

# Cherryhill Homeowners' Association

## Policy Regarding Collection of Unpaid Assessments

BE IT RESOLVED, the association, acting by and through its board of directors, hereby adopts the following policy and procedures relating to collection of unpaid assessments, dues, fines, and charges.

EFFECTIVE DATE: September, 23, 2024.

**Purpose.** This policy relates to the collection of assessments, dues, fines, fees, interest, attorneys fees and other costs of enforcement and collection incurred by the association, penalties and other charges (collectively, "Assessments") imposed upon or charged to owners of lots ("owner" or "owners") within Cherryhill Subdivision by the association. For purposes of this policy, "Assessments" shall mean and include any and all charges the association is entitled to charge or recover pursuant to the declaration, applicable law, and association policies. Assessments are payable when due without setoff or deduction.

- Covenant and Liability For Assessments.** The obligation to pay assessments is an independent covenant. Each owner, by acceptance of a deed for property in the subdivision, is deemed to covenant and agree to pay the association for all assessments levied by the association against a lot and the owners thereof in accordance with the provisions of the declaration, bylaws, policies and rules and regulations of the association and under Colorado law. Assessments are both a charge against the lot for which they are assessed and a personal obligation of the owner(s) of such lot. All owners are jointly and severally liable for all assessments incurred during such owner's ownership of said Lot which shall include any reasonable attorneys fees incurred by the association in enforcing the covenants or collecting any assessments, including but not limited to any fees incurred before a lien is placed on the Lot or a suit is filed. No owner may waive or escape liability for assessments, charges, attorney fees, fines, or penalties by the nonuse of the common areas or abandonment of his or her lot or asserting that services, duties, or obligations of the association have not been performed.
- Due Dates/Late Charges/Service and Other Fees.** Regular assessments charged to owners are due and payable in annual installments, due and payable by June 1<sup>st</sup> of each year. Special assessments are due and payable on the date such assessment is imposed unless other payment arrangements acceptable to the board are made. Any assessment which is not paid within 30 days from the date it is due shall be considered past due and delinquent. Subject to the hearing process set forth in this policy, a monthly late fee of \$15.00 will be charged once any Assessment is delinquent, and if any assessment is not paid within 30 days after the amount becomes due, the Assessment shall bear interest at the rate of eight percent (8%) per annum until paid. A charge for any returned check shall be imposed, which shall be the greater of (1) \$20 per check or (2) the actual charge from the financial institution returning the check. Any payments received for delinquent assessments shall first be applied to the assessments owed and, any remaining amount of the payment, at the board's discretion, shall be applied to the fines, fees, interest, or other charges owed. Except as specified in Section 6(a) of this policy (regarding no charge for issuing monthly statements), if the association incurs any type of service fee or attorney fee, regardless of what the fee is called, for the collection of delinquent accounts on a per account

basis, such fees shall be charged to the owner with the delinquent account.

3. **Lien.** Under the Declaration and under the Colorado Common Interest Ownership Act ("CCIOA"), the association has a statutory lien on a Lot for any Assessments levied against the Lot and/or imposed against an owner from the time each Assessment becomes due. Any such Assessment shall be a charge on the land and shall be a continuing lien against which such Assessment is made.

4. **Collection and Other Association Remedies.** The association shall have all the remedies available to it under the governing documents of the association (i.e Declaration, Articles, Bylaws and Policies) and under CCIOA, which include collection action, placing and foreclosing a lien on a Lot, filing suit against an owner. The board of directors has determined that it is in the best interest of the association to refer delinquent accounts promptly to a collection agency or attorney for collection so as to minimize the loss of assessment revenue. The board of directors may retain an attorney with experience in representing homeowner associations in collections and other matters. The association may, upon a majority vote of the board of directors, refer a delinquent account to a collection agency or attorney in a recorded vote. The association, through the board of directors, may also bring an action of law against an owner personally liable to pay for any assessment. In the event a judgment is obtained, such judgment shall include interest on the assessment, charge or fine and a reasonable attorney's fees to be fixed by the court, together with the costs of the action.

5. **Procedures.**

- (a) **Monthly Statement.** The association shall provide each owner who has any outstanding balance an itemized monthly statement of all assessments, fines, fees, charges and other sums due; such statement shall be provided without charge therefor to the owner,
- (b) **Notice of Delinquency/Notice of Violation.** When an owner is delinquent in paying assessments or has violated a protective covenant or any other provision of the Declaration or association rules, policies, or procedures, the association shall provide to such owner a Notice of Delinquency or a Notice of Violation in the following manner:
  - (i) via certified mail, return receipt requested, **and**
  - (ii) by physically post a copy at the owner's residence; **and**
  - (iii) by one of the following means:
    - (A) first-class mail, **or**
    - (B) text message to the cell phone number the owner has provided to the association, **or**
    - (C) e-mail to the e-mail address the owner has provided to the association.
- (c) **Contents of Notice.** The Notice of Delinquency shall contain the following details:
  - (i) a detailed statement of sums due including an accounting of how the total was determined;

- (ii) whether the charges concern unpaid assessments, unpaid fines, fees, charges, or a combination thereof;
  - (iii) a statement that unpaid regular assessments and special assessments may lead to foreclosure;
  - (iv) whether the owner will be given an opportunity to enter into a payment plan and, if so, instructions for contacting the association to enter into such a payment plan;
  - (v) the name and contact information for the individual the owner may contact to request a copy of the owner's ledger to verify the amount of the delinquency;
  - (vi) the nature of any alleged violation of a covenant, rule, policy, or procedure and the action or actions required to cure such alleged violation;
  - (vii) the timeline for the hearing process described in this Policy;
  - (viii) the interval upon which fines may be levied and the amounts of such fines;
  - (ix) that failure to cure the delinquency 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 and foreclosure of a lien against the owner's property, or the association's pursuit of other remedies available under Colorado law;
  - (x) a description of what legal action the association may take against the owner, including a description of the types of matters the association or owner may take to small claims court, injunctive relief, collection action, or lien, and a description of the applicable cure process the owner may undertake to avoid such legal action.
- (d) Record of Communications. The association shall retain a record of such notice and other communications to or with the owner regarding delinquent assessments, including information regarding the type of communication used to contact the owner and the date and time that the contact was made.
- (e) Contact Designation. Owners may notify the association of another person to serve as the designated contact for the owner, in addition to requesting that any Notice of Delinquency be made in a language other than English. If no such request is provided to the association, the Notice of Delinquency shall be in English.
- (f) Violations – Fines, Cure. The association, acting by and through its board of directors, may take action to abate, enjoin, or correct violations of the Declaration, the association's duly adopted rules, policies and procedures, or other provisions of the governing documents of the association ("Violation").
- (i) *Violation of Public Safety or Health.* If the association reasonably determines that the violation threatens public safety or health, the association shall provide written notice of violation as set forth in Section 6(b) and 6(c) of this policy, which notice shall inform the owner(s) that they have 72 hours to cure the violation, or the association may assess a fine or fines.
- If after inspection of the unit, the association determines that the owner has not cured the violation within 72 hours after notice, the association may impose fines in the amount of \$50.00 every other day and may take legal action against the owner for the violation.

(ii) *Other Violations.* For any violation that does not threaten public safety or health, the association shall provide written Notice of Violation as set forth in Section 6(b) and 6(c) of this policy informing the owner that they have 30 days to cure the violation or the association, after conducting an inspection and determining there has been no cure, may fine the owner in amount not to exceed \$500.00. The association shall provide the owner with two consecutive 30 day periods to cure the violation before taking legal action against the owner.

(iii) *Cure.* Owners shall notify the association when the violation has been cured, which notice shall include written and visual evidence of such cure. If the owner fails to provide visual evidence, the association shall inspect the lot as soon as practicable to determine if the violation has been cured.

The violation will be deemed cured on the earlier of (1) the date of the notice of cure by the owner, if such notice satisfactorily demonstrated such cure, or (2) the date of the inspection at which the Director(s) or their agents determined the Violation was cured.

Once a violation is determined to be cured, the association shall provide written notice that the owner will not be fined further for the violation, and provide a statement of the outstanding fine balance to the owner. Such notice shall be in the manner described in Section 6(a) of this policy.

(iv) *No Cure.* If the association does not receive notice from the owner that the violation has been cured, the association shall inspect the Lot within seven (7) days after the expiration of the 30-day cure period. If the violation is not cured, the association shall (i) provide a second 30-day cure period; or (ii) if two 30-day cure periods have lapsed without a cure, the association may take legal action against the owner.

6. **Hearing Process.** An owner who has been provided a Notice of Delinquency or Notice of Violation shall have the opportunity to be heard before an impartial decision maker by making a written request, within thirty (30) days of such notice, for an informal hearing before the board of directors of the association to determine whether the alleged violation actually occurred, and whether the owner is the one who should be held responsible for the Violation. If the owner fails to timely request such a hearing, the owner waives the right to such a hearing. If the owner timely requests a hearing, the association shall, in accordance with the association's Conflict of Interest Policy, determine if any director has a conflict of interest, and once the association has resolved conflict of interest issues, if any, the association shall provide the owner with at least thirty (30) days' written notice of the date and time of the hearing. The hearing shall be informal and the rules of evidence shall not apply; however, the owner may be represented at such hearing by an attorney of such owner's choosing and at such owner's sole expense. *See also* The Cherryhill Homeowners' Association Covenant Enforcement of Governing Documents Policy and Procedure for additional details on the hearing process for violations. In the event of a conflict between this policy and the Covenant Enforcement Policy, the provision that is more protective of the owner's interests shall apply.

7. **Payment Plan.** For delinquent regular or special assessments, the association shall, prior to referring the delinquent account to an attorney or collection agency for collection, provide the owner an opportunity to repay the debt in in monthly installments over an 18-month period in monthly

amounts of not less than \$25.00 per month. The owner may elect to pay the full balance due at any time during the duration of the payment plan.

If after thirty (30) days from the date of the written offer to enter into a payment plan the owner has either (i) failed to respond to the offer, or (ii) declined the payment plan, or if after accepting a payment plan the owner fails to make at least three (3) of the monthly installments within fifteen (15) days after the monthly installments were due or failed to remain current with regular assessments as they come due during the payment plan period, the association may commence legal action against the owner.

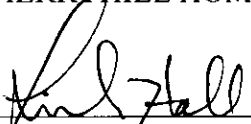
The association may commence a foreclosure action in lieu of a payment plan if the owner does not occupy the unit and has acquired the property as a result of: (i) a default of security interest encumbering the unit; or (ii) foreclosure of the association's lien; and (iii) the association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with an owner who has previously entered into a payment plan.

8. **Foreclosure.** The association may commence a legal action to initiate foreclosure based on an owner's delinquency in paying assessments if the association has complied with this policy. The association may not foreclose on an assessment lien 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; or (ii) collection costs or attorney fees that the association has incurred in connection with only assessed fines. Any amount due which is enforced by foreclosure shall be in a like manner as a mortgage on real property. In such foreclosure, the owner shall be required to pay the cost; and expenses of such proceedings, including reasonable attorney's fees.
9. **Waiver or Compromise and Settlement.** As to any delinquent assessments, the board may exercise its reasonable discretion, using good business judgment, to waive any late fee, interest, fine or penalty and/or negotiate any settlement of any delinquent Assessment owed to the association by an owner, except as otherwise required under Colorado law.
10. **Certificate of Status.** Upon written request of an owner, the association shall furnish to an owner or owner's designee in the manner requested by such owner or designee, which may include mail, email, or other reasonably and normally accepted manner of delivery, a written statement setting forth the amount of unpaid assessments currently levied against such owner or owner's lot, for a reasonable fee, which fee the association shall establish from time to time. However, if the account has been turned over to an attorney or collection agency for collection, such request may be handled through the attorney or collection agent.
11. **Owner Bankruptcy or Foreclosure.** The association, acting by and through its board of directors, shall notify the association's attorney of any notice of bankruptcy filing by an owner or foreclosure action upon any Lot.
12. **Referral of Delinquent Accounts to Attorney or Designated Collection Agent.** Upon referral of a delinquent account or enforcement matter to an attorney or designated agent of the association, such attorney or agent is authorized to, in consultation with the board of directors, take whatever action is determined to be in the best interests of the association and in compliance with this Policy and applicable law, including but not limited to corresponding with the owner, filing

a lawsuit, instituting a foreclosure action, filing a claim or motions in bankruptcy court or in a foreclosure action by another party, or negotiating a reasonable compromise and settlement agreement with the owner.

CERTIFICATION: The undersigned certifies that the board of directors of the association adopted the foregoing policy by majority vote.

CHERRYHILL HOMEOWNERS' ASSOCIATION

  
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Lincoln Hall, President

ATTEST:

  
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Karen Holt, Secretary