

## Virginia Run Community Association

Policy Resolution No. 2023-1

### **Regarding Assessment Collection Policies & Procedures**

WHEREAS, Article VI, Section 8 of the Bylaws of Virginia Run Association (“Association”) provides the Association’s Board of Trustees (“Board”) with all powers for the conduct of the affairs of the Association which are enabled by law, the Amended and Restated Declaration of Covenants and Restrictions for Virginia Run Community Association (“Declaration”), and the Association’s Articles of Incorporation that are not specifically reserved to the members of the Association;

WHEREAS, Section 55.1-1819 of the Virginia Property Owners’ Association Act (“POAA”) provides the Board with the power to adopt and enforce rules and regulations pertaining to areas of Association responsibility;

WHEREAS, pursuant to Article V of the Declaration, each Owner is obligated to pay certain assessments to the Association (referred to herein collectively as “Assessments”) and the Board, acting on behalf of the Association, has the responsibility to levy Assessments against Owners, to establish the due dates thereof, and to enforce the Owners’ obligation to pay Assessments;

WHEREAS, Article II, Section 1(d) and Article V, Sections 6 and 7 of the Declaration establish authority for the Association to enforce the obligation for Owners to timely pay Assessments through imposition of late fees, imposition of interest, acceleration of remaining assessment installments, suspension of certain rights, taking legal action, and recovering actual costs and reasonable attorneys’ fees associated with collection of amounts owed;

WHEREAS, Section 8.01-27.1 of the Virginia Code establishes authority for the Association to impose a processing charge of up to fifty dollars (\$50.00) plus the protest or bad check return fee, if any, charged to the Association by its bank if an Owner’s check or electronic debit is returned or rejected for insufficient funds or stop payment; and

WHEREAS, the Board has determined that, in light of recent amendments to the Declaration, there is a need to establish amended policies and procedures for the collection of assessments.

NOW THEREFORE, IT IS RESOLVED THAT the Board of Trustees hereby adopts the following assessment collection policies and procedures, which supersede any other previously adopted policies and procedures relating to assessment collections (including the “Administrative Resolution No. 6, Policies and Procedures for Virginia Run Delinquent Accounts” adopted September 9, 1999):

**Definitions.** Unless otherwise defined in this Policy, the words, terms, or phrases used in this Policy will have the same meanings as defined in the Declaration.

## **I. Routine Collections**

- A. **Due Dates.** The annual Assessment shall be collected monthly, in equal installments, with each installment due on or before the first day of each month. Unless otherwise determined by the Board, all special assessments shall be due and payable in full with the next periodic installment of the annual Assessment that is due more than ten (10) days after the date of the assessment notice unless otherwise determined by the Board. Each due date may be individually identified and referred to herein as the "Due Date."
- B. **Mailing Addresses.** All documents, correspondence and notices from the Association relating to assessments or charges will be mailed or delivered to the Owner's address which appears on the books of the Association, that is the Lot address unless the Owner submits written notice to the Association of a different or new mailing address. Owners are responsible for promptly informing the Association, in writing, of their correct address of record and any subsequent changes to that address.
- C. **Invoices and Other Notices.** Non-receipt of an invoice, payment coupon, or other document or notice relating to the payment of Assessments or other charges or fees does not excuse an Owner from the obligation to pay such amounts by the applicable due date. If an Owner does not receive an invoice or notice within the expected or required time period, it is the Owner's responsibility to contact the Association to obtain a copy of the notice and to confirm the Owner's correct mailing address. It is each Owner's responsibility to ensure that payments are mailed, delivered, or otherwise made in sufficient time for the payment to be received at the applicable Association-designated payment address in a timely fashion.
- D. **Unpaid Resale Fees.** In accordance with Section 55.1-1810 of the POAA, when a resale disclosure packet is issued by or on behalf of the Association but settlement does not occur within sixty (60) days after the delivery of the resale packet, or the applicable resale fees and costs are not collected at settlement and timely disbursed to the Association so that they are received within thirty (30) days after settlement, then any unpaid resale fee and costs within twelve (12) months of the resale packet's issuance shall be posted on the account of the then-current Owner of the Lot for which the resale packet was issued. These unpaid resale fees and costs are automatically assessed against the applicable Owner and immediately past due and owing upon being posted to the account without a case-by-case vote of the Board.

## **II. Remedies for Nonpayment of Assessments**

- A. **Late Fees.** If payment of an Assessment, or Assessment installment, is not received by the Association within fifteen (15) days after the applicable due date, then a late fee equal to ten percent (10%) of the unpaid Assessment, or such other amount established by the Board, is automatically assessed against the delinquent Owner and added to the Owner's assessment account balance.
- B. **Returned Checks.** If a check or electronic debit is returned or rejected for insufficient funds or a stop payment, the Owner's account is automatically assessed a returned check/debit processing charge in an amount not to exceed the maximum amount permitted by law, currently, fifty dollars (\$50.00), plus the bad check/debit return fee, if any, charged to the

Association by the bank. If the Association receives from any Owner, in any fiscal year, two or more returned checks or rejected electronic debits, the Board may require all future payments to be made by certified check, cashier's check, or money order for the remainder of that fiscal year.

- C. **Late Notice.** A late notice may be sent by the Association to Owners who have not paid assessments in full within fifteen (15) days after the applicable due date. Non-receipt of such notice does not relieve the Owner of their obligation to pay the assessment or the resulting late fees, costs, interest, attorneys' fees or other applicable charges. Additional late notices or reminder notices may be sent to a delinquent Owner, at the Board's discretion, prior to referral of an account for collection.

Notwithstanding anything to the contrary in this Policy, once an account has been forwarded to the Association's legal counsel for collection, no further late notices or other delinquency notices (other than those related to suspension of privileges) will be sent to the Owner until the account is closed with legal counsel.

- D. **Costs and Attorneys' Fees.** If an Owner's account is turned over to the Association's legal counsel, all costs and reasonable attorneys' fees actually incurred by the Association from the inception of counsel's involvement with the account through resolution, if any, regardless of whether litigation has been initiated to enforce payment of the delinquent assessments, are automatically added to the delinquent account without the need for a case-by-case vote by the Board, subject to any limitations under applicable law. These costs may include, for example, management administrative fees and mailing costs for delinquency notices, reasonable attorneys' fees, the cost of filing a lien or civil suit, other court costs, and any other collection-related costs.

- E. **Interest.** If nonpayment of an Assessment by any Owner continues for a period in excess of forty-five (45) days from the due date, the Association shall be entitled to collect interest, at the rate of twelve percent (12%) per annum from the due date until the balance owed, including all Assessments, late fees, costs, attorneys' fees, and accrued interest, is paid in full. 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 in accordance with this provision, the Declaration. or applicable law.

- F. **Acceleration.** If an Owner who has not paid Assessments, or any installment thereof, in full within fifteen (15) after the applicable due date, then the remaining balance of the applicable Assessment for the fiscal year is automatically accelerated upon written notice to such Owner, making the balance of that Assessment immediately due and payable in full without the need for specific case-by-case vote from the Board. The Association's legal counsel is authorized to include such accelerated amounts in the balance being collected.

- G. **Referral of Account for Collection.** If the amount of an Owner's account is delinquent in an amount greater than three hundred dollars (\$300.00), then the Owner's delinquent account shall be forwarded 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 or must be directed to the Association's legal counsel unless otherwise advised in writing by such legal counsel. Payments submitted to the Association's legal counsel are to be made payable to the Association.

- H. **Lien/Civil Suit.** As provided under the Declaration and the POAA, when an Assessment or other charge is assessed against a property, that Assessment or other charge is deemed to be lien against the Owner's property, and the Association may, at least thirty (30) days after notice of legal action is sent, record a Memorandum of Lien in the county's land records. After the Owner's account is forwarded to legal counsel for collection, legal counsel is authorized to record Memoranda of Lien against the Lot. The lien may include, for example, applicable past due Assessments and other charges (including accelerated installments), plus late fees, attorney's fees, court costs, and other collection costs. If an account remains delinquent after being sent an initial demand letter or being notified of a lien filing, the Association's legal counsel is authorized to file a civil suit against the Owner for the unpaid balance, including a claim for late fees, interest, costs, and attorneys' fees.
- I. **Further Legal Action.** If an account remains delinquent after the initiation of legal action (for example, after filing of a lien or civil suit), the Association's legal counsel is authorized to take other appropriate action to collect the amounts due, except as provided in Paragraph J below or unless directed otherwise by the Board. When deemed prudent or necessary, the Association's legal counsel may also file a proof of claim in pending bankruptcy cases and conduct skip tracing and asset searches. Once a judgment is entered against an Owner, further legal actions may include, for example, garnishment of wages, rent, or bank accounts and the attachment of vehicles or other assets.
- J. **Foreclosure.** If an assessment or judgment lien against the Owner's Lot remains unpaid, the Board may authorize the Association's legal counsel to institute foreclosure proceedings against the Owner's Lot within such time period as may be authorized by the POAA or other applicable law. As of the date of this Policy, assessment liens may be enforced through foreclosure within thirty-six (36) months after the date the assessment lien was recorded.
- K. **Waivers/Payment Plans.** 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 will be appropriately documented in the Association's files. The Board may designate the Association managing agent, president or any 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, then a condition of that payment plan may include, among other things, that the delinquent amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note; in addition, any previously-imposed suspension of privileges or use rights remain suspended unless specifically indicated to the contrary in the written notice to the Owner informing them of the payment plan acceptance. The Board may reject any offer of partial payment and demand payment in full of

all amounts owed to the Association. Acceptance of any payment plan or grant of any waiver shall be on a case-by-case basis, if at all, and in no way shall constitute a waiver of the Board's authority to enforce payment of all amounts owed.

L. **Method of Crediting Payments.** After an account becomes delinquent, payments received on an Owner's account will be credited to the account in the following order of priority, from the oldest to the newest amount in each category:

- 1) Charges for the actual costs and reasonable attorneys' fees incurred by the Association subsequent to the delinquent account being turned over to legal counsel to enforce payment of the debt, regardless of the results of litigation or whether litigation has been initiated against the delinquent Owner;
- 2) All returned check charges;
- 3) All late fees;
- 4) Interest;
- 5) Unpaid installments of the annual assessments or special assessments, which are not the subject matter of suit in the order of their coming due; and
- 6) Unpaid installments of the annual assessments or special assessments which are the subject matter of suit in the order of their coming due.

Any partial payments are applied in accordance with the above without regard to whether an Association-issued assessment coupon, notice, or invoice is submitted along with the payment. Exceptions to the above will be made when required by applicable law (e.g., sums received through a wage or bank account garnishment must be applied to the applicable judgment on which the garnishment was issued).

M. **Suspension of Rights.**

1. **Voting Rights.** An Owner's right to cast a vote as a member of the Association is automatically suspended (without the need for a case-by-case Board vote) if the Owner is past due in any payment of a financial obligation to the Association and the amount to bring the amount current has not been paid before the time of the applicable meeting or vote unless a different arrangement is agreed to by the Board as part of an approved payment plan to settle the debt.
2. **Use Rights.** If an Assessment or installment thereof is more than sixty (60) days past due, and after first giving the delinquent Owner prior written notice, an opportunity to cure and an opportunity for a hearing (pursuant to any related procedures that may be adopted by the Board from time to time or required under applicable law), the Board may suspend the right of the Owner to use the Common Area and Recreational Facilities to the extent that access to the Lot through the Common Area is not precluded and provided that such suspension shall not endanger the health, safety, or property of any Owner, tenant, or occupant. Suspensions apply to the Owner and to all occupants of, and visitors to, the

Owner's Lot. It is the Owner's obligation to notify tenants, guests, and family members (or other occupants of the Lot) of the suspension; however, the Association reserves the right to notify them as well. Suspensions of use rights remain in place until the account is paid in full unless a different arrangement is agreed to by the Board as part of an approved payment plan to settle the debt

- N. **Nonwaiver/Election of Remedies.** Any right or remedy available to the Association may be exercised from time to time and as often as may be deemed expedient by the Association. No delay or omission by the Association in exercising any right or remedy will serve to impair any such right or remedy or be construed to be a waiver of any delinquency nor shall the Association's exercise of any remedy constitute an election of remedies that precludes later exercise of any other remedy.

Virginia Run Community Association

**RESOLUTION ACTION RECORD**

Resolution Type: Policy No.: 2023-1

Pertaining to: Assessment Collection Policies & Procedures

Duly adopted by the Board of Trustees on JANUARY 12, 2023, by [check applicable]:

- majority vote at a Board meeting, or
- by unanimous written consent through an action without a meeting.

Motion by: MR. TROSCIANCECKI Seconded by: MR. KAKAR

VOTE:

DIRECTOR: (printed name)	YES	NO	ABSTAIN	ABSENT
<u>Diego Quiros</u>	<input checked="" type="checkbox"/>			
<u>Ted Troscianectki</u>	<input checked="" type="checkbox"/>			
<u>Joseph W. John</u>	<input checked="" type="checkbox"/>			
<u>Kelly Bubek</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>MR. Calabro</u>				<input checked="" type="checkbox"/>

ATTEST:

Kelly Bubek  
Secretary

1/12/23  
Date

Policy's Effective Date: 1/12/2023

CERTIFICATE OF MAILING

I hereby certify that on the 16<sup>th</sup> day of JANUARY, 2023, a copy of the above-referenced Policy was mailed (or emailed with consent) to all Owners as reflected in the Association's books and records.

Janis Fenta  
Managing Agent