

**WEXFORD CONSERVANCY**  
**POLICY/REGULATORY RESOLUTION NO. 2009-03**

**(Policy Concerning Collection of Charges, Fees and Assessments)**

WHEREAS, Section 55-513A of the *Virginia Property Owners' Association Act*, Va. Code § 55-508, *et seq.* ("Act") grants the Board of Directors of Wexford Conservancy ("Association") the power to establish rules and regulations for the use of the property and with respect to such other areas of responsibility assigned to the Association by the Declaration of Covenants, Conditions, and Restrictions for ("Declaration"), of record in the land records of the Circuit Court of Prince William County at Deed Book 1867, Page 1363, *et seq.*; and,

WHEREAS Section 55-515A of the Act charges all lot owners and their tenants, guests and invitees with compliance with the Act, the Declaration, By-Laws and Rules and Regulations of the Association, as amended; and,

WHEREAS, Article V of the Association's Declaration establishes that each Owner has an obligation to pay assessments and that all such assessments, together with interest thereon and costs of collection thereof shall be a charge on the land and shall be a continuing lien upon the property and shall become a personal obligation of the person who was Owner of such lot at the time of assessment;

WHEREAS, Article III of the Association's Declaration provides the Board of Trustees with the power to fix, levy and collect assessments;

WHEREAS, Article V of the Association's Declaration grants the authority accelerate and declare due the entire amount of the Annual Assessment upon default in the payment of any one installment, charge interest, and pursue foreclosure;

WHEREAS, the Board of Trustees believes that it is in the best interest to establish an updated policy and procedures for the collection of assessments and delinquent accounts, which shall supersede and replace all previously adopted policies concerning the collection of charges fees and assessments.

NOW THEREFORE, the Board of Trustees resolves as follows:

**A. Routine Collections**

1. Establishment of Annual Assessment: The Board shall establish the Annual Assessment at the time that it approves the budget for the upcoming fiscal year.
2. Owner's Mailing Address: The Board shall mail a notice of the Annual Assessment to each Owner at the property address of the Lot or to such other address designated in writing by the Owner. If an Owner designates another address to the Association for such notices, the Owner must furnish the

Association with a telephone number and an address where the Owner will promptly receive mail and notices. All Owners have an affirmative obligation to promptly advise the Association of any change in mailing address/contact information and to maintain updated contact information with the Association. Failure to receive notice of the Annual Assessment does not excuse the Owner's obligation to pay the assessment. Any Owner who does not receive notice of the Annual Assessment obligation shall contact the Association in order to obtain such information.

3. Due Date: The Association's fiscal year will begin on the first day of April of each year, at which time the Annual Assessment shall become due and payable; however, the Board shall provide Owners whose assessment accounts are not in arrears with the option to pay the Annual Assessment in twelve equal monthly installments, due on the first day of each month, which shall otherwise be known as the "Due Date". The Association shall allow a grace period for payment within thirty (30) days of the Due Date.
4. Direct Debit: The Association allows Owners to pay the monthly installments of the Annual Assessment through a direct debit program. If an Owner chooses not to pay the monthly installments through the direct debit program or if any direct debit payment is not honored by the Owner's financial institution, the Owner must ensure that the Association receives payment on or before the expiration of the grace period. Any direct debit payment program shall be deemed inactive when two assessment payments in any fiscal year are not honored by the Owner's financial institution.
5. Additional Assessments: All special assessments, costs incurred by the Association or monetary charges imposed by the Association as a result of any violation of the Declaration, Bylaws, Rules and Regulations of the Association by an Owner, his family, employees, agents, or invitees, shall be separately assessed against such Owner and shall be due upon demand or as otherwise specified in the notice of assessment. Such costs include, without limitation, legal or administrative expenses (regardless of whether suits or liens are filed) resulting from a lot owner's failure to pay charges or assessments when due, or from any other default referred to in this paragraph or in the Declaration, By-Laws and rules. Such charges shall also specifically include any administrative charges which the Association may incur as a result of notices, letters or other correspondence which may be sent to the lot owner by the management agent pursuant to collection of the assessment obligation.

#### **B. Remedies for Non-payment of Assessment**

1. Late Fee: If payment or any installment thereof, or charges due, including without limitation special assessments and charges for violations of the governing documents, are not received by the Association by the thirtieth (30<sup>th</sup>) day after the due date the account shall be deemed late and a one-time late fee in the amount of twenty dollars (\$20) will be added for each late installment until the Owner pays

the account in full. The Association will send a reminder notice to any Owner against whom it charges a late fee, but lack of receipt of the notice shall not excuse the Owner of the obligation to pay the late fee. Management shall add administrative and any costs of mailing of any such notice to the Owner's account. The Association may charge interest at the rate of 12% per annum from the date the fee was due until payment is received.

2. Referral to Legal Counsel: If an owner's account remains delinquent after the sixtieth (60<sup>th</sup>) day past the due date, the Association shall send the account to legal counsel for collection. When an account is referred to counsel, the remaining installments shall be automatically accelerated for the remainder of the fiscal year, a charge of \$50.00 will be added to the account for the costs incurred in referring the account for collection and counsel will issue a demand/lien warning letter which notifies the Owner of the full assessment.
3. Demand by Counsel and Lien Filing: If payment in full of the amounts due is not received by legal counsel or the Managing Agent within fifteen (15) days after the notice of legal action has been sent, a Memorandum of Lien may be filed. Non-receipt by the Owner of the lien warning letter shall not prevent the Association from filing a lien within the statutory deadline. Reasonable attorney's fees and costs of collection, including late fees and the costs of filing and releasing the Memorandum of Lien, shall be added to the account, and the delinquent Unit Owner shall be liable for said costs and attorney's fees.
4. Suit Filing: If payment in full of all amounts due is not received by legal counsel of the Managing Agent by the ninetieth (90) day after the due date, a civil suit may be filed personally against the delinquent Owner.
5. Further Legal Action: If an account remains delinquent after the filing of a lien or civil suit, legal counsel for the Association is authorized to take other appropriate action to collect the amounts due, except as provided in Paragraph 6 below and unless otherwise directed by the Board. Once a judgment is entered against an Owner, further legal actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.

If an account has been referred to counsel for collection and it is with counsel when a new fiscal year begins, and any assessment is late, counsel will issue a demand which notifies the owner of the debt and that the full fiscal year assessment shall be imposed if the balance is not paid in full within a time certain. If the balance is not paid within the time specified in any notice, the remaining installments shall be automatically accelerated for the remainder of that fiscal year and legal action shall be taken.

6. Exception: The Board reserves the right to refer a delinquent account to counsel for collection at any time prior to the 60<sup>th</sup> day after the Due Date. Extenuating

circumstances may require the Board to refer a delinquent account to counsel for collection prior to the 60<sup>th</sup> day after the Due Date. For example, an owner with a delinquent account may try to sell his property without making appropriate arrangements to pay the Association a delinquent balance. In such a case, the Board can and will refer the case to counsel for the appropriate legal measures to protect the Association's interests.

7. Authorization to Counsel: Counsel for the Association is authorized to record liens and file suits on behalf of the Association to collect all delinquent sums. Counsel shall add all legal fees, collection costs and court costs to the account of the delinquent Owner.
8. Returned Checks: If the Association receives from any Owner, in any accounting year, two (2) or more checks returned due to insufficient funds for payment of assessments or other charges, 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. The Owner's account shall be assessed a returned check fee of fifty dollars (\$50) for each returned check.
9. Crediting Payments: Payments received from a delinquent Owner shall be credited in the following order unless otherwise required by law:
  - a. Charges for attorney's fees and court costs;
  - b. All returned check charges or interest accrued, as applicable;
  - c. Special Assessments, or any installments thereof, and late fees for each Unit;
  - d. All other charges incurred by the Association as a result of any violation by an Owner or the Owner's family members, tenants, guests or other invitees; and
  - e. The Annual Assessment, or any installments thereof, and late fees *or other administrative charges* for each Unit, applied first to the oldest amount due.

### C. SUSPENSION OF PRIVILEGES

If an Owner's account becomes sixty (60) days or more delinquent on any payment obligation due to the Association, the Owner's rights and privileges, including but not limited to, the right to vote, the right to serve on the Board or Committees, and the right to use the Common Areas (except for the private streets or access ways), may be suspended. The suspension shall remain in effect until the Owner pays all amounts due. Prior to imposing any suspension, the Association shall send a written notice of the suspension of privileges, which include but are not limited to, suspension of the Owner's right to: a) park vehicles on the common areas, b) use the Association's recreational facilities, c) vote at any Association meeting; and/or d) run for election to the Board, via Certified Mail, Return Receipt Requested. If any owner wants to contest a suspension or explain any matters relative to an account, the unit owner may request a hearing with the Board of Trustees in writing. Upon receipt of a written

request for a hearing, the Board will schedule a hearing and notify the Owner in writing of the date and time of the hearing, and advise the Owner that he or she may have counsel present at the hearing. The suspension will not take place until such time as the requested hearing is held and decision is rendered by the Board.


**BE IT FURTHER RESOLVED** that the following policies shall apply to all delinquent accounts turned over to the Association's attorney for collection:

1. All contacts with a delinquent homeowner shall be handled through the Association's attorneys. Neither the Manager nor any Association Officer or Director shall discuss the collection of the account directly with a homeowner after it has been turned over to the Association's attorneys.

I hereby certify that the foregoing Resolution was duly adopted by the Board of Trustees of the Wexford Conservancy, this 16 day of September, 2009. This policy shall supersede and replace all previously adopted policies concerning the collection of fees, charges and assessments.

This Resolution will become effective Nov. 1, 2009

WEXFORD CONSERVANCY.

  
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Jon Williams, President  
Board of Trustees

# WEXFORD CONSERVANCY

## RESOLUTION ACTION RECORD

Resolution Type: Policy / Regulatory \_\_\_\_\_ No.

Pertaining to: Collection of Charges, Fees and Assessments

Duly adopted at a meeting of the Board of Trustees held Sept. 16 \_\_\_\_\_, 2009.

VOTE:  
YES NO ABSTAIN ABSENT

[Signature]  
Trustee

✓

[Signature]  
Trustee

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Trustee

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Trustee

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Trustee

✓

ATTEST:  
[Signature]  
Secretary

✓

Date 9/16/09

FILE:  
Book of Minutes – 2009:Month Sept.  
Book of Resolutions: 2009- 03

Resolution effective: Nov. 1, 2009