

RESOLUTION OF STARK FARM HOMEOWNERS ASSOCIATION. REGARDING POLICY AND PROCEDURES FOR COLLECTION OF UNPAID ASSESSMENTS

SUBJECT: Adoption of a policy and procedure regarding the collection of unpaid assessments pursuant to C.R.S 38-33.3-209.5(5) and 38-33.3-316.3.

PURPOSE: To provide notice of the Association's adoption of a uniform and systematic procedure to collect assessments and other charges of the Association.

AUTHORITY: The Declaration, Bylaws and Articles of Incorporation of the Association and Colorado Law.

EFFECTIVE

DATE: January 14, 2019

RESOLUTION: The Association hereby adopts the following policy, which shall supersede any current collection policy in effect:

1. Due Dates. The Annual (monthly, **annually**, biannually) installment of the Association assessment as determined by the Association and as allowed for in the Declaration shall be due and payable 30 days from billing. Assessments or other charges not paid in full to the Association on the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association by the due date shall incur late fees.
2. Receipt Date. The Association shall post payments on the day that the payment is received in the Association's office.
3. Late Charges on Delinquent Installments. The Association shall impose on a monthly basis a \$20 late charge for each Owner who fails to timely pay his/her installment of the annual assessment by the due date. This late charge shall be a "common expense" for each delinquent Owner.
4. Personal Obligation For Late Charges. The late charge shall be the personal obligation of the Owner(s) of the unit 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. Return Check Charges. In addition to any and all charges imposed under the Declaration, Articles of Incorporation and Bylaws, the Rules and Regulations of the Association or this Resolution, a \$34.00 fee or other amount deemed appropriate by the Board of Directors shall be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. This returned check charge shall be a "common expense" for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such return check charge shall be due and payable immediately, upon demand. Notwithstanding this provision, the Association shall be entitled to all additional remedies as may be provided by applicable law. Returned check charges shall be the obligation of the Owner(s) of the unit for which payment was tendered to the Association. 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 Resolution. 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 (1) year, be made by certified check or money order. This return check charge shall be in addition to any late

fees or interest incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the annual assessment is not timely made within 5 days of the due date.

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 cost 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, upon demand.

7. Application of Payments. All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late charges, returned check charges, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations or this Resolution, prior to application of the payment to any special or regular assessments due or to become due with respect to such Owner.

8. Payment Plan. Circumstances under which an owner is entitled to enter into a payment plan and the minimum terms of the payment plan must be established, before the account is referred for collection:

- (a) The payment plan must permit the Owner to pay off the deficiency in equal installments over a period of at least six months (a longer payment plan may be allowed)
- (b) The association will make a good faith effort to coordinate with the owner to set up a payment plan.
- (c) If the owner fails to pay an agreed installment or if the owner fails to remain current with regular assessments during the six-month period, the owner is in default of the plan and the association may pursue its remedies.
- (d) For purposes of the payment plan, assessments include regular and special assessments, fees, charges, late charges, attorney fees, fines and interest.
- (e) The Association is not required to enter into another payment plan with an Owner who has previously entered into a payment plan under the terms of C.R.S. 38-33.3-316.3.
- (f) The Association is not required to enter into a payment plan with an Owner who does not occupy the property AND has who obtained title by foreclosure of the Association's lien or a default of a security interest encumbering the property.

9. Collection Process.

- (a) After the annual assessment or other charges due to the Association becomes more than 1 days delinquent, the manager shall send a written notice ("First Notice") of non-payment, amount past due, notice that late fees have accrued and request for immediate payment.
- (b) After the annual assessment or other charges due to the Association becomes more than 30 days delinquent, the manager shall send a second written notice ("Second Notice") of non-payment, amount past due and notice that late fees have accrued.
- (c) After the annual assessment or other charges due to the Association becomes more than 60 days delinquent, the manager shall send a third written notice ("Third Notice") of non-payment, amount past due, notice that late fees have accrued, notice of intent to file a lien and request for immediate payment.
- (d) After the annual assessment or other charges due to the Association becomes more than 90 days delinquent, a lien may be filed. If the Association chooses, the account may then be turned over to a collection agency or an attorney.
- (e) In addition to the steps outlined above, the Association may elect to suspend the voting rights of any Owner whose account is past due at the time of such voting.

Before the Association turns over the account to a collection agency or refers it to an attorney for legal action, the Association must send the Owner a notice of delinquency specifying: (i) the total amount due, with an accounting of how the total was determined; (ii) whether the opportunity to enter into a payment plan exists and instructions for contacting the entity to enter into such a payment plan; (iii) the name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt; and (iv) that action is required to cure the delinquency and that failure to do so within thirty 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; (v) the method by which payments may be applied on the delinquent account of an Owner; (vi) the legal remedies available to the entity to collect on an Owner's delinquent account pursuant to the governing documents of the Association and Colorado law.

Upon receiving the delinquent account, the Association's attorneys shall send a letter to the delinquent Owner demanding payment for past due assessments or other charges due. Upon further review, the Association's attorney may file a lawsuit. If a judgment or decree is obtained, including without limitation a foreclosure action, such judgment or decree shall include reasonable attorney's fees together with the cost of the action and any applicable interest and late fees.

10. Acceleration and Deceleration of Assessments. The Board reserves the right to accelerate and call due the entire unpaid assessment on any delinquent account. Such acceleration shall result in the entire unpaid assessment being due to the Association immediately. The Board also reserves the right to decelerate any accelerated assessment.

11. Collection Procedures/Time Frames. The following time frames shall be followed for use in the collection of the assessment and other charges.

Due Date (date payment due)	30 days from billing
Past Due Date (date payment is late and late fees accrue if not received on or before that date)	31 days after due date
First Notice (notice that late charges have accrued)	Any time after 1 days after due date
Second Notice (notice that late charges have accrued)	Any time after 30 days after due date
Third Notice (notice that late charges have accrued and intent to file a lien)	Any time after 60 days after due date
Lien filed	Any time after 90 days after due date

12. Certificate of Status of Assessment. The Association shall furnish to an Owner or such Owner's designee upon written request, first class postage prepaid, return receipt, to the Association's agent, a written statement within 14 days of such request setting forth the amount of unpaid assessments currently levied

against such Owner's property for a reasonable fee. However, if the account has been turned over to the Association's attorney, such request may be handled through the attorney.

13. 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 unit within the Association, the manager shall notify the Board of Directors of the same. If appropriate, the account will be turned over to the Association's attorney.

14. Referral of Delinquent Accounts to Attorneys. Upon referral to the Association's attorney, the attorney shall, in consultation with the Association, take all appropriate action to collect the referred account. The attorney, in consultation with the Association, 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 delinquent Owner for a money judgment;
- (b) Instituting a judicial foreclosure of action of the Association's lien;
- (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. Upon referral of any matter to the Association's attorney, the Association shall pay the attorney's usual and customary charges as well as any costs incurred by the attorney on the Association's behalf, within thirty days of receipt of the monthly invoice from the attorney.

15. Appointment of a Receiver. The Association may seek the 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, who manages the rental of the property, collects the rent and disburses 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 the waste and deterioration of the property.

16. Judicial Foreclosure. The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The following requirements are applicable to an action by the Association to foreclose on its lien:

- (a) The balance must equal or exceed six months of budgeted common expense assessments.
- (b) The board must resolve, by recorded vote, to authorize foreclosure against the specific unit (on an individual basis).
- (c) This authority may not be delegated to a manager, account tech, attorney, insurer or other person.
- (d) Any Association foreclosure filed without evidence of the recorded vote authorizing the action must be dismissed.
- (e) The Association will not recover from the owner any attorney fees court costs or other charges in connection with an action that is dismissed for failure to have evidence of authorization attached.

The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action.

17. Waivers. The Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances.

18. Communication with Owners. All communication with a delinquent Owner shall be handled through the Association's attorney once a matter has been referred to the attorney. Neither the Manager nor any member of the Board of Directors shall discuss 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. Defenses. Failure of the Association to comply with any provision in this Policy shall not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Policy.
20. Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.
21. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Project.
22. Deviations. The Board may deviate from the Procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.
23. Amendment. This Procedure may be amended from time to time by the Board of Directors.

OFFICER'S

CERTIFICATION: The undersigned, being the OFFICER of the Stark Farms Homeowners Association, A Colorado Nonprofit Corporation, 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 this day of 1/14/19 in witness thereof, the undersigned has subscribed his/her name.

Stark Farm Homeowners Association,
a Colorado nonprofit corporation

By:

