

**CHURCHILL SQUARE ASSOCIATION, INC.**

**POLICY RESOLUTION NO. 2012-03**

**RESOLUTION REGARDING THE COLLECTION OF ASSESSMENTS AND CHARGES AND SUSPENSION OF RIGHTS TO FACILITIES AND SERVICES**

**WHEREAS**, Article 3 of the Bylaws, Section 3.1 (“Bylaws”) for the Churchill Square Association, Inc. (“Association”) states that the business and affairs of the Association shall be governed by the Board of Directors (“Board”);

**WHEREAS**, Article V of the Declaration of Covenants, Conditions and Restrictions (the “Declaration”) establishes an assessment obligation for each lot owner;

**WHEREAS**, Section 55-513 of the Property Owners’ Association Act empowers the Board to suspend the right of any lot owner or resident of a Lot to use the common area for so long as any assessment for such Lot remains unpaid and overdue;

**WHEREAS**, Article V, Section 1 of the Declaration provides that any and all assessments levied in accordance with the Declaration shall be a lien against the Lot;

**WHEREAS**, Article V, Section 8 of the Declaration empowers the Board to charge interest in the amount of eight percent (8%) per annum for any assessment not paid within thirty (30) days from the due date;

**WHEREAS**, Article V, Sections 8 of the Declaration and the Virginia Property Owners Association Act specify the types of relief the Association, through its Board or managing agent, may seek under the terms of the Declaration or the Virginia Property Owners’ Association Act, when an owner is in default, including suspension of use rights to the common area, legal action, or foreclosure of an existing lien on the Lot;

**WHEREAS**, Article 3, Section 3.14(f) of the Bylaws grants the Board the power to adopt, amend and enforce compliance with any reasonable rules and regulations relative to the operation, use, and occupancy of the Lots and the Common Area;

**WHEREAS**, Article V, Section 1 of the Declaration provides that in any proceeding arising out of any alleged default by an owner in the payment of assessments, the Association shall be entitled to its reasonable attorney’s fees and costs; and

**WHEREAS**, the Board has determined that it is in the best interests of the Association to adopt procedures for the billing and collection of assessments and charges.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT** the Board hereby adopts the following assessment collection procedures and policies:

**I. ROUTINE COLLECTIONS**

- A. All installments of the annual assessment shall be due and payable on the first (1<sup>st</sup>) day of the month of the payment period. All additional or special assessments shall be due and payable, unless otherwise determined by the Board, on the first day of the next month after delivery to the lot owner of notice of an additional or special assessment, provided that at least ten (10) days notice is provided (“Due Date”).
- B. All documents, correspondence, and notices relating to assessments or 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 an owner to the Association. Owners have the responsibility of informing the Association’s management agent, in writing, of their correct address of record and any subsequent changes to that address.
- C. Non-receipt of an invoice, coupon book, or other invoice, shall in no way relieve the lot owner of the obligation to pay the amount due by the due date. If an owner does not receive a notice within the expected or required time period, the owner should contact the Association’s management agent immediately to obtain a copy of the notice and to confirm the owner’s correct mailing address.
- D. Violation charges assessed pursuant to Section 55-513 of the Act shall be collected in the same manner as an assessment or in such other manner as shall be determined by the Board.

## II. REMEDIES FOR NONPAYMENT OF ASSESSMENT

- A. Acceleration. If an Owner fails to fully pay any assessment within thirty (30) days after the due date, then the Board, by this Resolution, hereby authorizes the Association's management agent or legal counsel, as the case may be, to automatically accelerate the remaining balance of the annual or special assessment for the entire fiscal year, making that entire remaining balance immediately due and payable in full, without further notice being required, and without the need to obtain specific case-by-case direction from the Board in that regard.
- B. Late Fee & Interest. If payment of the total assessment, or of any installment thereof, or other charge, is not received by the Association thirty (30) days after the due date, the account shall be deemed delinquent and a late fee of ten percent (10%) of the total assessment along with interest in the amount of eight percent (8%) shall be automatically added to the amount due and shall be a part of the continuing lien and personal obligation for assessments, as provided for in the Declaration and the Act, until all sums due and owing shall have been paid in full.
- C. Returned Checks. If a check is returned or rejected for insufficient funds the owner's account shall be assessed a returned check/debit processing charge of not more than Twenty-Five Dollars (\$25.00), plus the bad check/debit return fee, if any, charged to the Association by the bank. If the Association receives from any owner, in any calendar year, two (2) or more returned checks or rejected electronic debits, the Board may require all remaining payments for that fiscal year to be made by certified check, cashier's check or money order.
- D. Late Notice / Lien Warning Letter  
A "Late Notice" shall be sent by the Association via certified mail to owners who have not paid assessments or charges, in full, by the thirtieth (30<sup>th</sup>) day after the due date. The Late Notice shall warn the owner that the account may be sent to legal counsel for legal proceedings, and shall provide the delinquent owner with at least ten

(10) days' notice that a lien may be recorded in the county's land records. Non-receipt of such notice does not relieve the owner of his financial obligation to pay the assessment or the resulting costs of collection incurred by the Association for the collection of the delinquent debt, including, but not limited to, interest, administrative costs and attorneys' fees. Additional late notices or "reminder" notices may be sent to a delinquent lot owner, at the Board's discretion, prior to referral of an account to legal counsel. The Late Notice shall be in substantially in the same form as the document attached hereto as Exhibit A.

- E. Referral to Legal Counsel. If payment in full, of any two (2) full assessments or charge, interest and returned check charges, is not received by the managing agent by the sixtieth (60<sup>th</sup>) day after the due date, the account may be referred to legal counsel for the Association. A charge of \$50.00 will be assessed to any account turned over to legal counsel by the Association. In addition to those actions set forth in Paragraph H below, legal counsel shall be authorized to file a lien and/or initiate a civil suit on behalf of the Association.
  
- F. Lien Filing. As provided under the Declaration and the Act, when an assessment is levied against an owner, that assessment is immediately deemed to be a lien against the owner's lot, and the Association may perfect that lien at any time thereafter by recording a Memorandum of Lien in the county's land records, but only after first giving the delinquent lot owner ten (10) day's notice, by certified mail, that the lien will be recorded in the county's land records. Non-receipt or lack of notice shall not prevent the Association from filing a lien within the statutory deadline. Attorney's fees, late fees, interest, and the costs of collection, including the costs of postage and filing and releasing the Memorandum of Lien, shall be included in the Memorandum of Lien and added to the owners' account.
  
- G. Suspension of Rights. An owner whose account remains delinquent for more than sixty (60) days may also have his or her right to use the Association's facilities and services suspended for the duration of the delinquency, after notice and opportunity for a hearing pursuant to

Section 55-513 of the Act and any other procedures adopted by the Board from time to time.

- H. Other Action of Counsel. If an account remains delinquent after the filing of a lien or civil suit, legal counsel for the Association shall take other appropriate legal action to collect the amounts due. Once a judgment is entered against the owner, further legal actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.
  
- I. Foreclosure. If a lien remains unpaid, the Board may authorize legal counsel to institute foreclosure proceedings against the lot owner's lot 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 from time to time).
  
- J. Assessment of Costs and Attorney's fees. Any costs, including without limitation legal fees and all administrative costs, incurred by the Association as a result of a failure to comply with the Declaration or the Rules and Regulations by any owner, may be assessed against such owner's lot.
  
- K. Application of Payments. Payments received from an owner shall be credited to currently outstanding amounts and the amount owed for each category below shall be paid in full before payment is applied to the next category in the following order:
  - 1. Any collection costs for delinquent accounts, including, for example, administrative fees, certified mailing costs, lien filing/releasing costs, and court costs;
  - 2. Any attorney's fees awarded by the court or secured liens against the lot.
  - 3. Any late fees and returned check charges;
  - 4. Any other charges assessed against the lot owner's account (for example, for violations of the Declaration, Bylaws and rules and regulations); and

5. Annual and special assessments, applied to the oldest outstanding amount first.

The remedies stated herein shall not constitute an election of remedies and all remedies shall be deemed cumulative.

This Resolution shall become effective on **October 1, 2012**

CHURCHILL SQUARE ASSOCIATION, INC.

RESOLUTION ACTION RECORD

Resolution Type: Policy No. 2012-03

Pertaining to: Assessment Collection Procedures

Duly adopted at a meeting of the Board of Directors held August 15, 2012.

Motion by: DON HINES Seconded by: BRAD BOUTON.

VOTE:

	YES	NO	ABSTAIN	ABSENT
<u>Don Hines</u> , Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Jim Jan</u> , Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Brad Bouton</u> , Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>MATTHEW KONOPA</u> , Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>BEVERLY SWAIN</u> , Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Attest: Don Hines (Secretary) Date: AUG 15, 2012

Book of Minutes - 2012 Book Resolutions:

Resolution effective: October 1, 2012

**EXHIBIT A**

**Churchill Square Association, Inc.**

[Date]

[Addressee]

Certified Mail No. \_\_\_\_\_  
Return Receipt Requested  
And Regular Mail

Re: [Lot Address]

Delinquent Assessments

Dear Property Owner:

As a member of the Churchill Square Association, Inc., you are required to pay homeowner assessments when due as set forth in the recorded covenants on your lot. When you purchased your lot, you became personally subject to those documents. As you have failed to pay an assessment installment within thirty (30) days of the due date, the remaining balance of your annual assessment has been accelerated, making the entire remaining balance due and payable. As such, you currently owe the Association \$\_\_\_\_\_ in past due homeowner assessments and late fees through \_\_\_\_\_, \_\_\_\_.

Please be aware that if payment in full is not received by the Association's board or management agent by the sixtieth (60<sup>th</sup>) day after the due date, your account may, at the discretion of the board or management agent, be referred to the Association's legal counsel. In the event your account is referred to legal counsel, an administrative charge of \$50.00 will be assessed against your lot. In addition, you will also be responsible for the attorneys' fees and costs involved in the collection of your delinquent account.

This letter also constitutes notice that a Memorandum of Lien may be filed against your property in the Fairfax County Circuit Court Clerk's office to secure the past due and accelerated assessments through\_\_\_\_\_, plus late fees, attorneys' fees and costs. Once further legal action is taken, you may be held responsible for additional costs and attorneys' fees. A lien constitutes an encumbrance upon the title of your property, which will impede any sale or transfer of the title of the property.

If you wish to submit payment on your account and avoid further legal action against you and/or your property, you are directed to send payment in full made payable to Churchill Square Association, Inc. to the following address:

[mailing address]

Sincerely,

Churchill Square Association, Inc.