

**CASWELL COVE MARINA ASSOCIATION, INC.**  
**COMMON CHARGE COLLECTION POLICY**  
**November 2011**

**Statutory Provisions – Common Interest Ownership Act**

The Connecticut Common Interest Ownership Act (“The Act”), codified at C.G.S. Section 47-258, provides for a Statutory Limited Lien for unpaid common expenses. The lien is prior in right to a first mortgage and a second mortgage for only six (6) months of common charges. In all other respects the lien is a priority lien against all other liens or monetary encumbrances against a unit. The priority lien also includes court costs, title search costs and attorney’s fees. The priority lien does not include special assessments.

Both Connecticut Law and the Condominium Documents provide that each unit owner is responsible for all costs and expenses incurred by the Condominium Association in collecting unpaid common charges including reasonable attorney’s fees, sheriff’s fees, title search fees, appraisal fees and court fees which are typically incurred in situations where a foreclosure action is initiated in order to collect such unpaid common charges.

The major concern with the statutory lien is that the Condominium Association is protected by this priority for only six months of common expenses if there is a mortgage on the unit.

The relatively short six month priority period means that a Condominium Association should refer an unpaid Unit Account to an attorney for collection when more than two (2) months of unpaid common expenses have accrued on the Unit Account. A typical collection proceeding, including a court foreclosure of the Condominium Association’s lien when necessary, typically takes five to seven months to complete. There exists a likelihood of a loss to the Condominium Association in every situation where a foreclosure action is required in order to recover common expenses. Many foreclosures are not typical and can take far more time if a unit owner or lien holders cannot be located or if a bankruptcy petition is filed. It is critical to begin collection proceedings not later than the third month of default on payment of common charges.

Section 47-258 of the Act empowers the Condominium Association to foreclose its lien on a unit in order to collect unpaid assessments. The amendments add a new Subsection 47-258(m) to the Act. Subsection 47-258(m) sets out the following new requirements that must be met before the Condominium Association can begin a foreclosure action:

- A. The outstanding balance owed by the unit owner must equal at least two months of common expense assessments under the current annual budget;
- B. The Condominium Association must make a written demand for payment, either by hard copy or electronically; and
- C. The board must specifically vote to begin a foreclosure against that unit, or adopt a standard policy that provides for foreclosure against that unit.

## **Standard Collection Policy Including When Foreclosure is Authorized**

1. It is the responsibility of each unit owner to pay all common charges, assessments, fines and other charges imposed on the Unit Account when such payments are due. There is no legal requirement that the Condominium Association send a monthly statement or any other notice when charges are due except in situations where there is a change in the amount of the monthly common charges or in similar situations. The Condominium Association mailings of statements, overdue statements or final warning letters are a matter of convenience only. There is no legal requirement to send such notices and the failure of the Condominium Association to send such notices and/or the non-receipt of such notices by a unit owner does not constitute a legal excuse to not pay such charges when due. It is the responsibility of each unit owner to contact the Condominium Association with any questions as to the amounts owed on a Unit Account.
2. All amounts received from a unit owner shall be applied to the oldest unpaid amount as shown on the Unit Account Statement. There shall be a late charge in the amount of \$25.00 per month. The late charge will be imposed on the fifteenth (15<sup>th</sup>) calendar day of each month if there is any amount unpaid on the Unit Account as of the fifteenth (15<sup>th</sup>) day of each calendar month, provided, however, no late charge shall be imposed for any month in which the unit owner makes a payment of not less than the amount due for said month and said payment is made on or before the fifteenth (15<sup>th</sup>) calendar day of the month.
3. The Property Manager shall refer a Unit Account to the Condominium Association's attorney for legal collection proceedings when the amount unpaid on a Unit Account is greater than two (2) months of monthly common charges and/or two (2) months have passed without receipt of a payment from a unit owner.
4. The attorney for the Condominium Association is required to make a written demand for payment, either by hard copy or electronically prior to beginning a foreclosure. The said written demand shall include a proposed payment plan that the Condominium Association will accept. A foreclosure action may not be commenced unless the unit owner fails to accept the payment plan or the unit owner does accept the payment plan but fails to make payments in accordance with the payment plan. The attorney notice will include notice required by the Fair Debt Collection Act and request that the unit owner pay the Unit Account in full or the unit owner may accept a payment plan as proposed by the Condominium Association.
5. The first attorney letter shall contain a thirty (30) day notice period before a foreclosure may be commenced. If the unit owner contacts the attorney and requests verification of the amount of unpaid common expenses every reasonable effort is made to research the account and provide written verification of the amount of unpaid common expenses without additional charge to the unit owner. Once the debt is verified, the unit owner is provided an opportunity to present a payment plan if the unit owner is not able to pay that account in full at one time. The policy of the Condominium Association is to accept a

payment plan provided that the payment plan (1) is in writing; (2) requires payment of the current monthly common expenses and assessments, if any, that are due; and (3) an additional monthly payment towards the arrearage in an amount sufficient to satisfy the Unit Account arrearage and bring the Unit Account current within a six (6) month time period. For example, the minimum payment in any payment plan will be the amount due for the current month and an equal amount towards the arrearage or a double payment for each month of the payment plan. In addition, the payment plan must be completed within six (6) months of the date of the first written demand for payment to the unit owner. The date of written demand is the date that the letter is sent to the unit owner. All such notices or letters concerning payment shall be deemed received two (2) business days from the date sent. In extreme situations the payment plan may be modified provided the payment plan is in writing and there is no dispute as to the amount owed. In all cases, the payment plan includes a provision that the unit owner will be responsible for all common charges, late charges, assessments, attorney's fees and costs of collection.

6. Once an account is referred to an attorney for collection, the Condominium Association requires the unit owner to deal directly with the attorney's office until the account is paid current. Any checks or payments received by the Condominium Association directly from a unit owner will be delivered to the Attorney's office. The attorney's office will decide on a case by case basis whether to accept the check on account or return the check to the unit owner. If a check is accepted on account the check is delivered to the Condominium Association and a new letter is sent to the unit owner with an updated unit account statement itemizing the amounts paid and unpaid and again requesting that the unit owner pay the account in full or contact the attorney's office and propose a payment plan acceptable to the Condominium Association. The property manager shall not communicate with unit owner(s) concerning unit accounts that have been referred to an attorney for collection but shall refer all unit owner contact to the attorney for review and response until the account is current and the attorney's file is closed.
7. **In situations where the unit owner does not contact the attorney and/or the unit owner fails to sign a payment plan and/or a payment plan is accepted by the unit owner but the unit owner fails to make payments in accordance with the payment plan, a title search may be ordered and a foreclosure may be commenced in accordance with the provisions of this collection policy. When a foreclosure is commenced, every record owner of the condominium unit and any party owning a record interest in the unit (examples: holders or mortgages and/or judgment liens) is required to be named as a defendant and served a copy of the foreclosure complaint.**

**In situations where a foreclosure has been commenced, a unit owner may propose a payment plan but any such payment plan will be subject to approval of the Association. There is no standard payment plan and there is no guaranty that any payment plan will be accepted once a foreclosure has been commenced.**

It is the policy of the Condominium Association to aggressively pursue foreclosure actions once commenced and make every effort to complete a foreclosure action within

five to seven months. If this time period is achieved, there is minimal risk that the Condominium Association will lose common charges. The Condominium Association will not recover the common charges for time periods exceeding a six (6) month priority period.

In many situations it is not possible to complete a foreclosure in the seven month time period because one or more defendants may file bankruptcy and/or one or more defendants cannot be located.

8. In some situations there may be a second foreclosure against the same unit commenced by a Bank or other party such as the owner of Municipal Tax Liens. In such cases, the Condominium Association must participate and defend the position of the Condominium Association throughout the case. In bank foreclosure situations, the Condominium Association will send a letter to the bank requesting a six (6) month priority payment of common expenses together with all costs incurred by the Condominium Association in connection with the unit account. Said letter includes a notice that the foreclosing party is responsible for payment of common expenses for time periods following the date that the title vests in the foreclosing bank.

In situations where the Condominium foreclosure is completed, a notice is sent to the owner of the first priority mortgage. Said notice contains a itemization of all amounts required to be paid by the mortgage holder in order to redeem the unit on its law day and said notice also contains a statement that current condominium charges must be paid from the date that the title vests in redeeming party.

9. Once a Unit Account is collected in full or is collected to the fullest extent possible under Connecticut law, the Unit Account is deemed Paid Current and returned to the Management Company-Condominium Association.
10. In situations where an account is in collection and a check/payment is received from the unit owner, the attorney for the Condominium Association may endorse the check as agent for the Condominium Association for purposes of depositing the check into the attorney's client's trustee account and making disbursements in accordance with this Collection Policy and in accordance with the retainer agreement between the Condominium Association and the attorney.
11. All amounts paid by a unit owner shall be applied in the following order:
  - i. Payment of the oldest amount of unpaid common expenses and/or assessments on the unit account;
  - ii. Payment of late charges and/or interest;
  - iii. Payment of other amounts due the Condominium Association;
  - iv. Payment of legal fees and disbursements incurred in connection with the collection and/or foreclosure;
  - v. Fines.

In situations where the only amount outstanding on the Unit Account statement is fines, the Condominium Association shall not begin a foreclosure unless as a pre-condition the Condominium Association first obtains a civil judgment against the unit owner and then files a judgment lien against the unit on the land records.

In situations where the Unit Owner account includes amounts owed to the Association for damages to any unit or common elements due to the failure of a unit owner to follow written maintenance standards of the Association, or due to the costs to repair damage up to the amount of the insurance policy deductible in accordance with the Condominium Documents, all such amounts shall be the same as common charges.

This Collection Policy shall be a standard policy and the Condominium Association hereby authorizes commencement of foreclosures against units provided that all provisions of this Collection Policy have been followed before commencement of a foreclosure.

The attached **“Caswell Cove Marina Association – Summary of Common Charge Collection Procedures”** shall be provided to all unit owners within 15 business days of adoption of this policy by the Executive Board.

**This Collection Policy was adopted by vote of the Executive Board of Caswell Cove Marina Association, Inc at its regularly scheduled Board Meeting of March 9, 2010, and as amended August 11, 2011, such votes recorded as part of the minutes of said meetings.**