

Sugarland Run Townhouse Owners Association

Number: 16-4E

Date: April 13, 2016

Reference: Collection Resolution
Segan, Mason and Mason

MOTION

Roll Call Vote:

Pursuant to Article IV, Section 7 of the Bylaws, I come forward on behalf of the Board of Directors of the Sugarland Run THOA to approve the Policy Resolution Regarding Delinquent Assessment Payment with the recommendations of legal counsel Segan, Mason and Mason. See attached

A. Jackson

✓

P. Noto

✓

M. Thomen

✓

Submitted by:

Thomen

Seconded by:

P. Noto

FOR:

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AGAINST:

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ABSTAIN:

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ABSENT:

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Sugarland Run Townhouse Owners Association, Inc.
Policy Resolution Regarding Delinquent Assessment Payments

WHEREAS, the Declaration of Sugarland Run Townhouse Owners Association, Inc., as amended (the "Declaration"), the Bylaws of Sugarland Run Townhouse Owners Association, Inc., as amended (the "Bylaws") and the Articles of Incorporation of Sugarland Run Townhouse Owners Association, Inc. (the "Articles of Incorporation"), as amended, collectively known as the Governing Documents, provide that the Lots ("Lots") are subject to the Governing Documents and the rules and regulations of the Association; and

WHEREAS, Article II, Section 1 of the recorded Declaration and Article V, Section 3 and Section 4 of the recorded Declaration creates an Assessment obligation for an Owner which includes the payment of Annual Assessments and Special Assessments ("Assessment"); and

WHEREAS, (b)(1) of the Articles of Incorporation of Sugarland Run Townhouse Owners Association, Inc. (the "Association") provide that the Board of Directors (the "Board") is empowered to implement procedures for collection of the Assessments from the Owners; and

WHEREAS, Article V, Section 9 of the Declaration provides that the Board may bring suit, file a lien, or foreclose a lien if Assessments are not paid when due; and

WHEREAS, Article V, Section 1 of the Declaration and Article V, Section 9 of the Declaration authorizes the recovery of reasonable attorney's fees, along with collection costs, if an Owner is delinquent in the payment of the Assessments; and

WHEREAS, in accordance with Section 55-513.3 of the Virginia Property Owners' Association Act (the "POAA"), the Board may assess a late charge of five percent (5%) of the unpaid assessment or the maximum amount permitted in Section 58.1-3915 of the Virginia Code if the Assessment or any installment thereof is more than sixty (60) days delinquent from the due date; and

WHEREAS, Article V, Section 1 of the Declaration and Article V, Section 9 of the Declaration authorizes the Board to assess interest at the rate of six percent (6%) per annum if an Assessment is not paid within thirty (30) days after the due date; and

WHEREAS, in accordance with Article V, Section 3 of the Declaration and Article V, Section 7 of the Declaration, the Annual Assessment shall be paid in monthly installments due the first of each month; and

WHEREAS, Article VI, Section 1(e) of the Bylaws provide that the Association may delegate powers to a Managing Agent unless expressly reserved to the Board; and

WHEREAS, Article VI, Section 2(c) of the Declaration provides that the Association may suspend an Owner's right to use of the recreational facilities for any period during which any Assessment against his Lot remains unpaid; and

WHEREAS, there is a need to establish orderly procedures for the billing and collection of the Assessments;

NOW THEREFORE, it is hereby RESOLVED THAT the Board duly adopts the following assessment collection procedures:

I. Routine Collections

A. The amount of the Annual Assessment shall be established by the Board and an Owner shall pay the Assessment in monthly installments due on the first day of the month of each fiscal year (the Due Date). Special Assessments shall be due as specified in the notice of assessment. There shall be no penalty for prepayment of an installment of the Assessment. The fiscal year of the Association shall be the twelve (12) month period beginning January 1 and ending December 31.

B. Non-receipt of a payment coupon, coupon books, notices, or other such documents relating to the payment of the Assessments shall not excuse an Owner from the obligation to pay Assessments. In accordance with Article V, Section 9 of the Declaration, no Owner may exempt himself from liability for Assessments and Special Assessments by abandonment of any lot belonging to him or by the abandonment of his right to the use and enjoyment of the common areas and community facilities.

C. 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 or address on record with the Association.

II. Remedies for Nonpayment of Assessments

A. Interest. If an Assessment or installment thereof is not paid and received within thirty (30) days of the Due Date, interest shall accrue from the due date at the rate of six percent (6%) per annum.

B. Late Charge. If any Assessment or installment thereof remains delinquent for sixty (60) days from the due date, in accordance with Section 55-513.3 of the POAA, a late charge of five percent (5%) or the maximum amount permitted in accordance with Virginia Code Section 58.1-3915 shall be assessed against the delinquent Owner's account.

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

D. Collection Cost. The costs of collections charged by the Managing Agent to the Association shall be assessed to the delinquent Owner's account. Such amounts may include, but are not limited to, the reminder notice, the demand letter, postage and any other charges authorized by the Property Owners Association Action ("POAA"), as amended.

E. Action of Managing Agent. Whenever an Owner becomes delinquent in the payment of an Assessment, the Managing Agent, without any further vote of the Board, shall automatically take the following action:

1. The Managing Agent shall send a reminder statement to the Owner if an account is delinquent for more than two months. A \$10.00 notice fee shall be assessed to the Owner's account.

2. If the Owner remains in default, the Managing Agent shall send a final demand letter notifying the Owner that if the account is not current by the due date stated therein, that the account will be referred to legal counsel for further collection action. As reminder notices are not required to commence legal action, an Owner's failure to receive said notices shall not prohibit the ability of the account to be referred to legal counsel for collection action.

3. The Managing Agent shall refer the Owner's account to legal counsel for immediate collection action when the Owner's delinquent balance exceeds three months for the Annual Assessment. A \$50.00 legal turnover fee shall be assessed to the Owner's account.

4. After notice as further outlined in Section III and Section II(E)(5) of this resolution herein, the Board or Managing Agent may suspend an Owner's right to use of the Recreational Facilities if Owner is delinquent in the payment of the Assessments in excess of sixty (60) days.

5. If the Board or Managing Agent elects to suspend the privileges to the use of the recreational facilities, in compliance with Section 55-513(B) of the POAA, as amended, the Owner shall be mailed a written notice after he is sixty (60) days delinquent providing a reasonable opportunity for Owner to cure the delinquency to avoid the commencement of the suspension or limitation of use of the Recreational Facilities as further detailed in Section III (B) herein. This notice period shall not prohibit the collection action of legal counsel.

F. Referral to Legal Counsel.

1. Legal counsel is authorized, without further action of the Board, to take the following action: (a) send required notices in accordance with the Governing Documents to Owner demanding payment and notification of recordation of liens, if applicable, for failure to cure delinquency by specified date which shall not be less than thirty (30) days from date of notice; (b) proceed to collect the delinquency after notice to Owner and failure of Owner to remedy delinquency by date specified; (c) file a civil action for judgment against the Owner for the unpaid Assessments, interest, late charges, attorney's fees, cost of collection, and any other properly assessed charges to the Owner; and (d) take post-judgment action to collect the unpaid Assessment, interest, late charges, attorney's fees, management fees, collection cost, or any other properly assessed charges to the Owner.

2. The Board may choose to authorize legal counsel to record a memorandum of lien and foreclose the memorandum of lien for unpaid Assessments, pursuant to the Declaration and in the manner provided by the laws of the Commonwealth of Virginia, including the POAA.

G. Method of Crediting Payments. After an account becomes delinquent, payment received from an Owner will be credited to the account according to general accounting methods in the following order of priority:

a. Charges for attorney's fees and court costs.

b. Interest, statutory late charges, management fees, collection costs including notice fee and legal turnover fee, resale disclosure packet fees or any other fees authorized by the POAA, and returned check charges.

c. All other repair or maintenance assessments (pursuant to Article VII of the Declaration and 55-513 of the POAA) for violation by an Owner, his family, employees, agents, tenants or licensees of the Governing Documents and rules and regulations of the Association.

d. Any Special Assessments.

e. The Annual Assessment, oldest outstanding first.

III. Suspension of Use of Recreational Facilities

Suspension of Use of Recreational Facilities. Once an account is delinquent for sixty (60) days, such Owner may not be entitled to any of the rights and privileges of an Owner in good standing which include the use of the recreational facilities. 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 a reasonable opportunity to correct the delinquency as set forth in Section II (E) (5), above. This notice period shall not prohibit the collection action of legal counsel.

2. If the delinquency is not cured within the specified time stated set forth in the Notice of Suspension referred to in Section II (E) (5), 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.

3. 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.

4. 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.

5. 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.

This Resolution is effective May 1, 2016

The Board directs that this Policy Resolution Regarding Delinquent Assessment Payments shall be reasonably published or distributed to the Owners of the Association.

This Resolution supersedes any prior adopted resolution pertaining to collection of assessments including Amended Policy Resolution #6 effective February 11, 1998.

SUGARLAND RUN TOWNHOUSE OWNERS ASSOCIATION, INC.

By:

Patricia Noto
President

ATTEST:

M. Thener
Secretary