

Resolution 002-06
Of The
Dutch Creek Village Homeowners & Recreational Association
Regarding Policy and Procedures For
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 and Bylaws of the Association and Colorado Law.

Effective Date: 11-20-2006 (Amended 01-21-2014)

Resolution: The Association hereby adopts the following policy:

It is in the best interest of the Association to refer delinquent accounts promptly to an attorney for collection so as to minimize the Association's loss of assessment revenue. The Board of Directors has retained an attorney with experience in representing homeowner associations in collections and other matters. The Association hereby gives notice of its adoption of the following policies and procedures for the collection of assessments and other charges of the Association:

1. **Due Dates.** The installment of the annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the date set forth in the annual billing statement sent to each Owner. Assessments or other charges not paid in full to the Association on or before the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association when due shall incur interest and late fees as provided below.
2. **Receipt Date.** The Association shall post payments on the day that the payment is received by the Association.
3. **Late Charges on Delinquent Installments.**
 - A. Interest.** The Association shall impose interest from the due date at the rate of 12% per annum on the outstanding balance owed by each Owner who fails to timely pay their installment of the annual assessment within 30 days of the due date.
 - B. Late Fees.** The Association shall impose a \$15.00 late fee each month to each Owner who fails to timely pay their installment of the annual assessment within 30 days of the due date.
4. **Personal Obligation for Late Charges.** The late charges 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. **Returned 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 reasonable fee, not to exceed \$20.00, 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 after the date adopted as shown above. 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 the Owner. Any returned check shall cause an account to be past due if full payment of the installment of the annual assessment is not timely made within 30 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 costs 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 sums collected on a delinquent account that has been turned over to the Association's attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied to payment of (1) any and all legal fees and costs, including attorney fees incurred for collection of assessments or for Owner's failure to comply with provisions of the Association's Declaration, Bylaws, Articles of Incorporation or Rules and Regulations, including lien fees, and any collection fees charged by the Association's managing agent; (2) fines, late charges, and interest; (3) returned check charges and other costs owing or incurred with respect to such Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution; and (4) special or regular assessments due or to become due with respect to such Owner.
8. **Collection Process.**
 - (a) After an installment of an annual assessment and/or other charges due to the Association becomes more than 30 days delinquent, the Association shall send a written notice ("First Notice") of non-payment and request immediate payment. The "First Notice" shall include the following information:

- (A) Total amount of the delinquency with an accounting of how the amount was determined;
 - (B) Whether an opportunity is available to the Owner to enter into a Payment Plan as described in Paragraph (8)(d) below and instructions for contacting the Association to enter into such Payment Plan; and
 - (C) Contact information for the Owner to request a copy of the Owner's ledger account in order to verify the amount of the debt.
- (b) After an installment of an annual assessment and/or other charges due to the Association becomes more than 60 days delinquent, the Association shall send a second written notice ("Second Notice") of non-payment and request immediate payment. The "Second Notice" shall include the following information:
- (A) Total amount of the delinquency with an accounting of how the amount was determined;
 - (B) Whether an opportunity is available to the Owner to enter into a Payment Plan as described in Paragraph (8)(d) below and instructions for contacting the Association to enter into such Payment Plan;
 - (C) Contact information for the Owner to request a copy of the Owner's ledger account in order to verify the amount of the debt; and
 - (D) Notice that the Owner has 30 days from the date of the Notice to pay the deficiency or enter into a Payment Plan. Failure to respond will result in the Association turning the account over to the Association's attorney for collection.
- (c) After an installment of an annual assessment or other charges due to the Association becomes more than 90 days delinquent, the Association shall turn the account over to the Association's attorney for collection. Upon receiving the delinquent account, the Association's attorneys shall file a lien and send a letter to the delinquent Owner demanding immediate payment for past due assessments and/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.
- (d) **Payment Plan.**
- An Owner, who fails to timely pay their installment of the annual assessment within 30 days of the due date, may enter into a payment plan with the Association to pay off the deficiency in equal installments over a period of at least six (6) months, unless the Owner has previously entered into a payment plan for that delinquency. An Owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of their payment plan. The Association may pursue legal action against an Owner if the Owner fails to comply with the terms of their payment plan. For purposes of this section, "assessments" includes regular and special assessments,

interest, late fees, attorney fees, and any other costs incurred in the collection process.

(e) **Recreational Facilities**

An Owner who does not pay their installment of the annual assessment within 30 days of the due date will not be allowed access to the Association's recreational facilities, specifically the swimming pool. Access will be allowed when the annual assessment and late charges are paid.

(f) 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.

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

Due Date (date payment due) - Date set forth in the annual billing statement

First Delinquency Notice - sent 30 days after due date

Second Delinquency Notice - sent 60 days after due date

Delinquent account turned over to Association's attorney; Lien filed; Demand letter sent to Owner – 90 days after due date

The attorney is to consult with the Association as necessary to determine if payment has been arranged or what collection procedures are appropriate.

10. 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 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.

11. 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 Association shall notify the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate.

12. Use of Certified Mail/Regular Mail. In the event the Association shall cause a collection or demand letter or notices to be sent to a delinquent Owner by regular mail, the Association may also cause, but shall not be required to send an additional copy of that letter or notice by certified mail.

13. Referral of Delinquent Accounts to Attorneys. Upon referral to the Association's attorney, 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, is authorized to take whatever action is necessary and determined to be in the best interest 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; and
- f. Filing Writs of Garnishment, after obtaining a money judgment, to attach wages or assets for the benefit of the Association in payment against its judgment.

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, promptly upon receipt of the monthly invoice from the attorney. Such fees and costs shall be charged as an assessment against the Owner's account.

- 14. **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.
- 15. **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 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.
- 16. **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.
- 17. **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. No 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.
- 18. **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.
- 19. **Definitions.** Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

20. **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.
21. **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. Nothing in this policy shall require the Board of Directors to take specific action at a specific time, but the Board shall not take any action in less than the time stated herein for a particular action. The Board has the option and right to continue to evaluate each delinquency on a case by case basis.
22. **Amendment.** This Policy may be amended from time to time by the Board of Directors.

PRESIDENTS

CERTIFICATION:

The undersigned, being the President of the Association, certifies that the foregoing Resolution was approved and adopted by the Board of Directors of the Association, at a duly called and held meeting of the Board of Directors of the Association on 01-21-2014 and in witness thereof, the undersigned has subscribed his/her name.

DUTCH CREEK VILLAGE HOMEOWNERS &
RECREATIONAL ASSOCIATION,
a Colorado nonprofit corporation

By: /s/ David Landes

President

