

# Policy for Late Payment of Assessments

The policy is described below and taken from the Paseo Village Covenants, By-Laws and Rules and Regulations Manual.

**History:** For many years Paseo Village HOA had a near zero tolerance concerning nonpayment of dues. The Maintenance fees were due on the first of the month and late after the 10<sup>th</sup> of the month. That rule was changed with the new By-Laws adopted on January 15<sup>th</sup>, 2022.

**The Issue:** The issue is the policy is too strict. Retired persons get paid on various days of the month, many times weeks into the month. They might be finding themselves “late” before their Social Security checks arrived.

**The Answer: A New Policy** “No monthly assessment shall be considered past due, or subject to fines and penalties, until the first day of the next month’s assessment. Members are considered in good standing if the previous month’s assessment is paid in full even if the current months assessment is not yet paid.” PVHA By-Laws Section 1.14.

Example: The current month and date is January 31<sup>st</sup>, you have paid December’s dues in December, so today January 31<sup>st</sup> is your last day to pay your January payment. Tomorrow February 1<sup>st</sup>, you will be late and have both interest and a late fee added to your dues.

Another way to look at it is you have all month to pay your dues.

## OK I’m late, what happens?

### The Collection’s process is listed below:

1. First, a late fee of \$5.00 and retroactive interest rate of 6% per annum is added to the dues. The calculation method is  $\$114 + 6\% = (\$6.84) / 365 = .01873$  (the daily rate) x the number of days in the month (30) or .56 cents plus the late fee (\$5.00) = \$5.56 added to \$114 = \$119.56 and it accrues at the daily rate.
2. A “Violation Letter” is mailed, emailed and/or placed in the members mailbox. The “Violation Letter” notifies the member of your failure to pay dues and suggests you pay your dues or request a payment plan.
3. Also, a “30-Day Letter” is mailed, emailed and/or placed in the members mailbox. It simply states in 30 days the Board will refer the case to our attorney and is moving forward with collections and the legal process as described by law. The Attorney will contact the member and has control of the matter.
4. So, from the “due date” of the 1<sup>st</sup> of each month to the referral to Collections is 60 days +/-.
5. The member pays all the expenses of collections (filing charges, liens on your property) and includes all attorney fees.
6. NM State Statute 47-16-18 “Disputes” Allows owners to request a Board Hearing from the Association for everything except failure to pay dues. “...*written notice and an opportunity to dispute an alleged violation other than failure to pay assessments...*”

## Additional Board Members References

### Other notes:

#### **1977 Original Rule: Covenants Sec. 8 Effect of Nonpayment of Assessments: Remedies of the Association.**

“Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the property. No owner may waive or otherwise escape liability for the assessments provided for herein my non-use of the Common Area or abandonment of his Lot.”

#### **2021 Rule: Covenants Sec. 8 Effect of Nonpayment of Assessments: Remedies of the Association.**

“Any assessment not paid after the final due date shall bear interest from the final due date at the rate of ten percent (6%) per annum and be assessed a late penalty fee as listed in the Regulations and Rules Manual. The Association may bring an action at law against the property after providing written notice and a the thirty (30) day period. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.”

**2022 Change: By-Laws Sec. 1.14 “Good Standing”** shall mean a member has fully paid all assessments and is fully compliant with any rules and regulations promulgated by the association. No monthly assessment shall be considered past due, or subject to fines and penalties, until the first day of the next month’s assessment. Members are considered in good standing if the previous month’s assessment is paid in full even if the current months assessment is not yet paid.

#### **NM Statute 47-16-18. Enforcement of covenants; dispute resolution.**

- A. Each association and each lot owner and the owner's tenants, guests and invitees shall comply with the Homeowners Association Act and the association's community documents.
- B. Unless otherwise provided for in the community documents, the association may, after providing written notice and an opportunity to dispute an alleged violation **other than failure to pay assessments:**
- (1) levy reasonable fines for violations of or failure to comply with any provision of the community documents; and
  - (2) suspend, for a reasonable period of time, the right of a lot owner or the lot owner's tenant, guest or invitee to use common areas and facilities of the association.
- C. Prior to imposition of a fine or suspension, the board shall provide an opportunity to submit a written statement or for a hearing before the board or a committee appointed by the board by providing written notice to the person sought to be fined or suspended fourteen days prior to the hearing. Following the hearing or review of the written statement, if the board or committee, by a majority vote, does not approve a proposed fine or suspension, neither the fine nor the suspension may be imposed. Notice and a hearing are not required for violations that pose an imminent threat to public health or safety.
- D. If a person against whom a violation has been alleged fails to request a hearing or submit a written statement as provided for in Subsection C of this section, the fine or suspension may be imposed, calculated from the date of violation.
- E. A lot owner or the association may use a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation, settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues, for complaints between the lot owner and the association or if such services are required by the community documents.

History: [Laws 2019, ch. 30, § 10.](#)