (the “Due Date”). The fiscal year of the Association shall be the twelve (12) month period beginning January 1 and ending December 31. Payment of any special assessment shall be due and payable in accordance with the payment schedule established by the Board of Directors. Annual Assessments and Special Assessments are hereinafter referred to as “Assessments.”

B. All documents, correspondence, and notices relating to Assessments shall be mailed to the Owners address which appears on the books of the Association or as modified in writing by the Owner. Non-resident Owners must provide the Board with a telephone number and address, in writing, where the Owner can be contacted; otherwise, all notices shall be sent to the Lot address.

C. Non-receipt of a payment coupon, coupon books, notices, or other such documents relating to the payment of the Annual Assessment or Special Assessment shall not excuse an Owner from the obligation to pay Annual Assessments or Special Assessments. Pursuant to Section 6.4.1 of Declaration, an Owner may not avoid such liability by waiving any provisions of the Declaration or otherwise, abandoning or otherwise terminating his use of such Lot, or conveying the title to such Lot after the same becomes due.

II. **REMEDIES FOR NON-PAYMENT OF ASSESSMENT**

A. Late Charge. If payment is not received in the office of the Managing Agent by the thirtieth (30<sup>th</sup>) of the month the assessment is due, a late fee in the amount of twenty dollars (\$20.00) shall be imposed. A Late Notice may be sent, by regular first class mail, by the Managing Agent to the delinquent Owner demanding payment of the Annual Assessment or Special Assessment and the late fee. Late fees shall be imposed once for each monthly assessment which is not paid by the thirtieth (30<sup>th</sup>) day of the month.

B. Final Notice. If payment is not received by the Managing Agent within sixty (60) days of the Due Date, a Final Notice may be sent by certified mail, return receipt requested, by the Managing Agent to the delinquent Owner demanding payment of the assessment, late fee and interest from the Due Date at the rate of eighteen percent (18%) per annum. The Final Notice may place the Owner on notice that if the payment, including the late fee and interest, is not made within thirty (30) days from the date of the Final Notice, the delinquent account shall be referred to legal counsel for the pursuit of legal action and the account will be accelerated. Owner may be warned in the Final Notice of the responsibility for any attorney fees and costs incurred by the Association for collection services. Once an Owner has been referred to legal counsel, the lockbox payment service will be blocked and the Association will no longer accept payments mailed directly to the Association or Management Agent. All correspondence and payments will be through legal counsel.

C. Returned Check Charge. If the Association receives a check from an Owner which fails to clear the banking account for any reason, the Association shall charge the owner a returned check charge of fifty dollars (\$50.00), or the maximum amount permitted by law, whichever is greater. If the Association receives from any Owner, in any fiscal year, one or more returned checks for payment of an installment of the Annual Assessment or Special Assessment, the Managing Agent may require all future payments to be made by certified funds or cashier's check for the remainder of the fiscal year.

D. Referral to Legal Counsel, Acceleration and Suspension of Privileges. Whenever an Owner fails to pay any portion of the Annual Assessment or Special Assessment, the Managing Agent, without any further action of the Board, shall automatically take the following action:

1. The account shall be referred to legal counsel for immediate action.
2. Legal counsel is authorized, without further action of the Board, to take the following action: upon notice to the Owner, the entire balance of the Annual Assessment or Special Assessment for the remainder of the fiscal year shall automatically be declared due in full; a memorandum of lien for unpaid homeowner association assessments, the balance of the Annual Assessment or Special Assessment for the remainder of the fiscal year and any accrued late fees may be recorded against the title to the Lot and a civil action for judgment may be brought against the Owner for the unpaid Annual Assessment or Special Assessment interest, late fees attorney fees and costs. Legal counsel is authorized to take action to collect the unpaid Annual Assessment or Special Assessment, interest, late fees, attorney's fees and costs.
3. The Board may choose to authorize legal counsel to foreclose the memorandum of lien for unpaid homeowner association assessments, pursuant to the Declaration and in the manner provided by the laws of the Commonwealth of Virginia, including the POAA.

4. The Managing Agent may suspend an Owner's rights, privileges and benefits of membership, pursuant to Article III of this Resolution, below. If imposed, the suspension shall continue until payment is received in full by the Association. Such suspension may include, but is not limited to, revocation of recreation privileges.

E. Method of Crediting Payments. Pursuant to Section 6.6 of the Declaration and after an account becomes delinquent, payment received from an Owner will be credited to the account in the following order of priority:

1. Expenses and attorneys fees incurred by the Association in attempting to recover unpaid Assessments (attorney's fees, court costs), resale fees, and charges.
2. Late fees.
3. Interest, management fees, resale disclosure packet fees, and returned check charges.
4. Assessments, in the order in which the same (or installments thereof) became due and payable.

### **III. SUSPENSION OF PRIVILEGES**

A. Voting and Elections. An Owner may not vote if payment of the assessment on the Lot is delinquent at the time of such meeting or election. Suspension of the right to vote does not require notice and a hearing.

B. Suspension of Use of Facilities and Services. Once an account is delinquent for thirty (30) days, the responsible Owner shall no longer be a Member in good standing of the Association. Such Owner may not be entitled to any of the rights and privileges of membership, including the right to general access to, and use of, the Common Area or recreational facilities of the Association. Suspension, pursuant to Paragraph B, is subject to the notice and hearing provisions of the POAA as follows:

1. Before any suspension, the Owner shall be given an opportunity to be heard, to present witnesses and to be represented by counsel before the Board or other tribunal specified in the Governing Documents and rules and regulations of the Association.
2. Notice of the hearing shall be mailed by certified mail, return receipt requested to the Owner at the address of record with the Association, at least fourteen (14) days prior to the hearing.
3. The Notice of the hearing shall contain a description of the amount of the unpaid assessments and the provisions of the Governing Documents and rules and regulations of the Association alleged to have been violated.

4. The Board decision shall be hand delivered or mailed by certified mail, return receipt requested, to the Owner at the address of record with the Association within seven (7) days of the hearing. The Board shall provide the Owner with any forms that may be required by the Commonwealth of Virginia.

This resolution is Effective January 1, 2010.

Attested By:

The Board directs that this Resolution shall be reasonably published or distributed to the Owners of the Association.

ATTEST:

Carisbrooke Homeowners Association

By: Kim Thomas  
President

M.L.L.  
Secretary

WITNESSED BY:

Audra J. Wallace  
Audra J. Wallace, PMP

