

# AVALON VILLAGE HOMEOWNERS ASSOCIATION

## Resolution of The Board of Directors

### *COLLECTION OF UNPAID HOA ASSESSMENTS*

#### RECITALS

A. The Board of Directors of the Association is charged with the responsibility to establish, assess and collect homeowner assessments.

B. The Board deems it in the best interest of the Association and the owners to adopt a uniform and systematic procedure for the collection of unpaid assessments that assures that unpaid assessments are timely and efficiently collected to minimize the loss of assessment revenue.

C. To ensure that unpaid assessments are efficiently and effectively collected, the Board of Directors has entered into an agreement (“CFE Agreement”) with Vial Fotheringham LLP (“VF”) to undertake collection and enforcement of delinquent assessments on behalf of the Association.

#### **NOW, THEREFORE, IT IS RESOLVED that:**

I. The rules governing collection of delinquent assessments set forth below be adopted to provide for the uniform and systematic procedure for the collection of unpaid assessment.

II. A copy of this Resolution be sent to all owners at their address as shown in the records of the Association.

#### **ARTICLE I**

#### **AUTHORITY, DUTIES AND OBLIGATIONS UNDER GOVERNING DOCUMENTS & ACT**

1.1 “**Declaration**” is Declaration of Covenants and Restrictions for Avalon Village Homeowners' Association recorded on January 8, 1998, as Document No. 9801262, Records of Lane County, Oregon, including any amendments thereto.

1.2 “**Act**” is the Oregon Planned Community Act, Oregon Revised Statutes 94.550 to 94.783.

#### **1.3 Specific Authority and Duties.**

(a) Article 7, Section 7.3.1 of the Declaration and ORS 94.630(a) allow the Association to adopt rules.

(b) Article 8, Sections 8.1 and 8.7(b) and Article 13, Section 13.3 of the Declaration authorize the Board to enforce provisions of the Declaration and Rules and Regulations, including action to collect unpaid assessments.

(c) Article 8, Section 8.1 of the Declaration and ORS 94.630(1)(n) authorize the Board to establish late charges for delinquent assessments.

(d) Article 8, Sections 8.1 and 8.8 of the Declaration and ORS 94.709(4) authorize the Board, on behalf of the Association, to bring suit to foreclose the lien against the lot.

(e) Article 8, Section 8.8 of the Declaration and ORS 94.709(4) authorize the Board to bring an action to obtain a money judgment against an Owner for damages and for unpaid assessments.

(f) Article 8, Sections 8.1 of the Declaration and ORS 94.709(5) provide that late charges, fines, interest, and attorney fees and costs of collection are enforceable as assessments.

#### **1.4 Obligations.**

(a) Under Article 8, Sections 8.1 and 8.7(b) of the Declaration, owners are obligated to pay assessments.

(b) Under Article 8, Section 8.2.3 of the Declaration, assessments are currently due and payable Quarterly and due by the first day of each January, April, July and October.

(c) Under Article 7, Sections 7.3.1, Article 8, Sections 8.1 and 8.7(b) of the Declaration an assessment is delinquent if not paid within forty five (45) days of its due date.

(d) Under Article 8, Section 8.1 of the Declaration and ORS 94.709(1) all assessments, together with interest, attorney fees and costs of collection are a continuing lien on the lot against which the assessments are imposed.

(e) Under Article 8, Section 8.2.3 and Article 13, Section 13.3 of the Declaration and ORS 94.630(1)(n), owners are obligated to pay reasonable fees and costs, including, but not limited to, attorney fees incurred in connection with efforts to collect delinquent and unpaid assessments, regardless of whether a suit or action is commenced.

### **ARTICLE II** **INTEREST LATE FEES AND OTHER COSTS**

Pursuant to Section 1.3 above, the following apply to delinquent and unpaid assessments:

**2.1 Interest.** In accordance with Article 8, Section 8.1 of the Declaration, interest at a rate of ten percent (10%) per annum shall accrue on all delinquent assessments.

**2.2 Late Charge.** In accordance with Article 8, Section 8.1 of the Declaration, any assessment that is delinquent as set forth in Section 1.4(c) above will be charged a late charge in the amount of seventy-five dollars (\$75).

**2.3 Other Costs.** All costs of collection as set forth in Subsections (a), (b) and (c) of this section are imposed against the owner and are due when incurred in the amounts incurred, regardless of whether suit or action is commenced. Collection costs include, without limitation, the following:

(a) **Management Company Charges.** Collection charges imposed by the management company, if included in the contract between the Association and the management company, including reasonable mailing costs, recording fees, time spent for account maintenance, and other similar expenses.

(b) **Attorney Fees.** Any attorney fees for work performed with respect to the assessment account such as file intake; preparing calculations; consultations and telephone calls with the Association, owners, court, witnesses and other individuals involved in the process; legal research; drafting and preparing legal documents; drafting and preparing letters; depositions; trial preparations; travel time; investigations; court appearances; analyzing the account to determine the appropriate action; and preparing and attending post judgment proceedings.

(c) **Other Costs.** All expenses such as recording fees, postage costs, copy costs, service costs, court costs, filing fees, paralegal fees, private investigator fees, garnishment fees and other similar expenses.

### **ARTICLE III** **PROCEDURE**

**3.1 Association Lien.** When an assessment is levied against a lot and owner, the Association or an agent of the Association may cause a lien to be recorded in the Records of Lane County, Oregon.

**3.2 Association Invoice.** The Association shall use best efforts to send an invoice for assessments to the most current address provided by the Owner, or to the lot itself, at least 30 days in advance of the due date. A failure to provide thirty (30) days advanced notice of the assessment or the failure of any owner to receive the notice does not affect either the validity of the assessment or the due date.

**3.3 Association Payment Demand Letter.** When an assessment is delinquent, the Association or its agent shall send the owner a written payment demand letter (“Association Payment Demand Letter”) in substantially the form set forth in attached Exhibit A that includes a:

(a) Statement of the amount due under the assessment account.

(b) Demand for immediate payment.

(c) Notice if the stated amount due is not paid by the turnover date, the assessment account will be turned over to VF for collection in accordance with the Collection Resolution.

(d) Statement that the owner is responsible for the payment of all costs for collection incurred, as specified in the Collection Resolution, and the costs constitute assessments against the owner and the lot.

**3.4 Turnover of Assessment Account to VF.**

(a) Subject to Subsection (b) of this section, when an assessment remains unpaid after the turnover date specified in the Association Payment Demand Letter given under Section 3.3 above, Association or its agent shall turn over the assessment account to VF in accordance with the CFE Agreement. VF shall proceed as provided in the VF Agreement and this Resolution.

(b) After the assessment account is turned over to VF, all contact and communications with the owner regarding the assessment account must be with VF, unless VF gives written consent otherwise.

**3.5 Initial VF Payment Demand; Recording of Lien.** When an assessment account is turned over to VF, VF shall:

(a) Initial VF Payment Demand. Send a written demand for payment (“Initial VF Payment Demand”) to the owner. The Initial VF Payment Demand must include a demand that all moneys due under the assessment account be paid within thirty (30) days.

(b) Association Lien. If an Association lien has not been recorded in the Records of Lane County, Oregon, prepare an Association lien against the lot and cause the lien to be recorded in the Records of Lane County, Oregon.

**3.6 Final VF Payment Demand.** If the total amount due is not paid by the date stated in the Initial VF Demand Payment under Section 3.5 above, or arrangement for payment made in accordance with Section 3.9 below, VF shall send a final demand letter (“Final VF Payment Demand”) that demands payment of all moneys due under the assessment account within ten (10) days.

**3.7 Legal Action.** If the assessment, including all costs specified in Section 2.3 above, are not paid by the date specified in the VF Final Payment Demand given under Section 3.6 above, or arrangement for payment made in accordance with Section 3.9 below, VF, on behalf of the Association, shall initiate a lawsuit for a personal money judgment against the owner or foreclose the Association lien against the lot.

**3.8 Execution/Enforcement of Judgment.** After VF obtains a judgment, VF shall begin collection of the judgment by any one or combination of the following:

- (a) Garnishing the owner’s bank account.
- (b) Garnishing the owner’s wages.
- (c) Executing a writ against the owner’s real or personal property.
- (d) Any additional methods authorized by law.

### **3.9 Payment Plans.**

(a) Subject to Subsection (b) of this section, a payment plan proposed after the assessment account is turned over to VF must be:

(1) Approved by VF and the Board of Directors of the Association;  
and

(2) Secured by a Confession of Judgment or Stipulated Judgment.

(b) A payment plan approved under Subsection (a) of this section is not effective until a confidential statement of assets form provided by VF is completed and executed by the owner and submitted to VF.

**3.10 Payments.** After the assessment account has been turned over to VF, all payments must be made to VF.

**3.11 Disbursal of Funds.** Funds shall be disbursed to the Association in accordance with the VF Agreement that provides as follows:

(a) When payments are received, they are split 50/50 between two expense categories: fifty percent (50%) of the payment is applied to past due assessments and non-attorney related collection charges and fees and fifty percent (50%) is applied to attorney related charges and fees.

(b) Each payment shall be split as provided under Subsection (a) of this section until one of the expense categories is paid in full. After one of the expense categories is paid in full, the all of the remaining payments shall be applied to the remaining balance in the other expense category.

### **3.12 Owner Responsibility; Other Remedies.**

(a) Owner Responsibility For Payment of Assessments. Regardless of any procedure prescribed under this Resolution, it is the responsibility of the owner to ensure that assessments are paid when due.

(b) Owner Responsibility To Update Address. It is the sole responsibility of the owner to notify the Association in writing of any change of owner mailing address.

(c) Other Association Remedies. Nothing in this Resolution prevents the Association from taking any other actions against an owner, including termination of utilities and preventing the owner from access to recreational or service facilities, if provided under the Declaration, and Rules and Regulations, or the Act.

**CERTIFICATION OF ADOPTION**

The undersigned, Secretary of the Association, hereby certifies that the foregoing resolution is a true record of a resolution adopted by the Board of Directors at a meeting of the Board of Directors held in accordance with the governing documents of the Association on \_\_\_\_\_, 2016.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
\_\_\_\_\_, Secretary  
Board of Directors  
Avalon Village Homeowners Association,  
An Oregon nonprofit corporation

**EXHIBIT A**  
**ASSOCIATION**  
**PAYMENT DEMAND LETTER**

April 16, 2018

John Doe  
111 S.W. 11<sup>th</sup> Avenue  
Portland, OR 97208

RE: NOTICE OF UNPAID ASSESSMENTS  
**DEMAND FOR PAYMENT**

Dear Mr. Doe:

The records of Avalon Village Homeowners Association show that your assessment account is now past due. Our records reflect the following:

Principal Assessments Due:	\$ _____
Accrued Late Charges:	\$ _____
Accrued Interest:	\$ _____
Total Due:	\$ _____

**Demand is hereby made for immediate payment in full of the above Total Due. If payment in full is not made within thirty (30) days of the date of this letter, your assessment account will be turned over to Vial Fotheringham LLP for collection in accordance with the Avalon Village Homeowners Association Collection Resolution. A lien will be recorded against your property in the Records of Lane County, Oregon.**

All charges, including attorney fees, associated with collection of your assessment account are imposed against you and your lot as provided in the Collection Resolution.

**NOTICES**

**I. BEFORE THE END OF THE 30-DAY PERIOD:**

You may request a hearing if you disagree with the calculation of the above Total Due. To request a hearing, you may contact the undersigned in writing to voice your challenge. The Board must receive any written challenge of the calculation of these charges no later than the expiration of the 30<sup>th</sup> day after the date of this letter. If a hearing is not requested by the end of the 30 day period, your right to a hearing is forfeited.

If you would like to set up a payment plan, arrangements must be made with the contact below before the 30 days expires.

**II. LENDER FORECLOSURE:**

If a first trust deed or mortgage on your lot is being foreclosed, DO NOT EXPECT that delinquent assessments (including cost and fees) will be paid from the proceeds of

the foreclosure sale. Assessments (including costs and fees) that are not paid from the proceeds of the foreclosure sale remain the personal responsibility of the owner. The Association will proceed to collect all moneys owed to the Association by seeking a personal judgment against the owner.

Your prompt payment of the balance due is appreciated.

Sincerely,

Jane Smith  
President, Board of Directors  
(Phone number) (Email) (Physical Address)