

V. Collection of Past Due Assessments

5.01 Policy: It is vital to the effective administration of the Association that assessments and other charges to be paid by Members be paid in a timely manner. While a certain amount of bad debt is expected in any business, the Association must collect certain unpaid assessments in order to continue to serve the community well and efficiently. To perform these duties the Board needs to remain flexible in its approach in order to account for the unique facts and circumstances surrounding each delinquent payment.

5.02 Procedure:

- (a) Assessment Due Dates. Assessments are due as and when determined by the Board under the provisions of the Declaration.
- (b) “Past Due” Assessments. Assessments of all kinds are “past due” if they are not paid within thirty (30) days of their due date.
- (c) Fees and Interest, Suspension of Voting Rights, Returned Check Fees. All past due assessments shall also bear interest at the rate of eight percent (8%) per annum, compounded on a monthly basis. The fees and interest charged will become due thirty (30) days after the assessment becomes due. These fees and interest shall be added to the total delinquent amount and shall become a charge upon the land as provided in the Declaration. Once assessments become past due, the Association may suspend the voting rights of the delinquent Member. If a Member should ever pay the Association by check and such check is returned because of a Member's insufficient funds, the Association shall, in addition to the amount owed and any late charges and interest, owe the Association a contractual charge of \$20.00, together with all other and further amounts due the Association under the provisions of Colorado law, including, without limitation C.R.S. § 13-21-109.
- (d) Language for Notices/Designated Representative. For the purposes of this Collection of Past Due Assessments procedure, a member may notify the Association if the Member prefers that correspondence and notices from the Association be made in a language other than English. If a preference is not indicated, the Association shall send the correspondence and notices in English. The Member and the Member's designated contact must receive the same correspondence and notices anytime communications are sent out; except that the Member must receive the correspondence and notices in the language for which the Member has indicated a preference, if any. The Association may determine the manner in which a unit owner may identify a designated

contact.

- (e) Payment Plans. Except as provided here, the Association will make a good faith effort to coordinate with a Member who has unpaid assessments to set up a payment plan with the following minimum terms: repayment of all unpaid assessments, late fees, interest, and other charges, costs, and expenses (including attorneys' fees) that may be included with any assessment as provided in C.R.S. § 38-33.3-316.3, over a period of no fewer than eighteen (18) months in equal monthly installments. During the term of any repayment plan entered into under this policy, the Member shall also keep current on all assessments that may come due. The Association has no obligation to coordinate a payment plan with a member that does not occupy their unit and acquired their unit either through default in a security interest encumbering the relevant property, or foreclosure of the Association's assessment liens. Additionally, the Association has no obligation to coordinate a payment plan with a member with whom it has previously entered into a payment plan under this policy, regardless of the outcome.

- (f) Monthly Mailings. On a monthly basis, by first-class mail and, if the Association has the relevant e-mail address, by e-mail, the Association will send each member with an outstanding balance owed to the Association, an itemized list of all assessments, fines, fees, and charges owed.

- (g) Application of Payments on Delinquent Accounts. Payments made against balances owed on delinquent accounts shall be applied first to late charges, interest, returned check fees, and other costs and expenses that may become a charge upon the land under the terms of the Declaration, and then to unpaid assessments beginning with the amounts left unpaid the longest and continuing in chronological order. However, if the Member has both unpaid assessments and unpaid fines, fees, or other charges, any payment made by the Member will first be applied to the assessments owed.

5.03 Available Legal Remedies. Subject to the provisions of this policy and the Association's Dispute Resolution procedure, the Association, acting through the Board, may initiate collection proceedings of any kind at any time after any assessment payment becomes past due, as defined above. The Board, in its sole discretion in light of the relevant facts and circumstances, may choose to employ any one or more of the following means in

seeking collection. In addition to the remedies described in this policy, the Board may pursue collection of unpaid assessments by any means authorized under Colorado law, as the same may exist from time to time.

(a) Pre-Collection Courtesy Notice. If any assessment payment becomes past due, as defined above, the Association will first provide the Member with a pre-collection notice of delinquency for the purpose of alerting the Member to such delinquency. The pre-collection notice of delinquency will be delivered by certified mail, return receipt requested, and posted at the Member's property. In addition, the Association will provide the notice of delinquency by one of the following means:

- (i) First-class mail:
- (ii) Text message to a cell phone number that the Association has on file because the Member previously provided that cell phone number to the Association; or
- (iii) E-mail to an e-mail address the Association has on file because the Member previously provided that e-mail address to the Association.

(b) Collection Agencies/Lawyers. Once an assessment has become ninety (90) days past due, and the Association has provided the pre-collection notice, as described above, the Association may refer the past due assessment to a collection agency or a lawyer for collection, provided that such referral is approved by a majority of the Board at a meeting conducted pursuant C.R.S. § 38-33.3-308(4)(e). The delinquent Member will be liable for any fees or other expenses associated with referring the matter for collection. Such expenses will be added to all delinquent amounts and will become a charge upon the land, as provided in the Declaration. At least thirty (30) days prior to referring the matter to a collection agency or lawyer, however, the Association shall first provide the involved Member with a notice of delinquency, which shall describe:

- (i) The amount due (with an accounting of how the total was determined).
- (ii) Whether the delinquency concerns unpaid assessments, fines, fees or charges, or both unpaid assessments and unpaid fines, fees or charges.
- (iii) Whether the owner is eligible for a payment plan under

this policy and providing contact information for purposes of setting up such a plan, stating the name of the person from whom the Member may obtain a copy of the ledger or other accounting statement indicating the amount due.

- (iv) The steps the Association is required to take before taking legal action against the member, including the cure process for covenant violations, as described above and the Association's Dispute Resolution procedure; and
 - (v) That a failure to act in response to the notice within thirty (30) days may result in referral of the matter to a collections agency or a lawyer for collection, foreclosure of the Association's assessment lien, or the pursuit of other remedies provided by law, including injunction and prosecution of claims through small claims court, or any other court of competent jurisdiction.
- (c) Designated Representative. A Member may register another person to serve as a designated contact for the purpose of receiving the pre- collection notice of delinquency and subsequent notice of delinquency described above. Any request from a Member to identify another person to serve as the Member's designated contact shall be delivered to the Association by certified mail, return receipt requested, and shall specify the e-mail address and physical address of the requested designated contact for mailing purposes.
- (d) Lien. Once an assessment has become 120 days past due, the Association will give formal legal notice of its lien against the delinquent Member's property. Any costs or expenses associated with this process, including attorney fees, shall be added to the total delinquent amount, and shall become a charge upon the land as provided in the Declaration.
- (e) Foreclosure. As a last resort, the Association may foreclose its assessment lien upon the property of a delinquent Member to satisfy the past due assessments, fees, costs, and other expenses charged against the land. Once the Member has a balance of unpaid assessments equal to or exceeding

six (6) months of assessments computed under the Association's periodic budgets, and the Board, by vote on the record, determines to pursue foreclosure on an individual basis, the Association may begin foreclosure proceedings. The costs and expenses of so doing, including attorney fees, shall be charged against the proceeds of any foreclosure sale, along with the delinquent assessments, costs, fees, and other expenses as provided by the Declaration. The Association will not pursue foreclosure of an assessment lien that consists solely of fines assessed by the Association against a Member or collection costs and attorneys' fees that are only associated with assessed fines. Provided, however, the Association will not pursue foreclosure against the Member based solely on fines owed and will not initiate a foreclosure proceeding until:

- (i) It has provided a pre-collection notice and a notice of delinquency in compliance with C.R.S. § 38-33.2-316.3;
- (ii) It has provided the Member with a written offer to enter into a payment plan with the following minimum terms: repayment of all unpaid assessments, late fees, interest, and other charges, costs, and expenses (including attorney fees) that may be included with any assessment as provided in **C.R.S. § 38-33.3-316.3**, over a period of no fewer than eighteen (18) months. Under the payment plan, the Member may choose the amount to be paid each month, so long as each payment is \$25.00 or greater, and:
- (iii) Within thirty (30) days after it has provided the written offer to enter into a payment plan, the Member has either: (a) declined the payment plan; or (b) after accepting the payment plan, the Member has failed to pay at least three (3) monthly installments within fifteen(15) days after such payment was or has failed to remain current with regular assessments as they come due during the eighteen (18) months. During the term of any payment plan entered into under this policy, the Member shall also keep current on all assessments that may come due.

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Monthly Mailings. On a monthly basis, by first-class mail and, if the Association has the relevant e-mail address, by e-mail, the Association will send each Member with an outstanding balance owed to the

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