

AVALON AT CYPRESS COMMUNITY ASSOCIATION, INC.
COLLECTION, BOARD HEARING AND PAYMENT PLAN POLICY

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS, the property encumbered by this Collection, Board Hearing and Payment Plan Policy (the "Policy") is that property restricted by the Declaration of Covenants, Conditions, and Restrictions for Avalon at Cypress, recorded in the Official Public Records of Harris County, Texas, under Clerk's File No. RP-2021-399356, as same has been or may be amended from time to time (the "Declaration"), and any other property which has been or may be subsequently annexed thereto and made subject to the authority of the Avalon at Cypress Community Association, Inc. (the "Association"); and

WHEREAS, pursuant to Chapter 209 of the Texas Property Code, the Board of Directors (the "Board") of the Association hereby adopts this Policy for the purpose of establishing a systematic procedure for (a) the collection of assessments and other charges of the Association, (b) Board hearings related to same, and (c) identifying the guidelines under which owners may request an alternative payment schedule for certain assessments; and

WHEREAS, the Board has determined that it is in the best interest of the Association to adopt this Policy.

NOW, THEREFORE, BE IT RESOLVED THAT the Association does hereby adopt this Collection, Board Hearing and Payment Plan Policy, which shall run with the land and be binding on all owners and lots within the property. This Policy replaces any previously recorded or implemented policy or guidelines that address the subjects contained herein.

I. COLLECTION POLICY AND BOARD HEARINGS

1. ASSESSMENT PERIOD

The Board has the duty of establishing and adopting an annual budget, in advance, for each calendar year of the Association covering the estimated costs of operation of the Association during each year.

2. NOTICE

The Board shall fix the amount of the annual assessment against each lot for the following year and shall, at that time, prepare a roster of the lots and assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any owner. Upon completion of the roster, written notice of the assessment due may be sent to every owner subject to the assessment. An owner may not escape liability or be entitled to a deferral of interest, fines or collection costs with regard to delinquent assessments on the basis of such owner's failure to receive notice if such notice was sent via regular mail and/or via certified mail return receipt requested to the most recent address of the owner according to the records of Association. Each owner shall have the obligation to notify the Association in writing of any change in address, which shall become effective five (5) days after written notice has been received.

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3. DUE DATE

All assessments are due and payable on an annual basis, as determined by a majority of the Board for that assessment year. If any assessment due the Association is not paid on the date when due, then such assessment shall become delinquent thirty (30) days after the due date. Charges disputed by an owner are considered delinquent until such time as they are paid in full.

Payments received after the due date are considered delinquent and the entire amount due may be transferred to a Payment Plan as set forth in Section II of this Policy.

4. INTEREST

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate set forth in the Declaration until the assessment is paid in full.

5. DELINQUENCY NOTIFICATION

The Association may cause to be sent one or more of the following notification(s) to delinquent owners:

- a. PAST DUE NOTICE: In the event that an assessment account balance remains unpaid after the due date (or there is a default on a Payment Plan entered into prior to the Past Due Notice), a Past Due Notice may be sent via regular mail to each owner with a delinquent account setting forth all assessments, interest and other amounts due, including any late fees that may be charged by the Association. The Past Due Notice will contain a statement that the entire remaining unpaid balance of the assessment is due, including any previously imposed late fees, and that the owner is entitled to a Payment Plan as set forth in Section II of this Policy. **In the event an owner chooses to enter a Payment Plan, a monthly charge may be added to each delinquent owner's account balance for administrative costs related to the Payment Plan and such additional administrative costs will continue until the entire balance is paid in full.**
- b. FINAL NOTICE: In the event an assessment account balance remains unpaid after the due date (or there is a default on a Payment Plan entered into prior to the Final Notice), a Final Notice may be sent via certified mail to each delinquent owner. The Final Notice may be also sent by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier to the owner's last known address as shown on the Association's records, as well as by any other method that the Board determines that the Final Notice may be received by the owner. The Final Notice will set forth the following information and the result of failure to pay, including an explanation of:
 - 1) AMOUNTS DUE: All delinquent assessments, interest and other amounts due, including any late fees that may be charged by the Association, and the total amount of the payment required to make the account current;
 - 2) OPTIONS: If the owner has a right to a Payment Plan, as set forth below, the options the owner has to avoid having the account turned over to a collection agent or legal counsel, including information regarding availability of a Payment Plan through the Association;

- 3) PERIOD TO CURE: A period of at least forty-five (45) days for the owner to cure the delinquency before further collection action is taken;
- 4) HEARING: Owners shall be given notice and opportunity for a hearing before the Board. A hearing shall be granted if a written request for a hearing is received by the Association not more than thirty (30) days from the date the Final Notice is mailed to the owner.

If a hearing is requested within thirty (30) days from the date the Final Notice is mailed to the owner, further collection procedures are suspended until the hearing process is completed and the period to cure has expired.

- 5) PAYMENT PLAN: The Final Notice will contain a statement that the entire remaining unpaid balance of the assessment, including any previously imposed late fees, is due and that the owner is entitled to a Payment Plan as set forth in Section II of this Policy. **In the event an owner chooses to enter into a Payment Plan, a monthly charge may be added to each delinquent owner's account balance for administrative costs related to the Payment Plan and such additional administrative costs will continue until the entire balance is paid in full;**
 - 6) COMMON AREA RIGHTS SUSPENSION: If a hearing is not requested within thirty (30) days from the date the Final Notice is mailed to the owner, the owner's use of recreational facilities and common properties may be suspended once the owner's period to cure has expired; and
 - 7) MILITARY NOTICE: If the owner is serving on active military duty, the owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act.
- c. TURNOVER TO COLLECTION AGENT/ATTORNEY: If a Final Notice is sent to an owner and a hearing is not requested within thirty (30) days from the date the Final Notice is mailed to the owner, member privileges may be suspended, the account may be sent to a collection agent and/or the Association's attorney for collection and any fees and expenses may be charged to the owner's assessment account once the owner's period to cure has expired.

6. BOARD HEARING

In the event an owner requests a Board hearing pursuant to Section 5 of this Policy, the following rules will apply:

- a. Timing of Board Hearing: The Board hearing shall be held no later than the thirtieth (30th) day after the date the Board receives the owner's request for a Board hearing. The Board or the owner may request a postponement and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Notwithstanding the foregoing, the Board hearing may be scheduled outside of these parameters by agreement of the parties.
- b. Notice of Board Hearing: The Board shall provide the date, time, and place of the Board hearing to the owner not later than ten (10) days before the date of the Board hearing (the "Notice"). The Board hearing may be held by virtual or telephonic means, in which case the

access information for the virtual or telephonic Board hearing shall be the “place” of the Board hearing for purposes of the Notice.

- 1) The Board shall include with the Notice a packet containing all documents, photographs, and communications relating to the matter which the Board intends to introduce at the Board hearing (the “Hearing Packet”).
 - 2) If the Board fails to provide the Hearing Packet to the owner at least ten (10) days before the Board hearing, the owner is entitled to an automatic fifteen (15) day postponement of the Board hearing.
- c. **Owner’s Evidence:** Owners are expected to provide a list of anticipated participants (including, but not limited to, witnesses and owner representatives) and copies of any documentary evidence the owner intends to introduce at the Board hearing to the Board no later than five (5) days before the Board hearing.
- d. **Hearing Procedure:**
- 1) During the Board hearing, a member of the Board or the Association’s designated representative shall first present the Association’s case against the owner. An owner or an owner’s designated representative is then entitled to present the owner’s information and issues relevant to the dispute. The Board may ask questions of the owner, the owner’s designated representative and/or witnesses.
 - 2) Either party may make an audio recording of the hearing.
 - 3) All parties participating in the Board hearing are expected to treat each other professionally and respectfully. The Board reserves the right to terminate a Board hearing if the Board, in its sole and absolute discretion, determines the Board hearing has become unproductive and/or contentious. The Board, in its sole and absolute discretion, reserves the right to reconvene any Board hearing that is terminated pursuant to this Section.
- e. **Ruling:** The Board is not required to deliberate or to reach a determination during the Board hearing; rather, all information gleaned from the Board hearing may be taken under advisement by the Board. The Association or its managing agent may inform the owner of the Board’s decision in writing within thirty (30) days of the date of the hearing. If there is no written communication from the Association or its managing agent within this timeframe, the violation will remain standing.
- f. **Time Limit:** The Board may set a time limitation for the Board hearing, to be determined at the Board’s sole discretion. The Board may communicate the time limitation in any manner to the owner and will make every effort to communicate the time limitation to the owner in advance of the date of the hearing. The time limitation will be strictly adhered to and is intended to strike a balance between (i) allowing the Association ample time to present its case; (ii) allowing the owner ample time to present the owner’s response; and (iii) the Board’s finite amount of time available to consider such violations.
- g. **Number of Hearings:** Upon receipt of a Final Notice as set forth in Section 5 of this Policy, owners are entitled to request only one (1) Board hearing as it relates to the violations set

forth in the Final Notice, unless the Board, in its sole and absolute discretion, agrees to allow additional hearings.

- h. Alternative Dispute Resolution: In accordance with Section 209.007(e) of the Texas Property Code, an owner or the Board may use alternative dispute resolution services.

7. REFERRAL OF ACCOUNT TO ASSOCIATION’S ATTORNEY

Upon referral of the account to the Association’s attorney, the attorney is authorized to take whatever action is necessary, in consultation with the Board, to protect the Association’s interests, including, but not limited to, sending demand letters; filing a lawsuit against the delinquent owner for a money judgment; instituting an expedited foreclosure action; and filing necessary claims, objections and motions in the bankruptcy court and monitoring the bankruptcy case.

As a prerequisite to foreclosure of the Association’s lien, either the Association’s attorney or the Association will send notification via certified mail to any holder of a lien of record on the owner’s property whose lien is inferior or subordinate to the Association’s lien, as evidenced by a deed of trust. The notification may also be sent by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier, as well as by any other method that the Board determines that the notification may be received by such lien holder(s). Said notice will provide such lien holder with the total amount of the delinquency giving rise to the foreclosure and an opportunity to cure before the sixty-first (61st) day after the day the notice is mailed.

In the event the Association has determined to foreclose its lien as provided in the Declaration and to exercise the power of sale thereby granted, such foreclosure shall be accomplished pursuant to the requirements of Sections 209.0091 and 209.0092 of the Texas Property Code.

8. BANKRUPTCIES

Upon receipt of any notice of a bankruptcy of an owner, the account may be turned over to the Association’s attorney so that the Association’s interests may be protected.

9. REQUIRED ACTION

Nothing contained herein, not otherwise required by the Declaration or by law, shall require the Association to take any of the specific actions contained herein. The Board of the Association shall have the right, but not the obligation, to evaluate each delinquency on a case-by-case basis as it, in its best judgment, deems reasonable.

10. PAYMENTS RETURNED NON-SUFFICIENT FUNDS

An owner will be assessed a service charge for any check that is returned or Automatic Clearing House (ACH) debit that is not paid for any reason, including, but not limited to, Non-Sufficient Funds (NSF) or stop payment order (hereinafter “Unpaid Amounts”). The amount of the service charge assessed by the Association will be the amount charged by the financial institution related to any such Unpaid Amounts plus any administrative costs incurred by the Association as a result of such Unpaid Amounts.

II. PAYMENT PLAN

The Association hereby establishes a Payment Plan schedule by which an owner may make partial payments to the Association for delinquent assessments, or any other amount owed to the Association without accruing additional monetary penalties. Monetary penalties do not include interest or reasonable costs associated with administering the Payment Plan. Any late fees imposed prior to a request for a Payment Plan may be made part of such Payment Plan at the discretion of the Board. The Payment Plan Schedule is as follows:

1. The term for the Payment Plan shall be determined at the discretion of the Board, but shall be no less than three (3) months;
2. A Payment Plan may require equal monthly payments based on the number of months for such Payment Plan, with each payment due on the first day of each month;
3. Failure to pay the first monthly payment of the delinquent amount shall be considered a default of the Payment Plan;
4. An owner, upon written request, may request a longer period of time;
5. The Association is not required to enter into a Payment Plan with an owner who failed to honor the terms of a previous Payment Plan during the two (2) years following the owner's default under a previous Payment Plan;
6. If an owner requests a Payment Plan that will extend into the next assessment cycle, the owner will be required to pay future assessments by the due date in addition to the payments specified in the Payment Plan;
7. The Association is not required to offer a Payment Plan to an owner after the thirty (30) day period to cure the delinquency has expired;
8. The Association is not required to allow an owner to enter into a Payment Plan more than once in any twelve (12) month period.

III. APPLICATION OF PAYMENTS

- A. Except as provided in subsection B immediately below, a payment received by the Association shall be applied in the following order of priority:
1. Any delinquent assessment;
 2. Any current assessment;
 3. Reasonable attorney's fees or reasonable third-party collection costs incurred by the Association associated solely with assessments or other charges that can be the basis of foreclosure;
 4. Reasonable attorney's fees not subject to "3" above;
 5. Reasonable fines; and

6. Any other reasonable amount owed to the Association.

B. If/when an owner defaults on a Payment Plan, the remaining delinquent amount will become due in full and the Association may begin further collection action as set out above. Any payment(s) received by the Association after such default of a Payment Plan shall be applied in the following order of priority:

1. Reasonable costs;
2. Reasonable attorney's fees;
3. Interest;
4. Late fees;
5. Delinquent assessments;
6. Current assessments; and
7. Reasonable fines.

As to each category identified in this subsection B, payment shall be applied to the most-aged charge first. The acceptance of a partial payment on an owner's account does not constitute a waiver of the Association's right to collect the full outstanding balance due on said owner's account.

[SIGNATURE PAGE FOLLOWS]

CERTIFICATION

I hereby certify that, as President of the Avalon at Cypress Community Association, Inc., the foregoing Collection, Board Hearing and Payment Plan Policy was approved on the 25 day of August, 2021, at a meeting of the Board of Directors at which a quorum was present.

DATED, this the 25 day of August, 2021.

By: _____
Print Name: Robert Skinner
Title: President

STATE OF TEXAS §
 §
COUNTY OF Harris §

BEFORE ME, on this day personally appeared Robert Skinner, the President of the Avalon at Cypress Community Association, Inc., known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purposes herein expressed, in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal this the 25 day of August, 2021.

Notary Public – State of Texas

After Recording Please Return To:
Lisa L. Gambrell
Isabella L. Vickers
Roberts Markel Weinberg Butler Hailey PC
2800 Post Oak Blvd., 57th Floor
Houston, Texas 77056

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e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$46.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

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