

**TOWN AND COUNTRY COMMUNITY CORPORATION**

POLICY RESOLUTION NO: 2

Pertaining to Application of Collections

WHEREAS, Town and Country Community Corporation (“Association”) is a community association organized and operating pursuant to the Virginia Property Owners’ Association Act (“Act”) and the Association’s Governing Documents; and

WHEREAS, Article Four, Section 1 of the Association’s By-laws states that the “affairs of the corporation shall be managed by its board of directors;” and

WHEREAS, Article V, Section 1 of the Association’s Deed of Dedication and Declaration Covenants, Conditions and Restrictions (“Declaration”) outlines the Association’s covenants for maintenance assessments; and

WHEREAS, Article Three, Section 1 of the By-laws sets forth the financial requirements for a member to be deemed to be in good standing; and

WHEREAS, Section 55.1-1824 of the Act authorizes the Board to impose a late fee of no more than five percent (5%) of any assessment that is not paid within sixty (60) days of the due date; and

WHEREAS, Section 55.1-1828(B) of the Act states that in “actions against a lot owner for nonpayment of assessments ... and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment ... even if the proceeding is settled prior to judgment;” and

WHEREAS, the Board of Directors for the Association (“Board”) has determined that there is a need to update its orderly procedures for the billing and collection of assessments;

NOW THEREFORE, BE IT RESOLVED THAT the following assessment collection policies and procedures are hereby adopted:

**I. Routine Collections**

A. The annual assessment shall be fixed as set forth in Article V, Section 3 of the Declaration:

Until January 1, 1972, the maximum assessments shall be sixty dollars (\$60.00) per year. After consideration of current maintenance costs and present and future needs of the Association, the Board of Directors shall fix and determine the amount of the annual assessment at any amount not in excess of the maximum assessment. The initial assessment is hereby

established and declared to be five dollars (\$5.00) per year. From and after January 1, 1972, the maximum annual assessment may be increased at any meeting of members, provided that, any such assessments shall have the assent to two-thirds (2/3rds) of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

B. The annual assessment shall be due and payable on the first (1<sup>st</sup>) day of each August and special assessments shall be due and payable in a lump sum or in installments, as determined by the Board for each special assessment (“Due Date”).

C. All documents, correspondence, and notices relating to the charges shall be mailed to the address which appears on the books of the Association or to such other address as is designated in writing by a Lot Owner. All Lot Owners have the responsibility of informing the Association, in writing, of their correct mailing addresses and any subsequent changes to those addresses.

D. Written notice of the assessments shall be sent to each Lot Owner. Nonreceipt (or late receipt) of this notice, however, shall in no way relieve a Lot Owner of the obligation to pay the amount due by the Due Date. If a Lot Owner does not receive a notice, the Lot Owner should contact the Association’s Board or Management Agent immediately to obtain a copy of the notice and to confirm the Lot Owner’s correct mailing address.

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

A. **Late Fee, Interest, and Late Notice.** If payment is not received by the Board by the thirtieth (30<sup>th</sup>) day after the Due Date (or the first working day thereafter if such day is a Saturday, Sunday, or legal holiday), the account shall be deemed delinquent and shall accrue a late charge in the amount of five percent (5%) of the principal due. In addition, prejudgment interest at the rate of six percent (6%) per annum shall be applied to the account. A late notice shall be sent to the Lot Owner which shall advise of the delinquency and the possibility of collection efforts. Nonreceipt of such notice does not relieve the Lot Owner of his or her obligation to pay the assessment or the resulting interest, costs, attorneys’ fees, or other charges.

B. **Suspension of Good Standing Status.** If payment is not received by the Board by the sixtieth (60<sup>th</sup>) day after the Due Date (or the first working day thereafter if such day is a Saturday, Sunday, or legal holiday), the Lot Owner’s good standing status shall be deemed suspended without the requirement of further action by the Board.

C. **Referral to Legal Counsel and Attorneys’ Fees.** If payment in full is not received by the Board by the sixtieth (60<sup>th</sup>) day after the Due Date, the account may be turned over to the Association’s legal counsel for collection. In any proceeding arising out of an alleged delinquency by a Lot Owner, the Association may seek recovery of unpaid assessments, costs of collection, charges, and attorneys’ fees.

D. **Lien Filing and Initiation of Suit.** Once an account has been turned over to the Association's legal counsel, counsel hereby is authorized to file a Memorandum of Lien against the Owner's Lot to secure the unpaid balance on the account. This Resolution constitutes the Board's authorization for the Association's legal counsel to file appropriate liens without the need to obtain specific case-by-case direction from the Board in that regard. Neither the failure to send nor the failure of a Lot Owner to receive a warning notice shall prevent the Association from filing a lien within the statutory deadline. Attorneys' fees, the lien filing and release costs, and any other costs of collection may be included as part of the lien and added to the Lot Owner's account. The Association's legal counsel also may file a civil suit against the Lot Owner on the basis of the personal obligation to pay the assessments without obtaining specific permission from the Board. The cost of filing both the lien and the civil suit will be added to the account plus all other costs incurred during the collection process.

E. **Additional Legal Action.** If payment in full, including attorneys' fees, costs, and late fees, is not received by the Association's legal counsel within the time period set by counsel, counsel for the Association is authorized to take other appropriate legal action to collect the amount due, except as provided below or directed otherwise by the Board. Once a judgment is entered against a Lot Owner, further legal actions may include, without limitation, garnishment of wages, rent, and/or bank accounts, and the attachment of vehicles or other assets.

F. **Foreclosure.** If a Memorandum of Lien remains unpaid, the Board may authorize the Association's legal counsel to institute foreclosure proceedings against the Owner's Lot at any time within thirty-six (36) months of the date the lien was recorded (or within such other time period as may be authorized by the Act).

G. **Returned Checks.** If a check or electronic debit is returned or rejected for insufficient funds, the Lot Owner's account shall be assessed a returned check processing charge in the amount of twenty-five dollars (\$25). The Association's legal counsel also shall have the authority to pursue statutory remedies available for returned checks. If the Association receives from any Lot Owner, in any accounting year, two (2) or more returned checks for payment of assessments, the Board may require all future payments to be made by certified check, cashier's check, or money order for the remainder of the fiscal year.

H. **Waivers and Promissory Notes by Board.** The Board may grant a waiver of any provision herein upon petition in writing by a Lot Owner alleging a significant personal hardship. Such relief granted to a Lot Owner shall be appropriately documented in the Association's files. Such documentation shall include, without limitation, the basis for taking such action. Generally, waivers will not be considered for Lot Owners who have not mailed their assessment payments in sufficient time to have been received by the Due Date. The Board also may permit delinquent Lot Owners to remedy arrearages via a repayment plan in the form of a Promissory Note containing a Confession of Judgment provision.

I. **Waivers by Agent.** The Board hereby authorizes counsel to waive the imposition of late fees if the defaulting Lot Owner has owned the Lot for less than two (2) months at the time of the delinquency and, in the judgment of counsel, the default was the result of a

misunderstanding of the correct procedures relating to payment of the assessment. Such a waiver may be granted only once to any defaulting Lot Owner.

J. **Application of Payments.** Payments received from a Lot Owner shall be credited in the following order:

1. collection costs for accounts in default, including, for example, administrative fees, certified mailing costs, lien filing/releasing costs, court costs, and attorneys' fees;
2. accrued interest;
3. returned check charges;
4. other charges assessed against the Lot Owner's account (for example, for violations of the Declaration and rules and regulations); and
5. annual and special assessments, applied to the oldest outstanding amount first.

K. **Suspension of Right to Vote and Run for Office.** During the period of delinquency, the Lot Owner may not vote or run for a seat on the Association's Board. To be eligible to vote, the delinquency must be cured no later than seventy-two (72) hours prior to the meeting at which the vote is scheduled.

L. **Prior Resolutions Superseded.** This Resolution supersedes and replaces any and all rules and regulations relating to collections procedures at the Association.

M. **Not an Election of Remedies.** The remedies stated in this Resolution shall not constitute an election of remedies and all remedies shall be deemed cumulative.

The rules and regulations set forth in this policy resolution are effective as of February 27, 2022.

TOWN AND COUNTRY COMMUNITY CORPORATION

POLICY RESOLUTION NO: 26

Pertaining to Application of Collections

Resolution Action Record

Resolution No. 26

Pertaining to: Collections

Duly adopted at a meeting of the Board of Directors held February 6, 2022.

Motion by Brenda Ojima Seconded by: Patti Crescenzi

VOTE:

	YES	NO	ABSTAIN	ABSENT
<u>[Signature]</u> Director	X	_____	_____	_____
<u>[Signature]</u> Director	✓	_____	_____	_____
<u>Brenda Ojima</u> Director	✓	_____	_____	_____
_____ Director	_____	_____	_____	_____
_____ Director	_____	_____	_____	_____

ATTEST:

Secretary: Brenda Ojima Date: February 7, 2022

Resolution effective February 2, 2022.