

## **POLICY LETTER A**

### **ASSESSMENT COLLECTION**

#### **1. Owner Responsibility.**

- (a) Assessments are vital to fund the operations of the Sylvan Meadows Property Owners Association (the "Association"). The Association has adopted this rule (the "Rule") to promote and protect its financial strength for the benefit of all Owners. Owners are responsible for paying assessments as provided in the Association's Governing Documents including the Association's recorded Covenants, its Articles of Incorporation, its Bylaws and its Rules (collectively "Association's Governing Documents"). In addition, Owners have a statutory duty to pay under certain provisions of the Colorado Common Interest Ownership Act (CCIOA); and they have a duty to read, understand and comply with the Association's Governing Documents and the applicable provisions of the CCIOA.
- (b) Owners are responsible for contacting the Association, and for making arrangements for the delivery of all payments to the Association, whether by mail or direct deposits. Owners must notify the Association in writing of any change in their mailing address or status within 15 days of such change. The Association shall not be liable for any errors or omissions in any billing address or payment statement to the Owner.
- (c) Owners are encouraged to use direct deposit of monthly Assessments (if any are arranged) to avoid late charges, payment disputes, or other problems. Arrangements should be made by contacting in writing either the Association's Secretary or the Association's Registered Agent ("Registered Agent") whose name and address (the "Registered Address") are shown on the records of the Colorado Secretary of State's website. The Association's mailing address is: P.O. Box 82265, Black Forest, Co. 80908.
- (d) Checks containing a restrictive endorsement on the back may, at the option of the Association, either be:
  - (i) returned to the Owner and the amount tendered shall be considered unpaid; or
  - (ii) deposited without waiving any of the rights and remedies of the Association to unpaid sums, whether or not the restrictive endorsement is crossed out.

#### **2. Due Date, Interest and Late Charges.**

- (a) The Association's Annual Common Expense Assessment shall be due and payable as provided in the Association's Governing Documents, and unless otherwise provided, yearly Assessments shall be due on the 15th day of each March, and further, special Assessments, fines, fees and other charges shall be due on the date specified in any notice thereof.
- (b) Any payment, which is not received by the 15<sup>th</sup> day after such payment is due, shall be considered past due and delinquent, and will be charged a late fee/administration fee that is set by the Board (\$25.00)



to compensate the Association for the processing of a delinquent payment, which fee shall be owed by the Owner for each month such assessment is not paid.

- (c) In addition to the late fee, the Association shall be entitled to recover any and all costs of collection, including reasonable attorney's fees, as well as interest allowed by the Association's Governing Documents or any statute or law. The current interest rate for delinquent sums is set by the Board at 8% (eight) percent per annum.

### **3. Returned Checks.**

- (a) The Association will impose an administrative fee \$25.00 for all returned checks.
- (b) If notice of a returned check, draft or money order is sent as provided in C.R.S. 13-21-109 and the total amount due as set forth in the notice is not paid within 15 days after such notice is given, the Owner who provided the returned check shall be liable to the Association for collection for three times the face amount of the check, but not less than \$100.00, and any expenses of collecting such sums.
- (c) If two or more of an Owner's checks are returned unpaid by the bank within any fiscal year, the Association may require that all of the Owner's future payments, for a period of one year, be made by certified check or money order.

### **4. Payment Plan.**

- (a) The Association is not a lender, and failure to pay Assessments imposes financial burdens on the other Owners. A payment plan may only be considered for circumstances required by law or statute, or hardship conditions that justify some sort of temporary accommodation.
- (b) Any request for a payment plan must be made by an Owner in writing and delivered to the Association's Secretary or Registered Agent. The name of that agent and the Registered Address (currently P.O. Box 82265, Black Forest, Co. 80908) can be found at the Colorado Secretary of State.
- (c) Any payment plan must be a legally binding contract, and the plan must require the Owner to pay all delinquent sums, including late fees, interest, attorney fees and other costs. The payment plan must require the Owner to keep all monthly payments current and must pay off the entire delinquent amount in six equal monthly installments, unless a longer time period is agreed to by the Board, in writing, for extraordinary circumstances.
- (d) Nothing in this Rule prohibits the Association, or a holder or assignee of the Association's debt from pursuing legal action against an Owner if the Owner fails to comply with the terms of his or her payment plan. An Owner's failure to remit payment of an agreed-upon installment, or to remain current with regular Assessments as they come due during the repayment period, constitutes a failure to comply with the terms of his or her payment plan.
- (e) The Association is not obligated to negotiate a payment plan with an Owner who has previously entered into a payment plan. In such cases the Board shall have complete discretion as to payment plans, except as otherwise required by future changes to the Colorado statute.



- (f) No payment plan is available if the Owner does not occupy the Lot and has acquired the Lot as a result of: (1) a default of a security interest encumbering the Lot; or (2) foreclosure of the Association's lien.

**5. Notice of Delinquent Assessments.**

- (a) The Association may send the Owner a notice of delinquency and may charge for any notices sent to the Owners in connection with such delinquent Assessments, but the Owners are responsible for ensuring that their payments are timely and fully made, regardless of whether notice is sent.
- (b) 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 shall, to the extent required by statute or law, send the Owner a notice of delinquency specifying:
- (i) the total amount due, with an accounting of how the total was determined, which may be shown by enclosing a copy of that Owner's ledger;
  - (ii) an opportunity to enter into a payment plan may exist in accordance with Para 4 of this Rule in which case the Owner (if eligible) must contact the Association's Registered Agent, in writing at the Registered Address, to request a payment plan.
  - (iii) the name and contact information for the individual whom the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt is the Association's Registered Agent at the Registered Address described above; and
  - (iv) action is required to cure the delinquency, and that failure to do so within thirty (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 foreclosure of a lien against the Owner's property, or other remedies available under Colorado law.

**6. Payment Priority.**

Regardless of inscriptions or notations on the front or back of the check, all payments shall be applied to outstanding balances in the following order of priority:

- (i) late charges;
- (ii) interest;
- (iii) attorney fees and costs;
- (iv) returned check charges;
- (v) past-due Special Assessments, past-due fines, or other charges, if any;
- (vi) currently due Special Assessments, or currently due fines, or other charges if any; and



- (vii) unpaid Assessments beginning with the oldest unpaid assessment.

**7. Remedies for Collection of Delinquent Assessments.**

- (a) The Association may exercise any and all rights and remedies available under the Association's Governing Documents, or under Colorado law, including without limitation, the Owner's delinquent account being turned over to a collections agency, a lawsuit being filed against the Owner, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado law.
- (b) To the fullest extent permitted by the Association's Governing Documents and/or Colorado statutes, the Association may also deny rights to use Association facilities, voting rights, or other rights in the Association (including but not limited to inspection of records) until all Assessments and other sums are paid in full. In order to be a "Owner in good standing" for purposes of this Rule, and to obtain a release of liens, restoration of voting or other rights, or to terminate litigation, the delinquent Owner must make payment in full of all Assessments and other sums, including sums which arise after the collection process or after the Owner delivers a payment to the Association.
- (c) To the fullest extent permitted by the Association's Governing Documents and/or Colorado statutes, the Association may (but shall not be required) proceed by filing litigation against any Owner who has not paid his assessment and, without affecting that remedy, may also file a lien against the delinquent Lot, which may be foreclosed as provided in Section 9 below.
- (d) To the fullest extent permitted by the Association's Governing Documents and/or Colorado statutes, the Association may also assign its assessment lien against the delinquent property to a third-party assignee, without recourse or warranty of any kind. The assignee shall assume all responsibility for the enforcement of the assigned lien, and the Association shall not be liable for any actions of said assignee. Assignments shall apply only to Assessments that are owed to the Association prior to the assignment, and shall not assign, release or supersede any claims or lien the Association may have for Assessments accruing after said date. If an assignee does not pay any Assessments levied after the assignment, the assigned assessment lien shall be subordinate to any future assessment by the Association, and the assignee may not take any actions that would hinder the Association's right or ability to collect those unpaid future Assessments.

**8. Association's Collection Action through its Attorneys.**

- (a) After a delinquent account has been referred to the Association's attorney, all communication with the delinquent Owner shall be handled through the Association's attorney. Neither the manager, if any, nor any member of the Board of Directors have any authority to discuss the collection of the account directly with an Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact. However, the Association has the option and right to continue to evaluate each delinquency on a case-by-case basis.
- (b) Once accounts are turned over to the Association's attorney, Owners shall make payment to the Association at the address of the Association's attorney, and the Association shall be entitled to collect



interest at the rate set forth in this Rule, from the due date of such payments, as well as reasonable attorney fees, court costs, and all other expenses of collection on said delinquent payment. The reasonable attorney fees incurred by the Association shall be due and payable from the delinquent Owner on the date(s) when such expense(s) are incurred by the Association.

## **9. Foreclosure of Liens.**

- (a) Liens under CRS 38-33.3-316. The Association has rights and remedies to collect Assessments under the CCIOA, including the statutory liens described in CRS 38-33.316(2)(b)(i) and 38-33.3-316(c). Any sums expended by the Association for repairs or other actions needed to preserve or protect any abandoned property within the Association during a foreclosure against said property shall be additional indebtedness secured by the priority statutory lien claim. However, the Association, or holder, or assignee, of the Association's statutory lien, whether the holder or assignee of that lien is an entity or a natural person, may only foreclose on the lien if:

- (i) the balance of the Assessments and charges secured by its lien, as defined in Subsection (2) of CRS 38-33.3-316, equals or exceeds six months of common expense Assessments based on a periodic budget adopted by the Association;
- (ii) the Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The Board may not delegate its duty to act under this Subparagraph to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed.

The lien and other rights of the Association under the Association's Governing Documents shall not be affected or impaired by the restrictions set forth above.

- (b) Lien under Association's Governing Documents. In addition to the statutory lien described above, the Association may exercise its rights and remedies under the Association's Governing Documents in accordance with Colorado law, including the filing and foreclosure of liens.

## **10. Bankruptcy of Owner.**

- (a) The filing of a bankruptcy action does not terminate the Association's right to collect Assessments, because:
- (i) the Association has an Assessment lien claim against the property for all past Assessments; and
  - (ii) the Owner will remain personally liable for all post-bankruptcy filing Assessments, so long as they retain title to the property.
- (b) Based on the above, when the Association learns a bankruptcy action has been filed, the accounting for that Unit shall thereafter be based upon the filing date of that bankruptcy action (the "Petition Date"), and the Association should create two separate ledgers for the property showing Assessments owed prior to the Petition Date and after the Petition Date.



## **11. Proof of Payments.**

- (a) Since the records of the Association are kept in the ordinary course of business and the Association relies upon same for the behalf of all Owners, there is a presumption that those records are correct and that the Assessment is valid if there is no written dispute received by the Association within thirty (30) days after the mailing of a billing statement.
- (b) An Owner who wishes to dispute the amount or the validity of any Assessment charged to his/her Unit must submit a statement within thirty (30) days after the mailing of a billing statement that describes all disputed monthly payments and can request information from (or request a hearing before) the Board, but must put that request in writing in accordance with this Rule.
- (c) The Board may require the Owner deliver documentation, such as cancelled checks or bank statements, to support the Owner's claims.
- (d) All payments made to settle a dispute and ALL correspondence regarding payment disputes must be sent by certified mail to the Association's Registered Agent at the Registered Address. If payment or correspondence is delivered by any other method, the Owner using that non-authorized method, assumes the risk that the payment and any communication sent by that method will not be received by the Association.

## **12. Certificate of Status of Assessments.**

Upon receipt of the written request described below, and the advance payment of the fee described below, the Association should furnish to an Owner or such Owner's designee a written statement setting forth the amount of unpaid Assessments currently levied against the Owner's property upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's Registered Agent at the Registered Address described above. The statement should be delivered within 14 calendar days after actual receipt of the request. The request must include payment of the Association's fee for such statements, which can be found with the Association's Treasurer (name and contact information found on the Sylvan Meadows web site), and will include the fees of the Association's attorney, if the account is delinquent and has been referred for collection. Failure to pay any delinquent Assessments or sums (including the fee), or to comply with any conditions stated in the statement should render the statement null and void. Any such statement shall be without warranty or liability to the Association.

## **13. General.**

- (a) Nothing in this Rule requires the Board to take specific actions at a specific time. The Board has the option and right to continue to evaluate each delinquency on a case-by-case basis. The Board may modify the procedures contained herein as the Board shall determine appropriate under the particular circumstances.
- (b) Failure of the Association to strictly comply with any provision of this Rule shall not be deemed a waiver of the Association's right to require strict compliance by the Owner and shall not be deemed a defense to payment of Assessments fees or other charges, late charges, return check charges, attorney

fees and/or costs as described and imposed by this Rule nor be asserted as a claim against the Association.

- (c) This Rule shall be effective as provided below, at which time it shall replace and supersede any prior rule or policy regarding Assessments, collections, liens and legal remedies; provided, however, that the Board may in its discretion suspend the effective date of any provision of this Rule for any collection actions filed or taken prior to January 2, 2014. The Board may amend this Rule in the future.
- (d) If any portion or provision of this Rule is found to be invalid, the remaining provisions shall continue in full force and effect.

Adopted this 21<sup>st</sup> day of May, 2018, by the Board of Directors.

Signed: Joseph Arbuckle, Board President