



**1. Member Responsibility**

- (a) Assessments are vital to fund the operations of Pine Cone Acres Homeowners Association, Inc. (the “Association”). The Association has adopted this policy to promote and protect its financial strength for the benefit of all Members. Members are responsible for paying Assessments as provided in the Association’s governing documents, which include the Association’s recorded Declaration of Protective Covenants, Bylaws, Articles of Incorporation and Policies and Procedures. In addition, Members have a statutory duty to pay under certain provisions of the Colorado Common Interest Ownership Act (CCIOA); and have a duty to read, understand and comply with the Association’s governing documents and the applicable provisions of the CCIOA.
- (b) Members are responsible for contacting the Association, and for making arrangements for the delivery of all payments (to be made by check, money order or certified check) to the Association, whether by mail or in person to a Board Member. Members 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 Member.
- (c) Checks containing any restrictive endorsement will be returned to the Member and the amount tendered will be considered unpaid until an acceptable form of payment is received.
- (d) Members who have delinquent balances will have their voting rights and the right to run for a seat on the Board of Directors suspended until all delinquent balances are paid in full.

**2. Steps in Annual Assessment Notification Schedule**

- (a) An invoice/notice is sent to all Members at least 30 days prior to the Annual Assessments due date each year.
- (b) Reminder statements will be mailed to Members with delinquent Annual Assessment balances on a quarterly basis by USPS mail.
- (c) The Board of Directors may elect to offer an approved payment plan to Members with delinquent Assessment(s) balance(s). The payment plan will be mailed by USPS return receipt requested to the Member.
- (d) In the absence of a positive/cooperative response to the payment plan offer (see Assessment Collection Policy, 6. Payment Plan) within the stated time limitation, the Board of Directors has the option to file an Assessment Lien with El Paso County, CO against the property within 30 days of the Payment Plan Agreement expiration date as

stated on the form. The Member will receive a notice that a lien has been filed by USPS return receipt requested.

- (e) Upon payment in full of any delinquent Annual Assessment balance, a notice will be sent to the Member confirming the delinquent balance has been paid by USPS return receipt requested. As soon as the check has cleared the bank, an additional notice will be sent confirming the voting rights and Board of Director seat rights have been restored.
- (f) Steps will be immediately taken by the Board of Directors to remove the Assessment Lien by filing an Assessment Lien Release. Written notice will be provided to the Member by USPS return receipt requested in a timely manner regarding the status of the Assessment Lien.

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

- (a) The Association's Annual Assessment (currently \$45) is due and payable as provided in the Association's governing documents, unless otherwise provided. Assessments are assessed on a fiscal year basis (August 1 through July 31). The Assessments will be considered past due August 1<sup>st</sup> and will be assessed a \$5 late charge after September 15<sup>th</sup>. Special Assessments, fines, fees and other charges may be due on the date specified in any notice thereof.
- (b) Any account, which is considered late and past due will be assessed a late charge that is set by the Board (currently \$5 yearly) to compensate the Association for the delinquent payment(s), which charge will be owed by the Member until it is paid.
- (c) In addition to the late charge, 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 Colorado statute or law. The current interest rate for delinquent sums is set at 0% percent per annum.

### **4. Returned Checks**

- (a) The Association will impose a standard charge for all returned checks; currently \$25 per check.
- (b) If notice of a returned check, draft or money order is sent pursuant to 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 by USPS return receipt requested, the Member who provided the returned check will be liable, at the discretion of the Board, to the Association for collection for the face amount of the check, standard Association charge (\$25 per check) plus bank charges, and any expenses of collecting such sums.
- (c) If two or more of a Member's checks are returned unpaid by the bank within any fiscal year, at the discretion of the Board, the Association may require that all of the Member's future payments, be made by certified check or money order.

### **5. Notice of Delinquent Assessments**

- (a) The Association will send the Member a notice of delinquency and may charge for any notices sent to the Member in connection with such delinquent Assessments, but the Member is responsible for ensuring that their payments are timely and fully made, regardless of whether notice is sent.
- (b) Before the Association takes steps to file a lien against a Lot, the Association shall, to the extent required by Colorado statute or law, send the Member a notice of delinquency specifying:
  - (i) the total amount due, with an accounting of how the total was determined;
  - (ii) that an opportunity to enter into a payment plan exists in accordance with Section 6 of this policy, in which case the Member must contact the President or Treasurer of the Association, in response to the payment plan offered;
  - (iii) that action is required to cure the delinquency, and that failure to do so within thirty (30) days may result in a lien being filed against the Association Member's Lot, or other remedies available under Colorado law; and
  - (iv) the name and contact information for the individual whom the Member may contact to request a copy of the Member's ledger in order to verify the amount of the debt as described in (ii) above.

## **6. Payment Plan**

- (a) The Board of Directors will make a good-faith effort to coordinate with the Member to set up a payment plan that meets the following requirements prior to taking any type of legal action:
  - (i) A payment plan negotiated between the Association and Member or a holder or assignee of the Association's debt, whether the holder or assignee of the Association's debt is an entity or a natural person, and the Association pursuant to this section must permit the Member to pay off the deficiency in equal installments over a period of at least six months. Nothing in this section prohibits the Association or a holder or assignee of the Association's debt from pursuing legal action against a Member if the Member fails to comply with the terms of his or her payment plan;
  - (ii) 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 CCIOA §38-33.3-315 (2);
  - (iii) A request for a payment plan may be made by a Member in writing and delivered to the President or Treasurer of the Association;
  - (iv) Any payment plan must be a legally binding contract, and the plan must require the Member to pay all delinquent sums, including late charges, interest, attorney fees and other costs as may be applicable. The payment plan requires that the Member must keep all payments current and must pay off the entire delinquent amount within six months; and

- (v) Nothing in this policy prohibits the Association, or a holder or assignee of the Association's debt from pursuing legal action against a Member if the Member fails to comply with the terms of his or her payment plan. A Member's failure to remit payment of an agreed-upon installment, or to remain current with Assessments as they come due during the repayment period, constitutes a failure to comply with the terms of his or her payment plan.

## **7. Payment Priority**

- (a) Regardless of inscriptions or notations on the front or back of the check, all payments will be applied to outstanding balances in the following order of priority:
  - (i) unpaid Assessments beginning with oldest unpaid Assessment;
  - (ii) late charges, if any;
  - (iii) past-due special Assessments, past-due fines and interest, or other charges;
  - (iv) returned check charges;
  - (v) currently due special Assessments, or currently due fines, or other charges if any; and
  - (vi) attorney fees and costs.

## **8. 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 and without limitation, the Member's delinquent account may result in a lien being filed against the Association Member's Lot, 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 voting rights, or other rights as stated in the Association's governing documents. In order to be a "Member in Good Standing" for purposes of this policy, restoration of voting or other rights, or to terminate litigation, the Member must make payment-in-full of all delinquent Assessments and other sums, including sums which arise after the collection process or after the Member 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 proceed by filing a lien against any Member who has not paid his or her Assessment.

## **9. Bankruptcy of Member**

- (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 Lot for all past

unpaid Assessments up to six years; and

- (ii) the Member will remain personally liable for all post-bankruptcy filing Assessments, so long as they retain title to the Lot.
- (b) Based on the above, when the Association learns that a bankruptcy action has been filed, the accounting for that Lot must thereafter be based upon the filing date of that bankruptcy action petition date, and the Association should create two separate ledgers for the Lot showing Assessments owed prior to and after the petition date.

## **10. Proof of Payments**

- (a) Since the records of the Association are kept in the ordinary course of business and the Association relies upon same on the behalf of all Members, 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 30 days after the mailing of a billing statement.
- (b) A Member who wishes to dispute the amount or the validity of any Assessment charged to his/her Lot must submit a written statement within 30 days after the mailing of a billing statement that describes all disputed payments and can request information from (or request a hearing before) the Board.
- (c) The Board will require that the Member deliver documentation, such as canceled checks or bank statements, to support the Member's claims.
- (d) All payments made to settle a dispute and all correspondence regarding payment disputes must be sent by USPS return receipt requested to the President or Treasurer. If payment or correspondence is delivered by any other method, the Member using that non-authorized method assumes the risk that the payment and any communication sent by that method may not be received by the Association and should be aware that further action could result.

## **11. Certificate of Status of Assessments**

If a Member should request a written statement setting forth the amount of unpaid Assessment currently levied against the Member's Lot, the request must be made in writing and mailed by USPS return receipt requested to the President or the Treasurer of the Association. The statement should be delivered back to the Member by USPS return receipt requested within 14 business days after the actual receipt of the request made by the Member. The statement must reflect the Association's charge for such statements (if any), and will include the fees of the Association's attorney (if any), if the account is delinquent. Any such statement must be without warranty or liability to the Association.

## **12. General**

- (a) Nothing in this policy 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 policy must not be deemed a waiver of the Association's right to require strict compliance by the Member and must 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 nor be asserted as a claim against the Association.
- (c) This policy will be effective as provided below, at which time it will replace and supersede any prior policy regarding Assessments, collections, and legal remedies; provided, however, that the Board may in its discretion suspend the effective date of any provision of this policy for any collection actions filed or taken prior to January 2, 2014. If any portion or provision of this policy is found to be invalid, the remaining provisions will continue in full force and effect.

The Board may review this Assessment Collection Policy and update as needed.

**PINE CONE ACRES HOMEOWNERS ASSOCIATION, INC.**

*Revised and Approved this 20th day of August 2017*