

SOMERSET ESTATES HOMEOWNERS ASSOCIATION, INC.
COLLECTION POLICY AND PROCEDURE

Adopted December 19, 2023 and Amended January 30, 2025

The following policy has been adopted and amended by the Somerset Estates Homeowners Association, Inc. ("Association") pursuant to the Colorado Common Interest Ownership Act ("Act"), including C.R.S. 38-33.3-209.5, as amended, at a regular meeting of the Executive Board. This policy contains provisions that may conflict with the terms of the Association's governing documents. The Act and this policy will control over any conflicting provisions in the governing documents.

Purpose: To establish a uniform and systematic procedure for collecting assessments and other charges of the Association, thus ensuring the financial wellbeing of the Association.

Collection Philosophy: All Owners are obligated by the Consolidated, Amended and Restated Declaration for Somerset Estates ("Declaration") to pay all dues and assessments in a timely manner. Failure to do so jeopardizes the Association's ability to pay its bills. Failure of Owners to pay assessments in a timely manner is also unfair to other Owners who do. Accordingly, the Association, acting through the Executive Board, must take steps to ensure timely payment of assessments.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following procedures and policies for the collection of assessments and other charges of the Association:

1. **Due Dates.** The annual assessment, as determined by the Association, shall be due and payable quarterly in equal installments due on the first (1st) day of January, April, July and October each year. Special assessments or other charges may be assessed or made from time to time by the Association in accordance with the Declaration and are due and payable as specified by the resolution authorizing such assessment or charge. Fines assessed according to the Association's Enforcement and Fines Policy are due on the date the fine is imposed. All assessments, fines, or other charges not paid to the Association when due shall be considered past due and delinquent.

2. **Late Fees and Interest.** The Association shall be entitled to impose a quarterly late fee of \$75.00 on any Owner who has outstanding assessments, fines, or other charges not paid within 75 days after the due date. Additionally, any assessment, fine, or other charge not paid within 30 days after the due date shall bear interest at the rate of 8% per annum, or at such lesser rate as may be set from time to time by the Executive Board. All such fees and interest shall be due and payable immediately, without notice, in the manner provided for payment of assessments. Notwithstanding the foregoing, the Association may set a grace balance below which such late fees and interest are not imposed.

3. **Return Check Charges.** If any check or other instrument payable to or for the benefit of the Association is not honored by the bank or is returned by the bank for any reason, including, but not limited to insufficient funds, the Owner is liable to the Association for an amount equal to the face amount of the check, draft, or money order and a return check charge of: (a) \$20.00; or (b) 20% of the face amount of the check, draft, or money order, but not less than \$20.00, if it has been assigned to a collection agency for collection; or (c) an amount equal to the actual charges incurred by the Association levied by the party returning the check, whichever is greater. If two or more of an Owner's checks are returned with any fiscal year, the Association may require that future payments, for a period of one year, be made by certified check or money order.

4. **Lien.** Under Colorado law and the terms of the Declaration, there is a lien for any unpaid assessment. If payment in full of any assessment or other charge is not received by the deadline stated in the Notice of Delinquency, the Association may cause a notice of lien to be filed against the property of the delinquent Owner. The lien shall include assessments, fees, charges, late charges, attorneys' fees, collection costs, fines and interest owed by the delinquent Owner. The Association may delegate authority to the Association's attorney to sign and acknowledge the notice of assessment lien. This delegation may be withdrawn at any time by sending written notice to the Association's attorney of the withdrawal.

5. Failure to Pay. If an Owner fails to timely pay assessments or any money owed to the Association, the Association may require, without the necessity of commencing a legal proceeding, reimbursement for the following, in addition to the assessments or owed money:

- A. Actual collection costs of the unpaid assessments incurred by the Association or its managing agent for delinquent accounts. Examples include, but are not limited to, the actual cost of certified mailings and actual costs to translate a notice to a language other than English.
- B. Reasonable attorney fees incurred as a result of the failure to pay. The reimbursement amount for attorney fees the Association may seek to collect from an Owner who is delinquent on assessments is subject to the limitations of 38-33.3-123, as amended.
- C. Other actual costs incurred as a result of the failure to pay.

6. Suspension of Rights. An Owner's voting rights may be suspended without notice if an assessment or other charge is delinquent as set forth in this policy.

7. Acceleration. Following written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. Upon acceleration, the Owner loses the privilege of paying any and all assessments and charges in installments for the remainder of the fiscal year, unless privilege is otherwise reinstated in the Board's sole discretion.

8. Application of Payments. If an Owner makes a payment to the Association, the Association will apply such payment towards any of the Owner's outstanding and unpaid assessments, fines, fees, interest or other charges as follows: *first*, to any unpaid assessments; *second*, to any outstanding late fees; *third*, to any outstanding interest; *fourth*, to any outstanding fines, and *fifth*, to any other outstanding charges.

9. Monthly Statements. The Association will send monthly notices to each Owner with an outstanding balance including an itemized list of all assessments, fines, fees, and other charges that the Owner owes to the Association. The monthly statement will be sent by first-class mail to the Owner's registered address and by email if the Association has a current email address. If the account has been referred to a collection agency or to any attorney, the statement will also specify that the balance may not include all attorney's fees and costs that have been incurred as of the statement date but not yet invoiced to the Association and posted to the account. No fees or other charges will be assessed for providing statements required under this Section.

10. Notice of Delinquency. If an assessment, fine, or other charge owed to the Association becomes 90 days past due, and before the Association turns the delinquent account over to a collection agency or refers it to the Association's attorneys for legal action, the Association shall cause a Notice of Delinquency to be sent to the Owner who is delinquent in payment. The Notice of Delinquency shall specify the following:

- A. The total amount due, with an accounting of how the amount was determined;
- B. Whether an opportunity to enter into a payment plan exists as provided in this policy, and the instructions for contacting the Association or its manager to enter into such a payment plan;
- C. The name and contact information for the person the Owner may contact to request a copy of the Owner's ledger in order to verify the amount owed;
- D. A statement that action is required to cure the delinquency, and that failure to do so within 30 days may result in the Owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the Owner, the filing and foreclosure of a lien against the Owner's property, or other remedies under Colorado law;
- E. Whether the delinquency concerns unpaid assessments; unpaid fines, fees or charges; or both unpaid assessments and unpaid fines, fees, or charges; and if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the Owner that the unpaid assessments may lead to foreclosure;
- F. The steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's cure process; and the specific action required to cure the default; and

- G. A description of what legal action the Association may take against the Owner, including a description of the types of matters that the Association or Owner may take to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the Declaration, bylaws, covenants, or other governing documents of the Association.

11. Owner Contact and Delivery of Notice. An Owner may send written notice to the Association identifying another person to serve as a designated contact for the Owner for notices and correspondence. The Association will send the same written communications to the designated contact that it sends to the Owner. If the Owner wishes to change or cease the designated contact, the Owner must send the Association written notice. Before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, the Association will:

- A. Send a copy of the delinquency notice described in Paragraph 10 by certified mail, return receipt requested; and
- B. Contact the Owner by two of the following means:
 - i. Telephone call to a telephone number that the Association has on file because the Owner or designated contact has provided the number to the Association. If the Association attempts to contact the Owner or designated contact by telephone but is unable to contact the Owner or designated contact, the Association shall, if possible, leave a voice message for the Owner or designated contact.
 - ii. Text message to a cellular number that the Association has on file because the Owner or designated contact has provided the cellular number to the Association
 - iii. Email to an email address that the Association has on file because the Owner or designated contact has provided the e-mail address to the Association.
- C. Notices from the Association will be sent in English; provided, however, that the Owner may send written notice to the Association with an alternate language preference. The Association will attempt to provide an accurate translation of the original English version, but due to nuances in translating to a foreign language, slight differences may exist.

12. Record of Notification. The Association will maintain a record of the contact it has made with an Owner regarding a delinquency, including the type of communication used to contact the Owner and the date and time the contact was made. As this record relates to a particular Lot, it will not be deemed to be a record available to all Owners under Colorado law.

13. Payment Plans.

- A. Before the Association takes legal action to commence a judicial foreclosure proceeding based on the Owner's unpaid assessments, it will provide the Owner with a written offer to enter into a payment plan over a period of at least 18 months or such other longer period as authorized by the Board. Under the payment plan, the Owner may choose the amount to be paid each month so long as each payment is in an amount of at least \$25.00. The Owner may elect to pay the remaining balance under the repayment plan at any time during the duration of the repayment plan. No action referred to in Paragraph 15 hereof will be taken unless the Owner has failed to accept the repayment plan within thirty days after the written offer was made.
- B. If the Owner fails to comply with the terms of the payment plan (fails to remit payment of three or more agreed-upon installments within 15 days after the monthly installments are due), the Association may pursue legal action subject to the notice requirements outlined herein.
- C. The Association is not obligated to negotiate a payment plan with:
 - i. An Owner who has previously entered into a payment plan pursuant to this policy, or
 - ii. An Owner who does not occupy the Lot and acquired the Lot because of a default of security interest encumbering the Lot or a foreclosure of the Association's lien.
- D. All payment plans involving accounts referred to an attorney for collection will be set and monitored through the attorney in consultation with the President of the Board or other person designated by the Board.

14. Board Action to Refer Delinquent Account. Before a delinquent account is referred to a collection agency or an attorney, a majority of the Board must vote to refer the matter by recorded vote conducted in an executive session.

15. Referral of Delinquent Accounts to Attorneys or a Collection Agency. After an account has been referred to the Association's attorney and/or to a collection agency (either individual or agency referred to herein as the "Collection Agent"), the account remains with the Collection Agent until it is settled, has a zero balance, or is otherwise resolved. Once accounts are turned over to the Collection Agent, Owners will make payments to the Association at the Collection Agent's address unless otherwise agreed. The Collection Agent is authorized to take whatever action is necessary, in consultation with the President of the Board or other person designated by the Board, believed to be in the Association's best interest. After a delinquent account has been referred to the Collection Agent, all communication with the delinquent Owner will be handled through the Collection Agent unless otherwise agreed. Neither the property manager, if any, nor any member of the Board may discuss the collection of the account directly with an Owner after it has been turned over to the Collection Agent unless the Collection Agent is present or has consented to the contact. At the direction of the Association, the Collection Agent may take the following actions on behalf of the Association:

- A. Notice of Lien. If not already recorded, record a notice of lien against the delinquent Owner's property to provide record notice of the Association's claim against the property.
- B. Filing Lawsuit. File a lawsuit against the delinquent Owner seeking a money judgment. If a personal judgment is entered against the delinquent Owner, the Association may pursue remedies such as garnishing the Owner's wages or bank account to collect judgment amounts.
- C. Judicial Foreclosure. Institute a judicial foreclosure action of the Association's lien. The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgement. The purpose of foreclosing is to obtain payment of all assessments owed in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action. The Association shall consider individually each recommendation for a foreclosure. A majority of the Board must vote to foreclose by recorded vote conducted in an executive session. The Association may only approve a foreclosure action after the delinquency equals or exceeds six months of common expenses assessments based on a periodic budget adopted by the Association. The Association may not foreclose on an Owner's property if the debt securing the lien consists only of one or both of the following:
 - i. Fines that the Association has assessed against the Owner as a result of covenant violations; or
 - ii. Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines as a result of covenant violations. Should the Association pursue foreclosure of its assessment lien, no member of the Association's Executive Board, the Association's Manager, or any of the Manager's employees, or the Association's legal representative or any member of said law firm, or any family member of any of the preceding, shall be permitted to purchase a foreclosed home.
- D. Receivership. File a court action seeking appointment of a receiver. A receiver is a disinterested person, appointed by the court, who manages rental of the Owner's property and collects the rents according to the court's order. The purpose of a receivership for the Association is to obtain payment of current assessments, reduce past-due assessments, and prevent deterioration of the property.
- E. Bankruptcy Filings. File necessary claims, documents, and motions in Bankruptcy Court to protect the Association's interest.

16. Certificate of Status of Assessment/Estoppel Letter. The Association will furnish to an Owner or such Owner's designee upon written request to the Association, delivered by certified mail, first-class postage prepaid, return receipt requested, a written statement setting forth the amount of unpaid assessments currently levied against the Owner's Lot at no charge and delivered personally or by certified mail, first-class postage prepaid, return receipt requested, within 14 calendar days of receipt of the request. If the Owner's account has been turned over to the Association's attorney, the statement will include any attorney's fees incurred in providing the statement and may be handled through the attorney. A status letter provided to a title company or mortgage company in anticipation of a sale of the property or a refinance of the mortgage provides additional information beyond a statement of the

SEHOA COLLECTION POLICY

total amount due and as such any charges incurred by the Association for providing a status letter shall be charged back to the Owner.

17. Bankruptcies and Public Trustee Foreclosures. Upon receipt of any bankruptcy notice or a foreclosure notice by any holder of an encumbrance against any Lot within the Association, the Association may advise the Association's attorney of the same and turn the account over to the Association's attorney.

18. Enforcement. Either the Association or an Owner seeking to enforce this Policy, or any rights and responsibilities under the Declaration or this Policy or other governing documents related to disputes arising out of assessments, fines or fees owed to the Association and for which the amount does not exceed the current limit in Small Claims Court, exclusive of interest and costs, may file a claim in Small Claims Court for such enforcement, including injunctive relief.

19. Waivers. The Association may modify these procedures as the Association determines appropriate under the particular circumstances. Any accommodation must be documented in the Association's files. Failure to require strict compliance with this policy is not deemed a waiver of the Association's right to require strict compliance and will not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney's fees, and/or costs as described and imposed by this policy.

20. Severability. If a provision of this policy is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this policy.

Somerset Estates Homeowners Association, Inc.

By: Jon Gillespie-Brown
Jon Gillespie-Brown, President

This Collection Policy and Procedure was amended by the Executive Board on the 30th day of January, 2025, effective immediately, and is attested to by the Secretary of the Somerset Estates Homeowners Association, Inc.

By: Paula Hemenway
Paula Hemenway, Secretary