

Flukey Estates Homeowners Association

Policies and Procedures For the Collection of Unpaid Assessments

As required by C.R.S. 38-33.3-209.5

The following Procedures have been adopted by the Flukey Estates Homeowners Association ("the Association") pursuant to Colorado Revised Statute ("C.R.S.") 38-33.3-209.5, at a regular meeting of The Board of Directors ("The Board"). Additional policies, procedures and rules may exist separately.

PURPOSE:

To adopt a policy setting forth procedures for the collection of unpaid assessments.

NOW, THEREFORE, IT IS RESOLVED that The Association does hereby adopt the following procedures governing the collection of unpaid assessments.

It is vital to the effective administration of the Association that assessments and other charges be paid by Members 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.

- A. **Assessment Due Dates.** Assessments levied pursuant to the annual budget are due monthly on the first (1st) of each month. Payments received after the last day of each month will be considered past due and penalties will be assessed as below. Special and other types of assessments not levied pursuant to the annual budget are due as and when determined by the Board under the provisions of the Declaration.
- B. **Past Due Assessments.** Monthly assessments are considered past due if received after the last day of each month; other assessments are "past due" if they are not paid when due.
- C. **Fees and Interest; Suspension of Voting Rights.** A late fee of .66% of the outstanding assessments will be charged each month (8% per annum) to accounts that are delinquent. The fees charged will become due the date the assessment became due. These fees 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 will suspend the voting rights of the delinquent owner. The Association will be required to contact owners to alert them of the delinquency prior to sending a formal notice of delinquency. The association must formally vote to refer any delinquent account to an attorney or collection agency and must do so during an executive session.
- D. **Non-Sufficient Funds.** If an Owner should pay the Association by check and such check is returned because of Owner's insufficient funds, the Owner shall, in addition to the amount owed and any late charges and interest, owe the Association all bank fees at the current rate to process the NSF and cure the default 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.
- E. **Payment Plans.** Except as provided here, the Association will make a good faith effort to coordinate with an Owner 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 attorney fees) that may be included with any assessment as provided in C.R.S 38-33.3-316.3, (2) over a period of no fewer than eighteen (18) months in equal monthly installments, so long as each payment is in the amount of at least \$25.00.

During the term of any repayment plan entered into under this policy, the Owner shall also keep current on all assessments that may come due. The Association has no obligation to coordinate a payment plan with an Owner that does not occupy their unit and acquired their unit either through default in a security interest encumbering the Unit, or foreclosure of the Association's assessment liens. Additionally, the Association has no obligation to coordinate a payment plan with an Owner with whom it has previously entered into a payment plan under this policy, regardless of the outcome. **Should an owner enter into a payment plan, the association cannot proceed with legal action until the owner has defaulted at least three times or fails to remain current with regular assessments as they become due. In addition, the owner has a 15-day grace period before payment is considered in default.**

- F. **Application of Payments on Delinquent Accounts.** **Payments made against balances owed on delinquent accounts shall be applied first to unpaid assessments owed and continuing in chronological order,** and then to fines, fees or other charges owed to include penalty fees, returned check fees, and other costs and expenses that may become a charge upon the land under the terms of the Declaration.
- G. **Available Legal Remedies:** Subject to the provisions of this policy 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, with or without notice, at any time after a payment is past due. 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.
1. **Acceleration.** If any assessment payment is past due, the Association may elect to accelerate and declare immediately due and payable the remaining balance of the regular or special assessment for the current fiscal year.
 2. **Collection Agencies/Lawyers.** Once an assessment has become past due, the Association may refer the past due assessments to a collection agency or a lawyer for collection. The delinquent Owner 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 30 days prior to referring the matter to a collection agency, or lawyer, however, the Association shall first provide the involved Owner with a notice of delinquency, describing the amount due, indicating 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 Owner may obtain a copy of the ledger or other accounting statement indicating the amount due, and providing that a failure to act in response to the notice within 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. **All notices to the owner must be made by certified mail, posted on the unit and via one additional method such as first-class mail, text message or e-mail.**
 3. **Lien.** Once an assessment has become 120 days past due, the Association may give formal legal notice of its lien against the delinquent Owner's property. Any costs or expenses associated with this process, including attorney's fees, shall be added to the total delinquent amount, and shall become a charge upon the land as provided in the Declaration.
 4. **Foreclosure.** As a last resort, the Association may foreclose its assessment lien upon the property of a delinquent Owner to satisfy the past due assessments, fees, costs, and other expenses charged against the land. Once the Owner has a balance of unpaid assessments equal to or exceeding 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's fees, shall be charged against the proceeds of any foreclosure sale, along with the delinquent assessments, cost, fees, and other expenses as provided by the Declaration.

CONFLICTS BETWEEN DOCUMENT:

In case of discrepancies between this Policy and Procedure and the Declaration of Covenants, Conditions, and Restrictions (the Declaration), or the Bylaws or The Association, the Declaration shall control.

The undersigned, being the President of the Association, certifies that the foregoing resolution was adopted by The Board of Directors of the Association at a duly called and held meeting of The Board of Directors on the _____ day of _____, 2023.

Flukey Estates Homeowners Association

President