

# GRAND AVENUE HOMES CONDOMINIUM ASSOCIATION, INC

## Resolution of the Board of Directors Regarding

### COLLECTION OF UNPAID CHARGES

Effective October 1, 2019

The Board of Directors of the Grand Avenue Homes Condominium Association, Inc. desires to update its rules and to adopt a clear policy and procedure for collection of past due and delinquent assessments. Efficient collection of assessments is an essential part of managing and operating the Association and ensuring its financial stability. Reducing delinquencies ultimately allows the Board to keep assessment levels as low as possible. The following procedures are designed to provide an outline of the process to swiftly and effectively deal with delinquencies, while giving the homeowner ample opportunity to pay and/or enter into an approved payment plan. Communication with the Board is key and all owners who are delinquent or anticipate difficulty in paying their assessments are encouraged to contact the Association immediately. The Association is authorized to charge late fees to delinquent owners, and to recover its Attorney fees and costs incurred in collecting delinquent assessments, so that the Association and those members who are paying their assessments in a timely manner are not responsible for those costs. This policy describes those procedures and allows all owners to understand and anticipate what the costs of delinquency will be. Article III of this Resolution describes each step that will be executed by the Association when an assessment account becomes delinquent.

#### I. DEFINED TERMS

- A. **“Assessments,”** as used in this Resolution, include all amounts validly assessed against a Lot or Unit pursuant to the Governing Documents.
- B. **“Association”** is the Grand Avenue Homes Condominium Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, for the operation, maintenance, and benefit of the 15<sup>th</sup> Street Condominium Development.
- C. **“Attorney”** refers to the lawyer or law firm representing the Association.
- D. **“Board”** refers to the Board of Directors of the Association, duly elected pursuant to the Governing Documents.
- E. **“Bylaws”** refer to the properly adopted bylaws of the Association.
- F. **“Declaration”** is the *Declaration of Covenants, Conditions and Restrictions for Fifteenth Street Condominiums* recorded in the records of Ada County, State of Idaho.
- G. **“Governing Documents”** include the Declaration, Bylaws, Rules and Regulations, any Board Resolution, or otherwise adopted statements of corporate governance or intent.
- H. **“Owner”** refers to the owner or owners, in law or equity, of any Property included in the Declaration, including particularly any owners recorded on title in the records of Ada County, State of Idaho.
- I. **“Property”** refers to the individually-owned units or lots subject to the Declaration.
- J. **“Resolution”** refers to a resolution, policy, or set of procedures, adopted by the Board pursuant to its rule making authority.

## **II. LEGAL AUTHORITY**

**A. Rule Enforcement.** The Association is authorized by Article 7, Section 7.6.11 of the Declaration to adopt rules and regulations governing the operation of the Association and standardizing the procedures and policies of the Association.

**B. Assessment Collection.** Pursuant to Article 6 of the Declaration, the Association is authorized and obligated to charge assessments for the operation and benefit of the Association, and to collect those assessments.

**C. Legal Obligation of Assessments.** All assessment properly charged by the Association are both a personal obligation of the Owners of each Property within the Association, as well as a charge against the Property.

**D. Due Date.** Assessments shall be due and payable in advance on the due date established by the Board.

**E. Late Fees.** Pursuant to Article 6, Section 6.7 of the Declaration, the Association can assess late fees for late payments of assessments.

**F. Continuing Lien.** Pursuant to Article 6, Section 6.1 and 6.13 of the Declaration, all assessments, together with late fees, Attorney fees and costs of collection shall be a continuing lien upon each Property so assessed. Attorney is hereby explicitly authorized to record a notice of said lien on behalf of the Association, and record this Resolution if needed.

**G. Foreclosure.** Pursuant to Article 6, Section 6.14 of the Declaration, the Board may opt to foreclose its lien on a Property.

**H. Legal Action.** Pursuant to Article 6, Section 6.1 of the Declaration, the Board may opt to bring a legal action against the Owner for his or her personal obligation for unpaid assessments.

**I. Legal Fees.** Pursuant to Article 6, Section 6.1 of the Declaration, the delinquent Owner shall be obligated to pay reasonable fees and costs, including Attorney fees, incurred in collecting delinquent and unpaid assessments, regardless of whether foreclosure or legal action is commenced.

## **III. COLLECTION PROCESS**

**A. Uniformity.** Each assessment (or portion thereof, if assessments are charged in installments) shall be collected promptly and in a uniform manner, from all Owners.

**B. 1<sup>st</sup> Late Notice.** When an assessment payment is thirty (30) days past due, an Owner is sent a 1<sup>st</sup> Late Notice, and a \$25 late fee will be applied to the Owner's account.

**C. 2<sup>nd</sup> Late Notice.** When payment is sixty (60) days past due, an Owner is sent a 2<sup>nd</sup> Late Notice, and another \$25 late fee will be applied to the Owner's account.

**D. Final Demand for Payment from Association.** When payment is ninety (90) days past due or the account balance (including late fees) exceeds \$500.00, an Owner will be sent a Final Demand for Payment. Another \$25 late fee will be applied to the Owner's account. The final demand will provide notice to the Owner indicating the amount due, including accounting for any late fees and will demand immediate payment. The \$25 late fee charge will continue each month while the account is past due. The Association may record a lien against the property for any amounts due at this stage.

**E. Turnover.** If any assessment remains unpaid by the Owner for more than thirty (30) days following the Final Demand for Payment, the Board shall turn over collection to the Attorney. Following turnover of an account to the Attorney, all communication in regards to the account shall be through the Attorney. While most of the collections work charged by the Attorney will be

performed in a flat fee manner, any unanticipated communications, filings, pleadings, or other legal work that must be performed will be charged on an hourly basis and ultimately added to the Owner's account. The flat fee amounts included herein are subject to change, and this Resolution may be updated to reflect those changes at any time.

**F. Attorney Demand.** The Attorney shall send a written demand for payment and any notice as required by the federal Fair Debt Collection Practices Act. This will be billed as a flat fee of \$100.

**G. Lien.** The Attorney shall prepare and record a lien against the Owner(s) unit in the name of the Association (unless such lien has already been recorded prior to turnover). The lien amount shall include all collection costs to date, including Attorney's fees and the cost of preparing and recording the lien. This will be billed as a flat fee of \$50 plus costs.

**H. Ten Day Warning.** Attorney shall send the owner(s) a ten (10) day demand letter for payment notifying the owner(s) that if full payment is not received within ten (10) days of the date of the letter the Association intends to file suit to either obtain a money judgment or foreclose on the lien. The demand shall include the updated amount owing, including all collection costs to date. This will be billed as a flat fee of \$50.

**I. Telephone Calls.** The Attorney's office shall attempt to contact the owner(s) to arrange for payment. Each telephone call will be charged at a flat fee of \$20.

**J. Lawsuit or Foreclosure.** If any assessment remains unpaid by the owner(s) ten (10) days after the ten-day demand letter and notice of intent to file suit, the Attorney shall file suit for a money judgment, unless the Board, after recommendation by Attorney, determines that lien foreclosure is advisable under the circumstances. A money judgment lawsuit will be charged at a flat fee of \$150 plus costs. A foreclosure judgment will be charged at an hourly rate.

**K. Judgment.** Based on the actions of the owner(s), the Attorney will move for a Default Judgment. A flat fee of \$150 plus costs will be charged for a Default Judgment. However, if the owner(s) file an Answer with the Court, and the Attorney is required to proceed with the litigation process, all actions will be charged on an hourly basis.

**L. Post-Judgment Collection.** If the Association is successful in obtaining a money judgment, the Attorney shall collect on the judgment with the following options: (a) file and send a ten (10) day demand to pay judgment; (b) garnish bank accounts, wages, and rents; (c) levy against any personal and real property; and (d) levy against the unit. The garnishments will be charged on a flat fee basis of \$120 each, plus costs. Additional steps may be necessary to determine the availability and location of the judgment debtor's assets. If the Association is successful in a suit to foreclose on the lien, Attorney shall proceed as necessary to complete the foreclosure unless otherwise directed by the Board. All foreclosure steps will be charged on an hourly basis.

**M. Costs Assessed.** All legal fees and costs incurred in the collection of the account will be due and payable at the time they are charged by the Attorney. The Association shall promptly pay for all fees charged by the Attorney, and those fees will then be assessed against the delinquent owner who caused the fees to be incurred. The total amount of assessments, late fees, and all accrued costs of collection will be collected from the delinquent owner.

**N. Attorney Communication.** After an owner(s) has been turned over to the Attorney, all contact and communication with the delinquent owner(s) regarding the matter shall be through the Attorney. Neither the Board, nor any of its agents, shall discuss the collection of assessments directly with the owner(s) after turnover to the Attorney, unless the Attorney is present or has consented to the contact and contract.

**O. Payment Plans.** Owners are encouraged, if they are having difficulty paying their assessments, to contact the Association about the possibility of a payment plan. Prior to turnover to the Attorney for collections, Owners should contact the Board, through the Association's management company, to request a payment arrangement. After turnover, the Attorney shall have the discretion to enter into an installment payment plan with a delinquent owner(s) in appropriate circumstances. Any payment plan shall require approval of the Board or the Board's manager. Depending on the stage of the matter, payment plan documents will be drafted and charged to the owner(s). The flat fee for the payment plan will be \$125.

**P. Post-Turnover Payments.** All payments will be made to the Association. The Association will provide the Attorney with an updated ledger upon request from the Attorney, or if any new charges or payments are made in the matter, so that the Attorney has current knowledge of the balance of the account and communicate with any delinquent Owner about his or her balance.

**Q. Suspension of Rights.** As stipulated in the covenants, the Association may exercise the right to suspend the voting rights and right to use of the Common Area by an Owner, or by the family, guest, invitees or tenants of any Owner for any period in which any Assessment against such Owner's unit remains unpaid.

**R. Additional Remedies.** Nothing in this Resolution precludes the Board from taking further action in the collection of unpaid assessments permitted by the Association's governing documents or applicable law, including, but not limited to, adopting or enforcing rules regarding the termination of utility services paid for out of assessments of the Association and access to and use of recreational and service facilities available to owner(s) and, after giving notice and an opportunity to be heard, terminate the rights of any owner(s) to receive such benefits or services until the correction of any violation covered by such rule has occurred.

**S. Notice To Owners.** A copy of this Resolution shall be mailed or hand-delivered to each owner(s) prior to the turnover of any owner(s)' account to the Attorney.

**ADOPTED BY THE BOARD OF DIRECTORS SEPTEMBER 3, 2019.**