

# RULES AND REGULATIONS – FINANCE AND BUDGET

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## POLICY AND PROCEDURES FOR COLLECTION OF DELINQUENT ACCOUNTS, ASSESSMENT OF LATE CHARGES AND FEES AND SUSPENSION OF MEMBER PRIVILEGES

**POLICY STATEMENT:** It is the Policy of Cape George: (1) to provide timely notice to Members of amounts owing to Cape George; (2) to provide for the fair and orderly collection of funds due from Members; (3) to follow uniform procedures for the prompt collection of all amounts which are delinquent or past due; and (4) to maintain complete and accurate records of all collection efforts. **Section 1**, below, describes general collection guidelines to be followed for the collection of all delinquent Member accounts. **Section 2** describes specific procedures and remedies based on the nature of the underlying debt (i.e., water, marina, general damages).

**BACKGROUND:** Cape George through its Board of Trustees and employees is obligated to treat all Members equally. To conduct its business of managing common property and enforcing rules, Cape George has the authority to assess and collect funds from Members, to levy fines for rule violations, to impose late charges, to pursue collection efforts and to suspend Member privileges for payment delinquencies. (Cape George covenants, By Laws (Art. III. Sec B (1) and (2)) homeowners' statutes (RCW 64.38.020 et seq.), private marina operations statutes (RCW 88.26.010, .020) and Cape George rules and regulations.)

### **SECTION ONE: GENERAL COLLECTION GUIDELINES FOR ALL PAST DUE ACCOUNTS:**

**1.1 Delinquent Account:** A Member's account is delinquent if funds owed to Cape George are not paid within 21 days of due date. An account is due, and payment is to be made according to the specific terms of the underlying obligation. If the account is not paid in full within twenty-one (21) calendar days of the due date, the Member account will be subject to late fees, administrative fees and other consequences described below.

**1.2. Member Not In Good Standing:** A member who has a delinquent account with funds more than 45 days past due is a Member Not in Good Standing. The adverse consequences of this status are described in the By Laws (Art. IV, Sec. 5) and include: (i) the suspension of the right to have access to and to use all club amenities including the pool, fitness room, clubhouse, shop, boat storage facilities and marina; and (ii) the suspension of the right to vote in Cape George elections. Key card/fob access to Cape George facilities will be suspended, a Member's boat or boat trailer located at Cape George common facilities may be impounded and may be sold if amounts due for moorage and/or storage are not paid in full and account collection efforts will be pursued including the potential suspension of water service.

**1.3. Reinstatement of Member Privileges – Reactivation and Reconnection Fees:** A Member Not in Good Standing shall have her/his privileges fully restored when all amounts properly owing are paid in full and related reinstatement fees are paid. Reinstatement fees include a fee of \$25.00 to reactivate a key card or fob and if suspended a fee of \$25.00 to restore water service. The Board may, from time to time, change these fees and this section shall be deemed amended to correspond with any such changes.

**1.4. Notice to Members of Delinquent Account –Demand Letters and Personal Contact:** The General Manager shall mail or oversee the mailing of periodic and sequential "demand letters" to each Member whose account is delinquent. The demand letters shall, when practical, be standardized to assure that similarly situated Members are treated equally. The recommended timing and content of the letters are described at Section 2, below. Failure to mail one or more demand letters to a delinquent Member shall not excuse the Members responsibility to pay the delinquent obligation in full nor prevent the reduction in status to a Member Not in Good Standing until such payment is made.

**1.5 Imposition of \$20 Late Charge – Fines Currently Exempt:** With the exception of fines levied for rule violations and account balances under \$50.00, the General Manager shall charge a late fee of

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\$20.00 plus administrative fees for each month that a payment obligation is more than twenty-one (21) calendar days past due. This section shall be deemed amended should the By Laws subsequently be amended to include fines for rule violations or if late fee charges are changed.

**1.6. Attorney Fees:** (1) Article XIV of the By Laws and the homeowners' statute (RCW 64.38.050) provide that the Court may award attorney fees and costs to the prevailing party in litigation to interpret, construe, enforce or void the By Laws or this policy or for violation of the statute, respectively. (2) If the By Laws are hereafter amended to provide for the assessment of prelitigation collection costs and prelitigation attorney fees incurred in connection with a delinquent account, the Treasurer shall maintain a record or have a record maintained by the General Manager of such fees and costs for each delinquent account and include the same in any claim against a Member for amounts past due.

**1.7 Board Approval of Due Date Adjustment for Current Accounts:** A Member whose account is current may ask the General Manager for a due date adjustment for charges of special and general assessments and water service charges. If the Member account is current, the General Manager has the discretion to recommend for Board approval the adjustment of future due dates (from annual, quarterly or trimester to monthly or bimonthly) to accommodate the extenuating circumstances of a Member. An account with a due date adjustment is not a delinquent account and gives rise to no adverse consequences.

**1.8 Board Approval of Payment Plans for Delinquent Accounts:** The General Manager may seek authority from the Board to enter a written Forbearance Agreement/ Payment Plan ("Plan") with a Member whose account is delinquent. Cape George would "forbear" or hold off on additional collection efforts in exchange for the Member's written acknowledgement of the debt and undertaking to pay off all arrearages over a specific period of time. If approved, the Plan must be in writing, be dated and signed by the General Manager and the Member, describe the nature of, due date and amount of the delinquency including late fees, and provide for payment in full within four to six months of the date of the Plan unless the Board approves a longer term. To encourage the use of Plans, additional late fees shall not accrue for the months the Plan is in effect. If the Member fails to perform according to the terms of the Plan, late fees will be reinstated commencing with the month in which the default occurred and continuing each month thereafter until the amount is either paid in full or a new Plan is approved by the Board. Members on a Plan are not Members in Good Standing until the indebtedness is paid in full.

**1.9 General Manager's Notice to Member of Right To Seek Board Review of Disputed Accounts:** When an account balance is disputed or extenuating circumstances are claimed, the General Manager shall provide an aggrieved Member with written notice that the Member may file with the Board a request to appear in executive session to seek review, reconsideration or compromise of any allegation of account delinquency, status as a member Not In Good Standing, decision on a due date adjustment or payment plan or other matter concerning the delinquent account. The General Manager and aggrieved Member shall meet in person to seek a resolution of the dispute prior to the Board review. The Board shall meet privately with the Member, consider the claims, and provide a final written decision to the member within twenty days after the adjournment of the hearing.

**1.10 Allocation of Partial Payments:** When a partial payment is tendered on a delinquent account, the Treasurer or accounting service shall apply payment to the delinquent account in the following order. (1) water service bill and reinstatement fee; (2) fines and late fees; (3) claims for damage or reimbursement; (4) general or special assessments; (5) marina, clubhouse, or lot mow fees. The allocation shall be made without regard to contrary instructions from the Member whose account is delinquent.

**1.11 Compromise of Claims to Obtain Payment:**

(1) **General Manager's Independent Authority:** The General Manager has specific authority, consistent with Cape George rule violation enforcement procedures, to reduce or eliminate fines he has levied based on the Cape George fine schedule. (Rule MIS04, Part 1, Section 5)

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(2) **Board's Independent Authority:** The Board has authority, in limited circumstances and in order to obtain at least the partial payment of an **existing disputed delinquency**, to reduce charges it has independently set for the use of common property including charges for water, clubhouse rental, lot mow, and marina and for water reconnection and key/fob reactivation fees. The Board may resolve claims for damages based on its business judgment.

(3) **Board's Authority to Settle Pending Litigation:** Because general and special assessments are ratified by the Members and late fees are set in the By Laws by the Members, the Board lacks the initial authority to accept less than what is owed for late fees and delinquent general and special assessments. However, once a civil action has been filed in court, the Board may compromise or settle any legal dispute based on advice of counsel and/or its business judgment after weighing the potential of a financial recovery against the costs and risks of litigation, the likelihood of collecting on a judgment, the cost of diverting staff resources to litigation and the disruption of the community.

**1.12 General Manager May Contact Third Parties:** The General Manager may notify third parties of a Member's delinquent account if such efforts are reasonably calculated to facilitate collection of amounts due. Third persons include guardians, trustees, personal representatives, holders of a power of attorney and authorized family members and friends. If a Member's Cape George real property is for sale, the General Manager may notify the listing broker that Cape George has a claim against the Member for monies due. The General Manager may release information concerning a Member's indebtedness to Cape George to any Title or escrow company, closing agent or similar entity in order to receive payments from escrowed or other funds of amounts due.

**1.13 Charge for NSF Checks:** A Member shall be charged \$30.00, or such additional amount as the Board from time to time may set, for any check which is returned to Cape George for insufficient funds (NSF).

**1.14 Maintenance of Records and Reporting Obligation:** The Treasurer shall maintain or have maintained by the General Manager or accounting service complete and accurate records of all delinquent Member accounts and related collection efforts. Individual Member files shall contain copies of all correspondence related to delinquent account collection actions. The General Manager shall be responsible for periodic reporting to the Board and the Finance Committee concerning collection efforts and the status of delinquent accounts.

**1.15 Surcharge for Special Payment Arrangements:** To help defray the administrative costs associated with special payment arrangements including due date adjustment and deferred payment arrangements and to ensure that all Members are provided payment equity; the Board shall impose a \$5.00 administrative fee on each arrangement.

### **SECTION TWO: COLLECTION PROCEDURES**

**2.1 Demand Letters Sent for all Delinquent Accounts and Damage Claims:** The General Manager shall use or oversee the use of sequential demand letters (described below) to elicit payment from Members with delinquent accounts or against whom a claim for damages has been made. While the initial due dates for charges and fees owed to Cape George vary based on the nature of the obligation, the General Manager shall use reasonable efforts to apply the collection procedures, below, uniformly for all obligations, unless a specific exception is noted.

In addition to the specifics noted in the succeeding sections, each demand letter shall contain the following information to notify the Member about the indebtedness (hereafter referred to as "the Claim") including: (a) the amount of the debt; (b) the basis for the debt or charge (assessments, lot mow, water); (c) the date the debt was originally due; (d) the amount of accruing late charges.

The General Manager shall begin these collection efforts when a payment for amounts owed has not been received within twenty-one (21) calendar days after the due date.

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**2.2 Twenty-one Day Notice of Delinquency Letter:** If Cape George has not received payment after 21 calendar days from the due date, notice will be sent to the owner notifying them they are past due and have been assessed a late fee and applicable notice fee.

**2.3 Forty-Five Day Notice:** If payment of any delinquent account balance over \$50 has not been received within 45 days of the original date due, the General Manager shall cause a **Forty-Five Day letter** to be mailed or electronically sent.

The Forty-Five-day Letter shall provide notice of the Claim, a demand for immediate payment and notice that the member is No Longer a Member in Good Standing, and electronic access to the facilities has been suspended. The letter shall also include a statement that the account is accruing late charges and interest, that if the Claim remains unpaid, the account may be referred for collection involving the likelihood of increased costs and possible attorney fees payable by the Member. The Member should be encouraged to contact the General Manager to arrange for immediate payment or discuss the potential availability of a Payment Plan.

**2.4 Separate Water Notice:** If the water payment remains delinquent, the Forty-Five Day Letter shall include in bolded and highlighted type specific notice that a **Water Shut off Notice** will be mailed and posted at the property if payment is not received within **7 days** of the date of the Forty-Five Day Letter. If payment in full has not been received or if a Payment Plan has not been signed concerning a delinquent water account, and **7 calendar days** have passed from the date of the Forty Five Day Letter, the General Manager shall cause to be mailed **by first class and certified mail** to the Member whose account is delinquent and shall prominently post on the front door of the Member's house, a **Water Shut-Off Notice** warning that water will be shut-off at the expiration of 14 calendar days from the date of the Notice unless payment in full is received or a Payment Plan is authorized. If payment is not thereafter timely received or payment arrangements are not made, the General Manager shall, without further notice, cause the water to be shut off according to the terms of the Shut off Notice. The General Manager shall direct that water service be resumed when the water account and a \$25 reconnection fee are paid in full or if the Board approves a Payment Plan that allows for water reconnection.

**2.5 Post 60 Day Collection Efforts:** The General Manager shall request direction and authority from the Board to take further action to collect on all accounts which are more than 60 days delinquent. Additional collection efforts may include referring the past due account to a collection agency, to an attorney, continuing to send payment demand letters or authorizing the General Manager to pursue a claim for collection or damages directly in Jefferson County District Court or other court of competent jurisdiction.

**2.6 Collection of Past Due Moorage, Boat and Trailer Storage Fees and Impound Rights:** The Board has the option, as a private marina operator: (a) to pursue claims for amounts past due for moorage and boat and boat trailer storage pursuant to RCW 88.26.010 and 88.26.020; or (b) the Board may direct the General Manager to pursue collection efforts consistent with Sections 2.1 through 2.4 and 2.6, above. The specific terms and notice requirements of RCW 88.26.010 and .020, as the same may hereafter be amended, are incorporated herein by this reference. The General Manager shall notify the Board when a Member has failed to pay, within 30 days of the due date, charges for moorage, boat, or boat trailer storage or when there is good cause to believe that a boat or boat trailer is abandoned. The General Manager shall request direction from the Board concerning whether to proceed under the private marina operator statute to impound and sell the vessel or trailer and/or dispose of the abandoned vessel, or to proceed pursuant to Cape George's established collection procedures. The General Manager shall pursue collection efforts for other marina related charges (ramp use, guest moorage, dock box and electric fees) as provided at Sections 2.1 through 2.4 and 2.6, above.

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This policy replaces all prior collection policies.

Adopted by the Board of Trustees 11, May 2006.

Adopted by the Board of Trustees, July 16, 2009.

Adopted by the Board of Trustees, March 11, 2010.

Adopted by the Board of Trustees, June 14, 2012

Adopted by the Board of Trustees, December 10, 2015

Adopted by the Board of Trustees, October 10, 2019

Adopted by the Board of Trustees, May 14, 2020 to take effect January 1, 2021

Adopted by the Board of Trustees, December 17, 2020 to take effect January 1, 2021

Adopted by the Board of Trustees, November 19, 2021 to take effect December 31, 2021

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Jane Ludwig, Secretary

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Ray Graves, Vice President