

**RESOLUTION
OF THE
RED HAWK HOMEOWNERS ASSOCIATION, INC.
REGARDING POLICIES AND PROCEDURES
FOR THE
COLLECTION OF UNPAID ASSESSMENTS**

SUBJECT: Adoption of a policy regarding the collection of unpaid assessments, late charges, fines, and enforcement costs.

PURPOSE: To adopt uniform procedures to be followed to collect assessments and other charges of the Association.

AUTHORITY: The Declaration, Articles of Incorporation and Bylaws of the Association and Colorado law, including but not limited to C.R.S. §38-33.3-209.5.

EFFECTIVE DATE: February 6, 2016

- RECITALS:**
- A. The Colorado Legislature declared the continued economic prosperity of Colorado is dependent upon the strengthening of homeowners associations in common interest communities financially through enhancing the financial stability of associations by increasing the association's powers to collect delinquent assessments, late charges, fines, and enforcement costs. Based upon that declaration the Colorado Common Interest Ownership Act (the Act) was adopted.
 - B. The Colorado Legislature amended the Colorado Common Interest Ownership Act (the Act) by adopting House Bill 13-1276 to be effective January 1, 2014. This act applies to debt collection practices, payment plans, and foreclosure proceedings commenced on or after the applicable effective date of the act.
 - C. Pursuant to the Association's governing documents and the Act, the Association, acting through the Board of Directors, is obligated to collect the assessments and other charges owed to the Association.
 - D. Subsection 209.5 of the Act requires the Association to adopt policies and procedures for the collection of unpaid assessments.
 - E. Subsection 302(1)(k) of the Act provides that subject to the provisions of the declaration, the Association, without specific authorization in the Declaration may: impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for the collection of assessments regardless of whether or not suit was initiated; and, impose reasonable charges for the preparation and recording of statements of unpaid assessments.
 - F. Article IV Section 1 of the recorded Declaration of Covenants, Conditions and Restrictions of Red Hawk ("Declaration") generally provides:
 - 1. Each owner of a Unit/Lot, by acceptance of a deed, is deemed to agree to pay the Association assessments or charges.

2. The Assessment. Each quarterly installment of the assessment shall be due in advance on the first day of each calendar quarter.
3. Any assessment / installment not paid within 20 days of the due date shall be subject to a late fee of \$25.00.
4. Assessments, as that term is defined in the Act, are the personal obligation of the Owner of the Unit/Lot when the assessment fell due and a charge against the Unit/Lot.
5. Assessments are used to pay the common expenses of the owners of the Units/Lots within the community.

G. The Board of Directors deems it desirable to establish and operate by procedures that balance the Association's interest in the timely collection of Common Expense Assessments and other charges with the Owner's interest of being advised of any delinquent balance in their account and being treated fairly in the resolution of the delinquent account balance prior to the Association instituting legal action to collect the amount it alleges due.

H. The Board also deems it desirable to adopt and define the method in which the Association will apply partial payments on an Owner's account.

I. The Board also deems it prudent to immediately adopt the new procedures outlined in House Bill 13-1276 concerning limitations on the actions that may be taken against a Unit Owner with respect to the collection of debt owed to the Association.

RESOLUTION: The Association hereby adopts the following policy and procedures regarding the collection of unpaid assessments:

1. **Due Date, Late Fees, and Interest.** Quarterly installments of the Common Expense Assessment are due and payable by the first day of the calendar quarter. Payments not received by the 20th day of that month are considered past due and delinquent. The Owner's account will be subject to a monthly late fee in the amount of twenty-five dollars (\$25.00) plus interest from the original due date for each month the Owner's account remains in a delinquent status.

Interest on the Owner's account will accrue at the rate of 1.0% per month starting with the 1st day of the calendar quarter that the initial assessment was due and payable and continue until there is a zero balance on the account.

2. **Service Fees.** In the event the Association incurs any type of "service fee", regardless of what it is called by its management company, for the handling and processing of delinquent accounts on a per account basis, such fees will be the responsibility of the Owner as such fee would not be incurred but for the delinquency of the Owner.
3. **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 the delinquent Owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred, upon demand.
4. **Notice of Delinquent Account.** The Association, through its agent, shall send the Owner a Courtesy Reminder Notice on the 10th day of the quarter that their quarterly payment is due in ten (10) days and

if not received by the 20th day of the quarter, the payment will be considered past due and delinquent.

The Association, through its agent, shall issue the First Past Due Delinquency Notice twenty (20) days after the first of the month the payment was due and demand payment in ten (10) days. At this time late fees and interest will be imposed and continue to accrue on the account until paid in full.

Notices shall be in writing and delivered to the Owner, via U.S. Mail first class postage prepaid, addressed to the property subject to the assessment obligation. The Association, upon the written request of the Owner delivered to the Association personally or by Certified Mail, Return Receipt, postage prepaid, will mail the Past Due Delinquency Notice to another address as set forth in the Owner's written request.

In the event that the delinquent account is not paid in full by the 30th day in accordance with the First Past Due Delinquency Notice, the Owner's account will enter the Collection procedure as outlined in section 5 of this Policy.

The Association, pursuant to its right to recover legal costs of collection, shall have the right to recover its actual costs of maintaining the delinquent balance, written notice to the Owner, and other costs associated with the Owner's delinquency.

5. **Collection Procedure.** An Owner's account that has not been paid in full by the 30th day in accordance with the First Past Due Delinquency Notice as outlined in section 4 of this Policy will be subject to the Collection Procedure as specified below.

The Association, through its agent, shall issue the Second Past Due Delinquency Notice thirty (30) days after the first of the month the payment was due and demand payment in thirty (30) days.

The Association, through its agent, shall issue the Third Past Due Delinquency Notice sixty (60) days after the first of the month the payment was due and demand payment in thirty (30) days.

This notice shall:

- (a) Document the total amount due, with an accounting of how the total was determined.
- (b) Specify whether or not the Owner has the opportunity to enter into a payment plan pursuant to C.R.S. section 38-33.3-316.3 and provide detailed instructions for contacting the Association to enter into such a payment plan if appropriate.
- (c) Provide the name and contact information for the individual that the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt
- (d) Specify that action is required to cure the delinquency and specify that failure to do so within the 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 other remedies available under Colorado law.

If by the 90th day, the delinquency has not been resolved, either by full payment or the Owner having entered into an approved payment plan, the Association shall formally resolve, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The Association may **NOT** delegate its duty to act to any attorney, insurer, manager, or other person.

As a result of a positive resolution, the Association, through its agent, shall refer the delinquent account together with the account documentation to the Association's attorney for appropriate legal action.

Notices shall be in writing and delivered to the Owner, via U.S. Mail first class postage prepaid and U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed to the property subject to the assessment obligation. The Association, upon the written request of the Owner delivered to the Association personally or by Certified Mail, Return Receipt, postage prepaid, will mail the notice of delinquency to another address as set forth in the Owner's written request.

The Association, pursuant to its right to recover legal fees and costs of collection, shall have the right to recover its actual costs of maintaining the delinquent balance, written notice to the Owner(s), and other costs associated with the Owner's delinquency.

Nothing in the policy precludes the Association from seeking the appointment of a receiver or implementing other legal and equitable methods to collect the alleged delinquent assessments, late fees, interest, costs including attorney fees.

Summary of actions to be taken on accounts shown on the Aging Report as:

10 days after due	Courtesy Reminder Notice
20 days after due	First Past Due Delinquency Notice to include Late Fees, Service Fees, and Interest
30 days after due	Second Past Due Delinquency Notice to include Late Fees, Service Fees, and Interest
60 days after due	Third Past Due Delinquency Notice Intent to refer the delinquency to collections
90 days after due	Attorney turnover, specific Board approval required.

- 6. Payment Plan.** In accordance with C.R.S. 38-33.3-316.3, the Association will make a good-faith effort to coordinate with an eligible Owner to offer the Owner an opportunity to enter into a payment plan of at least six (6) months in accordance with the requirements of House Bill 13-1276 unless the Owners have already entered into one.

This section does not apply if the Owner does not occupy the unit and has acquired the property as a result of a default of a security interest encumbering the unit or foreclosure of the Association's lien. In addition, the Association is not obligated to negotiate a payment plan with an Owner who has previously entered into a payment plan under this section.

Any payment plan instituted under this provision to pay off a deficiency in equal installments will normally be for a period of six (6) months. Due to extenuating circumstances, the Board may consider extending a payment plan for a period not to exceed twelve (12) months.

A unit Owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the re-payment period, constitutes a failure to comply with the terms of his or her payment plan. Under these circumstances, the Association may pursue legal action against the Owner.

This section sets forth the circumstances under which an Owner is entitled to enter into a payment plan with the Association, pursuant to C.R.S. §38-33.3-316.3 For purposes of this section, "assessments" includes regular and special assessments and any associated fees, charges, late charges, attorney fees, fines, and interest charged pursuant to C.R.S. §38-33.3-315 (2).

- 7. Referral of Delinquent Accounts to Attorneys.** Upon referral to the Association's attorney in accordance with C.R.S. §38-33.3-209.5, the attorney 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 Association's management company's designated representative, is authorized to take whatever action is necessary and determined to be 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;
- (c) Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interest;
- (d) Filing a court action seeking appointment of a receiver.

Once the collection has been turned over to the Association's attorney, all communication with the delinquent Owner shall be handled through the Association's attorney. Neither the Manager nor any member of the Board of Directors shall discuss the collection of the amount 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.

8. **Partial Payments on Account.** The Colorado Supreme Court has held that a creditor is entitled to apply payments to the Debtor's account in a manner it chooses where the Debtor does not instruct Creditor otherwise. See: Westor Group, Inc. v. Hirschfeld Press, Inc., 845 P. 2nd 1162 (Colo. 1993).

Any payments of less than the full amount owed to the Association shall be applied to pay the following (if applicable) in the order listed, from oldest to most recent in each category:

- 1st Attorney Fees and legal costs
- 2nd Association's costs and other legal charges
- 3rd Fines
- 4th Late charges
- 5th Interest
- 6th Special assessments
- 7th Annual assessments
- 8th Reconstruction assessment
- 9th Monthly service fees.

The Association through its designated Agent shall have the discretion to return any partial payment that directs the funds to be applied in a manner inconsistent with the Association's policy pertaining to partial payments set forth above.

9. **Return Check Charges.** If a check or other instrument is tendered to the Association and the financial institution does not honor the instrument, the Association may impose a \$25.00 returned check fee. Additionally or in the alternative, the Association may pursue the statutory remedies that generally allow the Association to collect treble damages and attorney fees in the event the issuer fails to honor the instrument. The return check fee, if charged, shall be the personal obligation of the issuer of the check as well as a lien against the real property subject to the assessment obligation.

Such returned check charges shall become effective on any instrument tendered to the Association for payment of sums due under the Declaration, Articles, Bylaws, Rules and Regulations or this Policy. If two or more checks are returned unpaid within a 12-month period, 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. This return check charge shall be in addition to any late fees or interest incurred. Any returned check shall cause an account to be past due if full payment of the monthly installment of the annual assessment is not timely made within twenty (20) days of the due date.

10. **Foreclosure of Association's Lien.** The Association may only foreclose on its lien if:
- (a) The balance of the assessments and charges secured by the Association's lien equals or exceeds six (6) months of common expense assessments; and
 - (b) 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. No attorney fees, court costs, or other charges incurred by the Association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the Owner.

11. **Miscellaneous Provisions.** In the event the Owner intends to satisfy the entire debt to the Association by means of a restrictive endorsement of a check or money order for an amount less than the entire balance then due on the Owner's account, that check must be delivered to the Association's managing Agent personally or by Certified Mail, Return Receipt, postage prepaid.

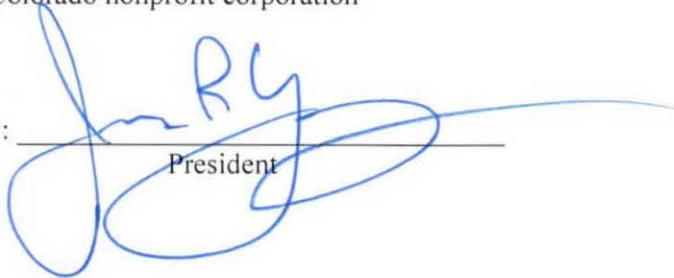
The Association has the right to suspend the voting rights of an Owner for any period during which any assessment against the Owner's Unit remains unpaid.

Generally, alleging a failure of the Association to maintain the Common Elements / Area or generally alleging a failure of the Association to comply with provisions of the Association's governing documents shall not constitute a defense or set-off of the lawfully imposed assessments.

In the event a Court of competent jurisdiction finds a provision of this collection policy void or otherwise unenforceable, the other provisions shall remain in full effect.

PRESIDENT'S CERTIFICATION: 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 26 Jan 17 and in witness thereof, the undersigned has subscribed his/her name.

RED HAWK HOMEOWNERS ASSOCIATION, INC.,
a Colorado nonprofit corporation

By: 
President

