

**RESOLUTION OF THE TRAILMARK
HOMEOWNERS ASSOCIATION, INC.
ADOPTING A POLICY AND PROCEDURE FOR THE COLLECTION OF
UNPAID ASSESSMENTS**

SUBJECT: Adoption of a policy and procedure regarding the collection of unpaid assessments.

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, Articles of Incorporation, Bylaws of the Association, and Colorado law.

EFFECTIVE DATE: AUGUST, 7TH, 2022.

RESOLUTION: The Association hereby adopts the following Resolution:

1. **Due Dates.** The Association's annual assessment shall be charged on a quarterly basis. The assessments shall be due on the first day of each quarter. Quarters begin on the first day of January, April, July and October of each year. If payment is not received within thirty (30) days after the due date, the Owner's account becomes delinquent.
2. **Late Charges and Interest on Delinquent Installments.** The Association shall impose on a monthly basis, a late charge of twenty-five dollars (\$25) per month for each Owner who fails to pay the assessment by the due date as provided above. This late charge shall be an assessment pursuant to the Declaration and CCIOA for each delinquent Owner. The Association shall also impose interest at an annual percentage rate equal to 8% per annum or less from the date it becomes due and payable if not paid within thirty (30) days after such date.
3. **Receipt Date.** The Association shall post payments on the day that the payment is received in the Association's bank office.
4. **First Notice for Delinquent Assessment Payments.** If the Association has not received the due assessment payment from the Owner within thirty (30) days from the due

date, the Association must contact the Owner, or representative of the Owner if specified by Owner, to inform them of their delinquency. This is known as the first notice. The first notice has the following requirements.

- i.) The first notice may be in English or in another language, if specified by the Owner. If the Owner does not specify what language is preferred, the notice shall be in English.
- ii.) The first notice must provide an itemized list of the past due amount including assessments, fines, fees and charges. A copy of the account ledger from a zero balance can satisfy this requirement.
- ii.) The first notice must be:
 - a.) Sent by first class mail;
 - b.) Emailed to an email address that the Association has on file, if that information has been provided to the Association by the Owner.
- iii.) If the Owner designates another person to contact, all notices must be sent to both the designated person and the Owner.

5. **Records Requirement.** The Association must maintain records of any contact(s) made with the Owner and/or their designated contact, including:

- i.) The type of communication used, and
- ii.) The date and time the contact was made.

6. **Notice of Delinquency.** After an installment of an annual assessment or other charge due to the Association becomes more than sixty (60) days delinquent and before the Association turns the delinquent account over to a collection agency or refers it to the Association's attorney for legal action, the Association shall cause a Notice of Delinquency to be sent to the delinquent Owner. If the Owner designates another person as contact, all notices must be sent to both the designated person and the Owner. The Notice of Delinquency may be in English or in another language if specified by the Owner. If the

Owner does not specify what language is preferred, the Notice of Delinquency shall be in English.

The Notice of Delinquency must include:

- i.) the amount past due with an accounting of how the total was determined;
- ii.) whether the opportunity to enter into a payment plan exists and instruction for contacting the Association to arrange for and to enter into a payment plan;
- iii.) the name and contact information for the individual the Owner may contact to request a copy of the ledger to verify the amount of the debt;
- iv.) a notice that action is required to cure the delinquency and that failure to do so 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, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, other remedies available under Colorado law including revoking the owner's right to vote if allowed by the Association's Declaration or Bylaws;
- v.) Specify whether the delinquency concerns:
 - a.) unpaid assessments;
 - b.) unpaid fines, fees, or charges; or
 - c.) both unpaid assessments and unpaid fines, fees, or charges;
- vi.) If the Notice concerns unpaid assessments, then the Notice must notify the Owner that unpaid assessments may lead to foreclosure;
- vii.) Include a description of the steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's covenant violation cure process laid out in the Association's Covenant Enforcement Policy; and
- viii.) Include a description of what legal action the Association may take against the Owner, including a description of the types of matters that the Association or Owner may take to Small Claims Court, including injunctive matters

for which the Association seeks an order requiring the Owner to comply with the governing documents of the Association.

The Notice of Delinquency shall be:

- a.) Sent by certified mail with return receipt;
- b.) Physically posted to the door of the Unit; and
- c.) By at least one of the following methods at the Board of Directors' discretion:
 - a. Sent by first class mail;
 - b. Text message sent to a cell phone that the Association has on file that has been provided to the Association by the Owner; or
 - c. Email to an email address that the Association has on file that has been provided to the Association by the Owner.

7. **Payment plans.** The Association shall offer a payment plan to any delinquent Owner and make a good faith effort to coordinate such a plan. Such payment plan may be determined at the discretion of the Board of Directors but shall be for a term of not less than eighteen (18) months and shall provide that the Owner must remain current with regard to future assessments. Under the repayment plan, the Owner may choose the amount paid each month, so long as each payment is at least twenty-five dollars (\$25.00), until the balance of the amount owed is less than twenty-five dollars (\$25.00).

If the Owner fails to accept the repayment plan offered by the Association within thirty (30) days after receipt of the written offer, the offer shall be deemed declined.

If the Owner declines the repayment plan within thirty (30) days after the Association's offer or after accepting the repayment plan, or the Owner fails to pay at least three (3) of the monthly installments within fifteen (15) days after the monthly installments were due under the payment plan, the Association may pursue legal action against the Owner.

An owner who has entered into a repayment plan may elect to pay the remaining balance under the repayment plan at any time during the duration of the payment plan.

8. **Monthly Notices to Delinquent Owners are Mandatory.** On a monthly basis, the Association must send, at the Association's own expense, to each Owner with a delinquent account an itemized list of all assessments, fees, fines, and charges owed. This monthly notice must be sent:

- i.) By first class mail, and
- ii.) Email if the Association has the relevant email on file provided by the

Owner.

The monthly notices must be sent in English unless the Owner has indicated another preferred language. The monthly notices shall be sent to the Owner or to the Owner and the designated contact of the Owner if a designated contact is specified by Owner. The monthly notices shall be sent by the Association even after legal action has been started against the Owner. If the Owner's account has been transferred to a collection agency or to Association's attorney for collection, the monthly notice must indicate that legal fees might not be posted on the Owner's account and that the Owner should contact the collection agency or Association's attorney for an up-to-date balance.

9. **Referral of Delinquent Accounts to Attorneys.** After the deadline stated in the Notice of Delinquency has expired, the Association may, but shall not be required to, refer delinquent accounts to a its attorneys for collection. Any delinquent account must first be discussed by the Board of Directors during an executive meeting of the Board. The Association may pursue legal action against the Owner only if a majority of the Board of Directors approves this action in a recorded vote at a meeting conducted pursuant to the Association's Conduct of Meetings Policy. 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 is authorized to take whatever action is necessary, in consultation with the President of the Board of

Directors or other authorized representative, believed to be in the best interests of the Association, including but not limited to:

- (a) Filing a suit against the delinquent Owner for a money judgment;
- (b) Instituting a judicial foreclosure action of the Association's lien if approved by the Board of Directors;
- (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.

Upon referral of any matter to the Association's attorney, the manager, acting on behalf of the Association, shall pay the Association's attorneys their usual and customary charges as well as any costs incurred by the attorney on the Association's behalf, promptly upon receipt of the monthly invoice from the attorney.

10. **Judicial Foreclosure.** The Association may foreclose its lien only if the delinquency is equal or higher than six months of common expenses assessments based on a periodic budget adopted by the Association. Each foreclosure action has to be approved by the Board of Directors by resolution or a recorded vote taken at a Board meeting.

The Association may not foreclose on a unit 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 as a result of covenant violations; or
- ii.) Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines as a result of covenant violations.

The Association shall not commence a legal action to initiate a foreclosure proceeding based on a unit Owner's delinquency in paying assessments unless the Association has

provided the Owner with the opportunity to enter into a payment described in Section 7 of this Collection Policy and the Owner either declined the payment plan, failed to accept the payment plan within thirty (30) days, or the Owner failed to pay at least three (3) of the monthly installments within fifteen (15) days after the monthly installments were due.

11. **Prohibited Parties from Purchasing a Foreclosed Unit.** If the Association forecloses on a Unit, the following parties are prohibited from purchasing the foreclosed Unit:

- i.) A Board member,
- ii.) An employee of the community association management company representing the Association,
- i.) An employee of a law firm representing the Association, or
- ii.) An immediate family member of any of the foregoing.

12. **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, Colorado law, and this Resolution. 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; correct any violations of the Declaration, Bylaws, or Rules and Regulations; and prevent the waste and deterioration of the property.

13 **Bankruptcies and Foreclosures.** Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of 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 may turn the account over to the Association's attorney.

14. **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 to the Association from a delinquent Owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred.

15. **Personal Obligation for Late Charges.** In addition to being a continuing lien on the Lot, the late charge 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 herein for payment of assessments.

16. **Returned Check Charges.** In addition to any and all charges imposed under the Declaration, Articles of Incorporation, Bylaws, the Rules and Regulations of the Association, or this Resolution, a twenty dollar (\$20.00) fee 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 an assessment pursuant to the Declaration and CCIOA for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such returned 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 Lot 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 after the date adopted.

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 returned 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 installment of the assessment is not timely made within fifteen (15) days of its due date.

17. **Application of Payments.** All sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. If the Owner has both unpaid assessments and unpaid fees, fines, or other charges on the Owner's account, any payment made by the Owner are first applied to the assessments owed. The remaining amount shall be applied to fees, fines and other charges owed pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution. If an Owner pays down the assessment balance so that the remaining balance is made up of only fines, attorney fees, or other costs, the Association may not foreclose as its remedy as the Association cannot foreclose on a lien that consists only of fines, collection costs and attorney's fees, except for such fees and costs associated with the initial unpaid assessment balance. The Association may proceed with the collections process on these unpaid balances by obtaining a judgement against the Owner in Small Claims Court and collecting through the garnishment of wages.

18. **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.

19. **Notification to and Communication with Owners.** The Association shall, upon request, provide all Owners with a copy of this Resolution which shall become effective upon its adoption. 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 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.

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. Once an Owner's account is turned over to the Association's attorney, all communication regarding the account must be made through the attorney. However, the

Association has the option and right to continue to evaluate each delinquency on a case-by-case basis.

21. **Sole Collections Policy.** This policy shall be the sole existing policy of the Association regarding the collection of unpaid assessments, and shall replace and supersede any previous rules and regulations of the Association addressing the collection of past due assessments.

22. **Defenses.** Failure of the Association to comply with any provision in this Collection Policy shall not be deemed a waiver of the Association's right to require strict compliance and shall not be deemed a defense to payment of assessment fees or other charges, late charges, returned check charges, attorney fees, and/or costs as described and imposed by this Collection Policy.

23. **Amendment.** This Collection Policy may be amended from time to time by the Board of Directors.

24. **Survival.** 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 force and effect.

PRESIDENT'S CERTIFICATION:

The undersigned, being the President of the Trailmark Homeowners Association, Inc., 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 AUGUST 7TH, 2022, and in witness thereof, the undersigned has subscribed his/her name.

**THE TRAILMARK
HOMEOWNERS
ASSOCIATION, INC.**
a Colorado nonprofit corporation

By: 

President