

The Sierra Condominium Unit Owners Association

Policy Resolution No. ____ Assessment and Collection

WHEREAS, Declaration for The Sierra Condominium (the "Declaration") and recorded Bylaws of The Sierra Condominium (the "Bylaws"), as amended, together known as the Condominium Instruments, provide that the Units are subject to the Condominium Instruments and the Rules and Regulations of The Sierra Condominium Unit Owners Association (the "Association"), including the obligation of all Unit Owners to pay the Common Expenses assessed by the Board¹; and

WHEREAS, Section 3.1 of the recorded Bylaws stipulates that the Board of Directors (the "Board") has the power to make assessments against the Unit Owners to defray the costs and expenses of the Association and to establish the means and methods of collecting such assessments from the Unit Owners²; and

WHEREAS, Section 5.1(c) of the Bylaws, provides that the assessments are due monthly on the first day of each month in equal installments (the "Due Date"), and that a Unit Owner is in default if the installment payment is not received by the tenth day of each month; and

WHEREAS, Section 9.1(d) of the Bylaws provides that any installment not paid within 15 days of the Due Date shall entitle the Association to claim the amount of such assessments, together with interest thereon at the rate of eighteen percent (18%) per annum and assess a late fee; and

WHEREAS, Section 9.2(b) of the Bylaws, allow for the acceleration of assessment installments upon the default in the timely payment of any two consecutive installments; and

WHEREAS, Section 9.1(b) of the Bylaws and Section 55-79.53 of the Condominium Act provide that a delinquent Unit Owner shall be responsible for the costs of collection and reasonable attorney fees; and³

WHEREAS, Section 2.1, Section 3.1 and Section 3.2 of the Bylaws provide that the Association shall have all of the powers conferred by the Virginia Condominium Act (the "Condominium Act") and the Condominium Instruments and may delegate any such powers to a Managing Agent unless expressly reserved to the Board; and⁴

¹ The goal is to give more credibility to the Rules and Regulations of the Association by anchoring them to the *recorded* Condominium Instruments (the judges focus on recorded documents).

² Unit Owner is one of several terms that are capitalized to harmonize the Resolution with the defined terms in the Virginia Condominium Act or the Condominium Instruments (See, Section 1.2 of the Declaration).

³ I advise also stating the statutory authority for the costs and legal fees is in the Condominium Act.

⁴ This may help support the delegation of certain powers to the Managing Agent particularly with recent cases that have held that the powers of the Management Agent, delegated by the Board, must be clearly set forth. A recent case suggested that the action of the Board, rather than the Managing Agent, was required for every acceleration or referral. The goal of this Resolution is make the delegation of that power continuing and automatic.

WHEREAS, Section 9.1(f) and Section 9.2(c) of the Bylaws and Section 55-79.84 of the Condominium Act permit the Association to enforce a memorandum of lien for unpaid condominium assessments by foreclosure; and

WHEREAS, Section 5.3 of the Bylaws provides that the Board shall take "prompt action" to collect assessments that remain unpaid for 30 days from the Due Date⁵; and

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

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

I. Routine Collections

A. The assessments shall be established by the Board. The assessments shall be collected monthly, with payment due on the first day of each month (the "Due Date"). The fiscal year of the Association shall be the twelve month period beginning January 1 and ending December 31.⁶

B. Non-receipt of a payment coupon, coupon books, notices, or other such documents relating to the payment of assessments shall not excuse a Unit Owner from the obligation to pay assessments. Pursuant to Section 5.2 of the Bylaws, no Unit Owner may exempt himself for liability for assessments by abandoning any Unit or by the abandonment of the use and enjoyment of the Common Elements.⁷

C. Non-resident Unit Owners must provide the Board with a telephone number and address, in writing, where the Unit Owner can be contacted; otherwise, all notices shall be sent to the Unit address.⁸

II. Remedies for Nonpayment of Assessments

A. Late Charge. If a monthly assessment is not paid within 10 days of the Due Date, the account shall be considered delinquent and a late charge of \$50.00 shall be imposed on the account by the Managing Agent and a Late Notice setting forth the amount of the late fee may be sent by the Association by regular first class mail.⁹

B. Final Notice. If a monthly Assessment is not paid within 30 days of the Due Date, the Management Agent may send a Final Notice by certified mail, return receipt requested, requesting payment of the assessments and late fees within 10 days of the date of the Notice to

⁵ It is good policy to let the Unit Owners and the Courts know that the Board's prompt action is actually required by the Condominium Instruments and therefore, is a duty of the Board.

⁶ The Resolution should establish the dates of the fiscal year for acceleration (See, Section 5.1(a) of the Bylaws).

⁷ It is good to have this general policy in writing—the bankruptcy court had a different policy regarding abandonment until the recent statutory amendments.

⁸ It is advisable to have this general policy in writing, because these due process issues are critical to the court.

⁹ The amount of the late fee should be set forth in the Resolution. Section 5.3 of the Bylaws allows the Board to set a higher amount—twenty dollars is minimum amount if the Board takes no further action.

avoid legal action or a proceeding for the suspension of the use of Common Elements facilities. Unit Owners may be warned in the letter of their responsibility for any attorney fees incurred by the Association for collection services. The Management Agent is directed to refer to legal counsel without delay, any Unit Owners who have not paid the assessment in full within the 10 days stated in the Final Notice.¹⁰

C. Returned Check Charge. If the Association receives a check from a Unit Owner which fails to clear the Unit Owner's personal banking account, the Association shall charge the Unit Owner a returned check charge of 35.00, or an amount permitted by law, whichever is greater.¹¹ If the Association receives from any Unit Owner, in any fiscal year, one or more returned checks for payment of assessments, 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 any Unit Owner fails to pay any portion of the assessments, 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: the entire balance of the assessments for the remainder of the fiscal year shall be automatically accelerated and declared due in full; a memorandum of lien for unpaid condominium assessments in the accelerated amount shall be recorded against the title to the Unit and a civil action for judgment shall be brought against the Unit Owner for unpaid assessments, interest, late fees, attorney's fees and costs. Legal counsel is authorized to take action to collect the unpaid assessments.

3. The Board may choose to authorize legal counsel to foreclose the memorandum of lien for unpaid condominium assessments, pursuant to Article 9 of the Bylaws, in the manner provided by the laws of the Commonwealth of Virginia, including the Condominium Act.¹²

4. The Managing Agent may suspend a Unit 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 and parking privileges.¹³

E. Method of Crediting Payments. After an account becomes delinquent, payment received from a Unit Owner will be credited in the following order of priority, pursuant to Section 3.1(l) of the Bylaws and generally accepted accounting principles:

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

¹⁰ This is a suggested procedure—the current Resolution only provides one notice—two would be more in line with the due process the Courts favor, but the timeline would still allow to file the lien timely. I would like to review the proposed notice should the Board elect this procedure.

¹¹ The Board may wish to have this power set forth clearly in its Resolution and take advantage of the General Assembly recently amending the maximum amount that can be recovered for a returned check.

¹² This is to clarify that the power to foreclose must be authorized by the Board and is consistent with new amendments to the Act regarding nonjudicial lien foreclosure and required Board Action.

¹³ These statutory amendments should be incorporated into the Resolution and practice of the Association. Also, it is wise to include the delegation of power to the Managing Agent since it is permitted by the Condominium Instruments, but the Condominium Act only makes reference to the Board.

- b. Late fees, interest and returned check charges.
- c. Charges (pursuant to Section 55-79.80:2 of the Condominium Act) for violation by an Owner, his family, employees, agents, tenants or licensees of the Condominium Instruments and Rules and Regulations of the Association.
- d. All other repair or maintenance assessments and any and all Limited Common Expenses or costs incurred pursuant to Section 9.1(a) and 9.1(e) of the Bylaws.
- e. Special Assessments.¹⁴
- f. The monthly assessments, oldest outstanding first.¹⁵

III. Suspension of Privileges

A. Voting and Elections. Suspension of the right to vote is not addressed by the Condominium Act. Section 2.9(c) of the Bylaws provides that a Unit Owner may not vote or be elected to or serve on the Board of Directors if payment of the assessment on the unit is delinquent more than sixty days and the amount necessary to bring the account current has not been paid at the time of such meeting or election. Notice of the 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 sixty (60) days, the responsible Unit Owner shall no longer be a Member in good standing of the Association.¹⁶ Such Unit 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 Elements, recreational facilities or services of the Association. Suspension, pursuant to Paragraph B, is subject to the notice and hearing provisions of the Condominium Act as follows:

1. Before any suspension, the Unit 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 Condominium Instruments and Rules and Regulations of the Association.

2. Notice of the hearing shall be mailed by certified mail, return receipt requested to the Unit 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 Condominium Instruments and Rules and Regulations of the Association alleged to have been violated.

¹⁴ Section 9.2 of the Bylaws authorizes a Special Assessment. Section 5.2 of the Bylaws recognizes Limited Common Expenses.

¹⁵ It is prudent to have an order of payment in the collection resolution. This will allow the Condominium to apply payment to attorney fees and costs first. The Courts do not always follow these provisions and require the order of payment to be in the recorded documents, but there is less of a chance of defending this policy if it is not in the written Resolution.

¹⁶ Although the Bylaws state that suspension is permitted after a 30-day delinquency (Section 9.1(h)), the Condominium Act states 60 days. Section 11.4 of the Bylaws defers to the Condominium Act.

1. Before any suspension, the Unit 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 Condominium Instruments and Rules and Regulations of the Association.

2. Notice of the hearing shall be mailed by certified mail, return receipt requested to the Unit Owner at the address of record with the Association, at least fourteen (14) days prior to the hearing.

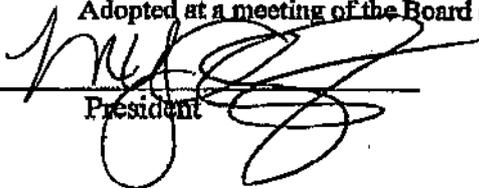
3. The Notice of the hearing shall contain a description of the amount of the unpaid assessments and the provisions of the Condominium Instruments and Rules and Regulations of the Association alleged to have been violated.

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

This Resolution is effective October 1, 2006

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

Adopted at a meeting of the Board of Directors on via email September 28, 2006.



President

10/1/06
Date

Attested By:

Secretary

Date

G:\WP\Word Files\Clients\Sicma Condominium\Resolutions\Assessment and Collection.doc