

Americana Townhome Association, Inc.

Collection Policy

RECITALS:

- A. The Americana Townhome Association, Inc., ("Association") is charged with certain responsibilities regarding the care, maintenance, and service of certain portions of the lots and common elements.
- B. The Association must have the financial means to discharge its responsibilities.
- C. The Board of Directors ("Board") has a responsibility to pursue collection of assessments and other charges from owners pursuant to the Declaration of Covenants, Conditions, and Restrictions of Americana Townhomes, recorded with the Arapahoe County Clerk and Recorder on March 24, 1983, at reception number 2259795 (as amended) ("Declaration"), Bylaws of Americana Townhome Association, Inc. (as amended) ("Bylaws"), and the Colorado Common Interest Ownership Act ("CCIOA") codified in the Colorado Revised Statutes ("C.R.S.") §§ 38-33.3-101 to -402.
- D. C.R.S. §§ 38-33.3-209.5, -316, and -316.3 require the Association to have a policy regarding the collection of unpaid assessments containing certain terms.
- E. The following policy is intended to comply with applicable law and facilitate efficient collection of assessments and other charges.

THEREFORE, the following policy applies to the collection of assessments and other charges due to the Association.

1. Due Dates. The monthly installments of the annual assessments shall be due and payable on the first day of each month. Except as otherwise provided in the Declaration or this policy, all other assessments and charges are due and payable immediately when applied to an owners account. Any assessment or other charge that is not paid in full within ten (10) days of its due date shall be delinquent and shall incur late fees and interest as provided below.
2. Payment Date. The Association shall post payments on the day that the payment is received in the Association's offices.
3. Late Charges and Interest on Delinquent Accounts. The Association shall impose a late charge of \$20 per month for each account that is delinquent. This late charge shall be a common expense assessment pursuant to the Declaration and CCIOA for each delinquent owner. The Association may also collect interest on any delinquent account at the rate of 18% per annum from the due date.

4. Personal Obligation For Late Charges. In addition to being a lien on the lot, the late charges, returned check charges, interest, and all other fees or costs applied to an owner's account shall be the personal obligation of the owner(s) of the lot for which such assessment or installment is unpaid. All late charges shall be due and payable immediately, without notice, in the manner provided by the Declaration (and as set forth herein) for payment of assessments.

5. Returned Check Charges. In addition to any and all charges imposed under the Declaration, Articles of Incorporation, Bylaws, or the Association's rules and regulations the Association shall assess a fee of twenty-five dollars (\$25), or other amount determined by the Board, against an owner's account if a bank returns or fails to honor (for any reason whatsoever including but not limited to insufficient funds) any check, electronic payment, or other instrument attributable to or payable for the benefit of the lot's owner. This returned check charge shall be a common expense assessment pursuant to the Declaration and CCIOA and is in addition to any late fee incurred by the lot owner. Such returned check charge shall be due and payable immediately. With regard to any lot, if a bank returns or dishonors two or more payments within any fiscal year, the Association may require that all of the future payments for that lot, for a period on one (1) year, be made by certified check or money order. In addition to the returned check charge, the Association shall be entitled to all additional remedies as may be provided by applicable law.

6. Attorney Fees on Delinquent Accounts. As an additional expense permitted under the Declaration and by Colorado law, the Association shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred.

7. Application Of Payments. All payments received on account of any owner or the owner's property shall be applied to amounts owed in the following order: any and all legal fees and costs (including attorney fees); interest and late charges; other expenses of enforcement and collection; returned check charges; lien fees; fines; other fees and costs; special assessments; and regular assessments. In the event that the Association turns over an account to the Association's attorney for collection, all sums payable on a delinquent account shall be remitted to the Association's attorney until the account is brought current, except as otherwise directed in writing by the Association.

8. Collection Process.

(a) If an installment of an annual assessment or other charge due to the Association is not paid in full within thirty (30) days of the due date, the manager shall send a written notice ("First Notice" or "Notice of Delinquency"). The Notice of Delinquency shall contain the following information:

- (1) Notice of the delinquency, and that interest and late fees and other charges have accrued or may accrue;
- (2) The total amount past-due, with an accounting of how the total was determined, and a request for immediate payment;
- (3) Whether the opportunity to enter into a Statutory Payment Plan (as defined in section 9, below) exists, and instructions for contacting the Association to enter into such a payment plan;
- (4) The name and contact information for the individual the lot owner may contact to request a copy of the lot owner's ledger in order to verify the amount of the debt; and
- (5) That action is required to cure the delinquency and that failure to do so within 30 days of the date of the First Notice may result in the lot 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 lot owner's property, or other remedies available under Colorado law; and

(b) If an owner fails to cure the delinquency within 60 days of the due date, the Association's manager is directed to send a second written notice of non-payment ("Second Notice") containing the same information required by the First Notice.

(c) If an owner fails to cure the delinquency within 70 days of the due date, the Association may file a notice of lien on the lot, pursuant to Article IV, Section 1 of the Declaration. Any notice of lien shall be signed by a member of the Board or the Association's managing agent.

(d) If an owner fails to cure the delinquency within 90 days of due date, the Association may turn the account over to the Association's attorney for collection. Upon receiving the delinquent account, the Association's attorneys shall send a letter to the delinquent owner demanding immediate payment for past due assessments or other charges due. Upon further review, the Association's attorneys may file a summons and complaint with a court of proper jurisdiction. If the Association obtains a judgment or decree of foreclosure, such judgment or decree shall include reasonable attorney fees together with the cost of

the action and any applicable late fees, interest, or other charges as provided by the Association's governing documents and applicable law.

(d) In addition to the steps outlined above, the Association may also suspend the voting rights of any owner whose account is past due at the time of such voting or suspend any other privileges as set forth in the Declaration, Bylaws, or rules and regulations.

9. Statutory Payment Plans.

(a) Beginning January 1, 2014, certain owners, as set forth in subsection 9(b), below, will be eligible to enter a statutory payment plan as set forth in C.R.S. § 38-33.3-316.3. That statutory section requires that certain owners be allowed to enter a payment plan that, at a minimum, allows the owner to pay off the deficiency in equal installments over a period of at least six months. Nothing in this subsection prohibits the Association from pursuing legal action against the owner if the owner fails to comply with the terms of his or her statutory payment plan. The owner's failure to remit payment of an agreed-upon installment or to remain current with regular assessments (including fees, charges, attorney fees, fines, and interest) as they come due during the statutory payment plan constitutes a failure to comply with his or her statutory payment plan.

(b) Eligibility for Statutory Payment Plan. Owners have the right to enter a statutory payment plan, as set forth in subsection 9(a), above, unless:

- (1) The owner has previously entered into a statutory payment plan; or
- (2) The owner does not occupy the lot and has acquired the property as the result of:
 - (i) A default of a security interest encumbering the lot; or
 - (ii) Foreclosure of the Association's lien.

10. Acceleration of Assessment. The Association may accelerate and call due the entire unpaid annual assessment on any delinquent account. Such acceleration shall result in the entire unpaid annual assessment being due to the Association immediately. The Association may also decelerate the entire unpaid annual assessment on any delinquent account, in the Board's sole discretion. In the event that a notice of acceleration is given to a delinquent lot owner or owners, any costs incurred by the Association in giving the notice shall be charged to the lot as assessments.

11. Certificate of Status of Assessment. Upon written request to the Association's managing agent, first class postage prepaid, return receipt requested, the Association shall furnish to an owner or such owner's designee

a written statement setting forth the amount of unpaid assessments currently levied against such owner's property for a reasonable fee as determined by the Board. However, if the account has been turned over to the Association's attorney, such request shall be handled through the attorney and subject to the fees and costs billed by the Association's attorney.

12. Bankruptcies and Foreclosures. Upon receipt of any notice of a bankruptcy filing by an owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any lot within the Association, the manager shall advise the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate.

13. Use of Certified Mail and Regular Mail. All collection and demand letters or notices shall be sent to a delinquent owner by registered or certified mail. This requirement shall not apply to monthly statements and other routine notices, which may be sent by regular first-class mail.

14. Referral of Delinquent Accounts to Attorneys. Upon referral to the Association's attorneys, the attorneys shall take all appropriate action to collect the accounts referred. After an account has been referred to an attorney, the account shall remain with the attorney until the account is settled, has a zero balance, or is written off. The attorney, in consultation with the President of the Board, the Association's manager, or other authorized representative, is authorized to take whatever action is necessary in the best interests of the Association, including, but not limited to:

- (a) Filing of a suit against the delinquent owner for a money judgment;
- (b) Instituting a judicial foreclosure action of the Association's lien in accordance with paragraph 16, below;
- (c) Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interests;
- (d) File a court action seeking appointment of a receiver.

All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney or as otherwise agreed to by the parties.

15. Appointment of a Receiver. Pursuant to Colorado law, the Association may seek the *ex parte* appointment of a receiver if an owner becomes delinquent in the payment of assessments pursuant to the Declaration and Colorado law. A receiver is a disinterested person appointed by the court to manage the rental of the property, collect the rent, and disburse 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; correct any violations of the Declaration, Bylaws or rules and regulations and prevent the waste and deterioration of the property.

16. Judicial Foreclosure. Subject to the provisions of this section, the Association may choose to foreclose its lien against an owner's lot in lieu of or in addition to suing the owner for a money judgment. The purpose of foreclosing is to obtain payment of assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action.

- (a) Formal Decision to Foreclose. In order to foreclose the Association's lien against an owner's property, the Board must pass a formal resolution, by a recorded vote, to authorize foreclosure of the Association's lien against the specific lot at issue. The Board is prohibited from delegating its duties under this subsection to any of the Association's agents. Pursuant to C.R.S. § 38-33.3-316(11)(b) (2013), any foreclosure action filed without evidence of the recorded vote by the Board authorizing such action will be dismissed and no attorney fees, court costs, or other charges incurred in connection with such an action may be assessed against the owner.
- (b) Minimum Balance for Foreclosure. Before the Association can foreclose its lien against any property within the Association, the balance of the assessments and charges secured by the lien must equal or exceed an amount equal to six months of common expense assessments based on the periodic budget adopted by the Association.

17. Waivers. The Association may extend the time for the filing of lawsuits and liens, or otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances and in conformity with applicable law.

18. Notification to and Communication with Owners. Upon request, the Association shall provide owners with a copy of this Resolution. Once the Association has referred a collection matter to an attorney, all communications with a delinquent owner shall be handled through the Association's attorney. Neither the manager nor any member of the Board shall 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.

19. Current Address. The owner(s) of each lot are responsible for maintaining a current mailing address for billing and notices with the Association. If the owner's address for billing and notices is different than the property address within the Association, the owner shall provide the Association with written notice of the address by certified mail, return receipt requested, to the Association's managing agent.

20. Ongoing Evaluation. Nothing in this Resolution shall require the Association to take specific actions other than to notify the owners of the adoption of these policies and procedures. The Association may evaluate each delinquency on a case-by-case basis and adapt these procedures as required, at the discretion of the Board and in conformity with applicable law.

21. Defenses and Survival. Failure of the Association to comply with any provision in this policy shall not be deemed a defense to violation of any covenant, policy, or rule, including non-payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by the Association. If a court of competent jurisdiction finds a provision of this policy unenforceable, the other provisions shall remain in full force and effect.

22. Definitions. Words not defined in this policy are used as defined in the Declaration and the Bylaws.

23. Effective Date and Amendment. This policy is effective starting on the 10th day after its adoption. The Board may amend this policy from time to time.

Policy adopted this 2nd day of February, 2014 by Resolution of the Board of Directors.

Anissa Ostermiller

by President

its _____