

North Creek Landing

Homeowners Association, Inc.

RESOLUTION NUMBER 2017-01

Relating to NCLHA Delinquent Accounts

WHEREAS, in accordance with the North Carolina Planned Community Act, Paragraph 47F-3-102 the Association may adopt and amend bylaws and rules and regulations, and exercise any other powers necessary and proper for the governance and operation of the association; and

WHEREAS, Article III, Section 1 of the Bylaws of NCLHA assigns the Board of Directors to manage the business and affairs of NCLHA; and

WHEREAS, The NCLHA Board of Directors in concert with General Statute 55A-8-30 of the North Carolina Nonprofit Corporation Act are each acting in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director reasonably believes to be in the best interests of the Association; and

WHEREAS, the NCLHA Board of Directors wishes to establish Delinquent Account Policy and Procedures; and

WHEREAS, the Board of Directors has determined having specific Delinquent Account Policy and Procedures is in the best interests of NCLHA and its Members.

NOW, THEREFORE, BE IT RESOLVED the NCLHA Board of Directors hereby adopts the attached NCLHA Delinquent Account Policy and Procedures, version 01, dated 2/04/2017 for immediate implementation.

Attachments:

1. Resolution #2017-01 Action Record
2. NCLHA Delinquent Account Policy and Procedures version 01, dated 2/04/2017

North Creek Landing Homeowners Association, Inc.

RESOLUTION ACTION RECORD

Resolution Number: 2017-01

Relating to: Delinquent Accounts

Duly adopted at a meeting of the Board of Directors held: 2-4-2017

Motion by: Keith Quinton Seconded by: Janet Parisi

	VOTE			
	YES	NO	ABSTAIN	ABSENT
Keith Quinton, Director	<u>X</u>	_____	_____	_____
Cynthia York, Director	<u>X</u>	_____	_____	_____
Janet Parisi, Director	<u>X</u>	_____	_____	_____
James McKelvey, Director	<u>X</u>	_____	_____	_____
Ernie Gonzales, Director	<u>X</u>	_____	_____	_____

ATTEST:

Keith Quinton
Keith Quinton, President

2-4-2017
Date

Janet Parisi
Janet Parisi, Secretary

2-4-2017
Date

Recorded in Board of Directors meeting minutes dated: 2-4-2017

Resolution effective date: 2-4-2017

NORTH CREEK LANDING HOMEOWNERS ASSOCIATION

DELINQUENT ACCOUNT POLICY

(version 01, dated 2/04/2017)

It is the policy of the North Creek Landing Homeowners Association (NCLHA) that all annual assessments and special assessments are payable on the due date(s) specified on the invoice submitted to the property owner(s). If payments are not received by the specified due date, the account of that property owner will be declared "Delinquent". Complete payment includes all interest and administrative/collection fees, and payment of only the base amount will not remove the "Delinquent Account" status. Property owners who fail to pay interest and fees from previous years (even though the assessments have been paid) will be billed in the following year for these charges and will remain in Delinquent Account status until all charges are paid in full.

Property owners with Delinquent Accounts will have their voting rights suspended, and shall forfeit the right to use the community amenities including all common areas (excluding the road -- North Creek Drive), boat ramp, and marina facilities as outlined in the Declaration Of Covenants, Conditions And Restrictions Of North Creek Landing (NCLHA Declarations) (Article 9, paragraph C).

Delinquent Accounts are subject to an administrative fee of \$20.00 each month that an account remains delinquent and interest charged at the rate of 10% per annum (.833% per month) on the balance due at the end of the month inclusive of all unpaid assessments, statutory penalties, fines, fees, collection costs, charges and reasonable attorney fees as provided for in the NCLHA Declarations (Article 8). NCLHA will pursue any and all amounts available to it under the NCLHA Declarations and existing North Carolina statutes, including statutory penalties and fines, collection costs, charges, late fees and reasonable attorney fees as defined in the North Carolina Planned Community Act. Such actions include the filing of a Claim of Lien and/or Judgment Lien against the property and personal property in the Office of the Clerk of Superior Court of Beaufort County, use of a collection agency, and reporting Delinquent Accounts to the National Credit Bureaus. Foreclosure upon the real property may be initiated for Delinquent Accounts upon approval of the NCLHA Board of Directors.

NORTH CREEK LANDING HOMEOWNERS ASSOCIATION

DELINQUENT ACCOUNT PROCEDURES

(version 01, dated 2/04/2017)

Trigger	Action	BOD Approval	Comments	Authority Source	Responsible Agent
Account is 5 days delinquent.	Contact property owner by email and/or telephone to facilitate payment.	No	Payment is not received by the due date + 5 days.	Courtesy	Treasurer
Account is 15 days delinquent.	Send Payment Reminder Letter (Attachment A) to property owner via first class mail.	No	May also contact property owner by email and/or telephone to facilitate payment.	Courtesy	Treasurer
Account is 30 days delinquent.	Send Delinquent Account Notification Letter (Attachment B) to property owner via first class mail.	No		North Carolina Planned Community Act para 47F-3-107.1.	President
Account is 30 days delinquent.	Add Interest at the rate of 10% per annum to the account balance from the Due Date.	No	North Carolina Planned Community Act allows up to 18%, but NCLHA Covenants Conditions and Restrictions caps rate at 10%.	NCLHA Covenants Conditions and Restrictions Article 8, and North Carolina Planned Community Act para 47F-3-115 (b).	Treasurer
Account is 30 days delinquent.	Add \$20.00 monthly administrative fee on the due date of each month the account remains delinquent beyond 30 days.	No	This administrative fee is separate and beyond the per annum interest charge, costs of collection, court costs, and reasonable attorney fees.	North Carolina Planned Community Act para 47F-3-102 (11).	Treasurer
Account is 30 days delinquent.	Schedule hearing to determine suspension of Association voting privileges and	Yes	Article 9 of The NCLHA Covenants Conditions and Restrictions says, "...the Corporation	North Carolina Planned Community Act para 47F-3-107.1 and	President

	common use area privileges. Include consideration of any active Boat Slip Assignment Agreement.		shall follow the hearing procedures as set forth in the Bylaws.” NCLHA Bylaws do not address hearings, so the guidance in the NC statute must be followed.	NCLHA Covenants Conditions and Restrictions Article 9 (last para).	
Account is 30 days delinquent.	Suspend owner’s voting privileges.	Yes	Subject to hearing results.	NCLHA Covenants Conditions and Restrictions Article 9.	President
Account is 30 days delinquent.	Suspend owner’s common use area privileges.	Yes	Subject to hearing results.	NCLHA Covenants Conditions and Restrictions Article 9.	President
Account is 30 days delinquent.	Consider offering a payment plan to the property owner.	Yes	The BOD may consider a payment plan for the property owner. If the BOD approves a payment plan and the property owner keeps current with the payments under the plan, interest on the outstanding balances will continue to be posted; however, a lien will not be filed when normally required. If payments are not made according to the plan requirements, NCLHA will proceed with the warnings and eventual lien filing as necessary.	North Carolina Planned Community Act para 47F-3-116 (i).	Treasurer
Account is 45 days delinquent.	Send Final Demand/Warning Letter (Attachment	Yes	No fewer than 15 days prior to filing a lien on the	North Carolina Planned Community	President

	C) to property owner via first class mail.		property, the association must mail a statement of the assessment amount due by first-class mail with return receipt requested service to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. The association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.	Act para 47F-3-116 (b).	
Account is 60 days delinquent.	Turn Delinquent Account over to a collection agency for collection and credit bureau reporting.	Yes			President

Account is 60 days delinquent.	Mail a Claim of Lien (Attachment D) and Lien Transmittal Cover Letter (Attachment F) to the property owner via first class mail and also certified return receipt requested mail service.	Yes	The BOD should consider that a lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien.	NCLHA Covenants Conditions and Restrictions Article 8; and North Carolina Planned Community Act para 47F-3-116 (c).	President
Account is 60 days delinquent.	File a Claim of Lien (Attachment D) on the property with the Beaufort County, NC Superior Court Clerk.	Yes	Filing should include Claim of Lien, Certificate of Service (Attachment E), and Lien Transmittal Cover Letter and postage receipts.	NCLHA Covenants Conditions and Restrictions Article 8; and North Carolina Planned Community Act para 47F-3-116 (a).	President
Account is at least 90 days delinquent.	Refer account to attorney for foreclosure.	Yes	Upon approval by a majority vote of the BOD, the Delinquent Account may be referred to an attorney for foreclosure.	North Carolina Planned Community Act para 47F-3-116 (f).	President
Claim of Lien is satisfied.	Send a Release of Claim of Lien (Attachment F) to the property owner(s) and the Court.	Yes			President

Attachment A

PAYMENT REMINDER LETTER

{Date (15 days past due date)}

{Name}

{Address}

Dear {Name};

This is a courtesy reminder that your {20XX} NCLHA {Annual/Special} Assessment for Lot # {XX} was due on {Date} and we have not received your payment. Interest and administrative fees will be added if payment is not received by {30 day past due date} and will continue to be incurred monthly on any outstanding balances. We urge you to remit payment immediately to avoid additional expenses related to collection activities.

Please contact me if you feel you have received this letter in error. You can reach me with any questions or concerns via email at northcreeklanding@gmail.com or by phone at {(XXX) XXX-XXX}.

Sincerely,

{Name}

Treasurer, NCLHA

Attachment B

DELINQUENT ACCOUNT NOTIFICATION LETTER

{Date (30 days past due date)}

{Name}

{Address}

Dear {Name};

Your {20XX} NCLHA {Annual/Special} Assessment for Lot # {XX} was due on {Date}. We sent several reminders to you, but our records indicate payment has not been received.

Your account is at least 30 days delinquent resulting in the addition of a monthly \$20.00 administrative fee and the addition of a 10% per annum interest charge (accrued monthly). You currently owe a total of {\$XXX.XX} including:

Assessment amount	{XXX.XX}
Interest	{XXX.XX}
Administrative fees	{XXX.XX}

Additionally the Board of Directors will consider the following actions and add all related costs to your account:

- Convene a hearing to determine suspension of your Association voting and common use area privileges
- Record a Claim of Lien on your property with Beaufort County North Carolina Superior Court.
- Hire a collection agency to collect arrears and report delinquency to credit bureaus.
- Hire an attorney to aid collection efforts and as necessary foreclose on your property.

Please remit payment or contact me immediately if you feel you have received this letter in error. You can contact me with any questions or concerns via email at northcreeklanding@gmail.com or by phone at {(XXX) XXX-XXXX}.

We appreciate your prompt attention to and resolution of this matter.

Sincerely,

{Name}

President, NCLHA

Attachment C

FINAL DEMAND/WARNING LETTER

{Date (45 days past due date)}

{Name}

{Address}

Dear {Name};

This is a Final Demand/Warning.

Our records indicate that you are 45 days in arrears in paying your assessment(s) to your homeowners association even though you have received previous correspondence regarding your delinquency.

If payment is not received within 15 days from the date of this letter, we will begin legal action under the provisions of the Declarations of Covenants Conditions and Restrictions of North Creek Landing, the North Carolina Planned Community Act, and our Delinquent Account Policy and Procedures to file a Claim of Lien on your property and/or turn your account over to an attorney for collection.

The property subject to the assessment(s) which is in arrears is located at:

Lot # {XX} North Creek Drive
Belhaven, NC 27810

Our records on your account indicate the following:

Base Charges Due	\$ _____
Payments received on account	\$ _____
Administrative Fees through _____	\$ _____
Interest through _____	\$ _____
Total Due	\$ _____

You will be responsible for all costs of collection, including reasonable attorney fees, the sum of which will be added to your account. To avoid the filing of the Claim of Lien, your payment must be received by _____. Please contact me with any questions via email at northcreeklanding@gmail.com or by phone at {(XXX) XXX-XXXX}.

Sincerely,

{Name}

President, NCLHA

Attachment D

CLAIM OF LIEN

NORTH CAROLINA BEAUFORT COUNTY

Name and address of person claiming lien:

North Creek Landing Homeowners Association, {XXXX} North Creek Drive Belhaven, NC 27810

Name and address of record owner of the real property claimed to be subject to the lien at the time the lien is filed:

{Name(s), Address}

Description of the real property on which the lien is claimed:

1 Lot {#XX}, Section {X}, North Creek Landing, {PIN XXXXXXXX}; North Creek Drive Belhaven, NC 27810;
Deed Book/Page: {XXX/XXX}

Claim authorization:

The basis for this claim of lien is authorized by the Declaration recorded in Deed Book 882, Page 49 of the Beaufort County Registry, and all amendments thereto, and N.C.G.S. §§ 47F-3-115 and 116, and is for the non-payment of North Creek Landing Homeowners Association assessments.

THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW. THIS CLAIM OF LIEN SUPERSEDES ANY AND ALL PREVIOUS CLAIMS OF LIEN FILED BY THE HOMEOWNERS ASSOCIATION ON THIS PROPERTY.

General description of claim and the amount claimed:

Claim is for unpaid annual assessments, accumulated interest, attorneys' fees, administrative costs and other expenses incurred by the North Creek Landing Homeowners Association. The amount of the lien claimed to date is {\$XXX.XX}, which does not include additional attorneys' fees, administrative costs and other expenses that may be incurred by the North Creek Landing Homeowners Association in collection of the amount due.

This the {XXth day of XXXXXXXX 20XX}

Lien Claimant: _____

President

North Creek Landing Homeowners Association

{XXXX} North Creek Drive

Belhaven, NC 27810

Filed: _____ Clerk of Beaufort County Superior Court

Attachment E
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this Claim of Lien upon all parties to this cause by depositing a copy hereof, postage prepaid, in the United States Mail, certified return receipt requested; and also postage prepaid, in the United States Mail, first class mail service properly addressed as follows:

{Name(s), Address}

This the {XX} day of {month} {year}

Lien Claimant: _____

President

North Creek Landing Homeowners Association

{XXXX} North Creek Drive

Belhaven, NC 27810

Attachment F
LIEN TRANSMITTAL COVER LETTER

{Date }

{Name}

{Address}

Dear {Name};

It is with regret that the North Creek Landing Homeowners Association Board of Directors must send the enclosed notice to you indicating that, as a result of your delinquency in payment of assessments (including accumulated interest and fees) to the Association, a lien has been placed on your property in the Beaufort County Superior Court.

We encourage you to pay your account in full as soon as possible in order that this lien may be extinguished. If you should choose not to do so, you should also be aware that, based on the Protective Covenants of the Community, the North Carolina State Statutes, and the policies of the Board of Directors the potential exists that foreclosure proceedings can be initiated by the Association to recover the funds due to it.

In addition, pursuant to the Protective Covenants and North Carolina State Statutes, you are reminded that access to and use of any of the common areas or amenities of the community by you and members of your household are suspended until your arrears to the Association are paid in full.

If you have any questions, please contact me by email at northcreeklanding@gmail.com or phone at {(XXX) XXX-XXXX}.

Sincerely,

{Name}

President, NCLHA

Attachment G
RELEASE OF CLAIM OF LIEN

{Date}

{Name}

{Address}

Dear {Name};

The LIEN filed on {Date} by the North Creek landing Homeowners Association against {Full names(s) of
Property owner and mailing address} is hereby RELEASED.

This the { } day of { } YYYY}

Sincerely,

{Name}

President, NCLHA

cc: Clerk of Beaufort County Superior Court