

## PAGOSA LAKES PROPERTY OWNERS' ASSOCIATION

### COLLECTION POLICY AND PROCEDURE

Effective Date: August 10, 2022

This policy is adopted to comply with the terms of the Colorado Common Interest Ownership Act ("CCIOA") which contains provisions that may conflict with the terms of the Association's governing documents. CCIOA and this policy will control over any conflicting provisions in the governing documents.

1. Due Dates, Late Charges, Interest, Suspension of Rights, and Acceleration of Assessments.

A. Due Dates. The annual assessment payment is due and payable May 1<sup>st</sup> of each year. Payments will be deemed received on the date the payment is received in the Association's office or the Association's payment processor's office; provided, however, if the Owner's name and the property address for which payment is made is not identified on or with the payment, payment will not be deemed received until such time as the owner and property to which payment should be credited is determined. Any payment not paid in full when due is past due and delinquent.

B. Late Fee or Charge. A late fee in the amount of \$50.00 will be imposed for any assessment not paid by the due date. Fines or other charges are due 30 days after being assessed and are delinquent if not paid by the due date without further notice to the Owner. Delinquent fines are subject to a \$50.00 late fee. The late fee is a personal obligation of the Owner and a lien on the property.

C. Interest. Interest at the rate of 8% per annum will accrue on any delinquent assessment, fine, or other charge from the due date without further notice to the Owner. Interest is a personal obligation of the Owner and a lien on the property.

D. Lien. Under Colorado law and the terms of the Declaration, there is a lien for any unpaid assessment. The Association reserves the right to record a notice of lien in the county records at any time after an assessment becomes delinquent.

E. Administrative Expenses. Collection costs, imposed by the Association or its managing agent, for delinquent accounts will be the obligation of the Owner and may be posted to the Owner's account. Examples include but are not limited to, certified mailings, costs to physically post a notice or translate a notice to a language other than English.

F. Suspension of Rights. An Owner's voting rights are automatically suspended without notice if an assessment or other charge is delinquent as set forth in this policy. An Owner's rights to use recreational facilities may also be suspended without notice if an assessment or other charge is delinquent as set forth in this policy.

2. Attorney's Fees and Collection Costs. The Association is entitled to recover its reasonable attorney's fees and collection costs incurred in collecting assessments or other charges due the Association from a delinquent Owner pursuant to the terms of the Declaration and Colorado law.

3. Application of Payments. If an Owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the Association, the Association will apply the payment first to assessments and any remaining amount of the payment to the fines, fees, or other charges owed.

4. Monthly Statements Required. On a monthly basis, the Association will send to each Owner who has any outstanding balance an itemized list of all assessments, fines, fees, and charges that the Owner owes to the Association (i.e., an account ledger). The monthly statement will be sent by first-class mail to

the Owner's registered address, and if the Association has a relevant e-mail address, by e-mail. If the account has been referred to a collection agency or to any attorney, the statement will also specify that the balance may not include all attorney's fees and costs that have been incurred as of the statement date but not yet invoiced to the Association and posted to the account.

5. Notice of Delinquency. The Association may send courtesy notices to Owners. However, before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, the Association must send the Owner a notice of delinquency specifying:

- A. The total amount due, with an accounting of how the total was determined;
- B. Whether the opportunity to enter into a payment plan exists as provided in this collection policy, and instructions for contacting the Association to enter into a payment plan, if available;
- C. The name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger to verify the amount of the debt;
- D. A statement that action is required to cure the delinquency, and that failure to do so within 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;
- E. Whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges; and if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the Owner that the unpaid assessments may lead to foreclosure;
- F. The steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's cure process; and
- G. 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 declaration, bylaws, covenants, or other governing documents of the Association.

6. Owner Contact and Delivery of Notice. Before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, the Association will:

- A. Send a copy of the delinquency notice described in Paragraph 5 by certified mail, return receipt requested and physically post a copy of this delinquency notice at the Owner's property; and
- B. Contact the Owner by one of the following means:
  - i. First-class mail;
  - ii. Text message to a cellular number that the Association has on file that the Owner has provided to the Association; or
  - iii. E-mail to an e-mail address that the Association has on file that the Owner provided to the Association.
- C. Notices from the Association will be sent in English; provided, the Owner may send written notice to the Association with an alternate language preference. The Association will attempt to provide an accurate translation of the original English version, but due to nuances in translating to a foreign language, slight differences may exist.

D. An Owner may send written notice to the Association identifying another person to serve as a designated contact for the Owner for notices and correspondence. The Association will send the same written communications to the designated contact that it sends to the Owner. If the Owner wishes to change or cease the designated contact, the Owner must send the Association written notice.

7. Record of Notification. The Association will maintain a record of the contact(s) it has made with an Owner regarding a delinquency, including the type of communication used to contact the Owner and the date and time the contact was made. As this record relates to a particular property, it will not be deemed to be a record available to all Owners under Colorado law.

8. Payment Plans.

A. Before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, it will make a good faith effort to coordinate with the Owner to set up a payment plan. An Owner may enter into a payment plan to pay off a deficiency in equal installments over a minimum period of 18 months or such other longer period as authorized by the Board.

B. If the Owner fails to comply with the terms of the payment plan (fails to remit payment of three or more agreed-upon installments during the payment plan term), the Association may pursue legal action subject to the notice requirements above.

C. The Association is not obligated to negotiate a payment plan with:

- i. an Owner who has previously entered into a payment plan pursuant to this policy, or
- ii. an Owner who does not occupy the property and acquired the property because of a default of a security interest encumbering the property or a foreclosure of the Association's lien.

D. Before the Association initiates a foreclosure proceeding based on the Owner's unpaid assessments, it will provide the Owner with a written offer to enter into a repayment plan of at least 18 months. Under the repayment plan, the Owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least \$25.00. The Owner may elect to pay the remaining balance under the repayment plan at any time during the duration of the repayment plan.

E. All payment plans involving accounts referred to an attorney for collection will be set up and monitored through the attorney in consultation with the President of the Board or other person designated by the Board.

9. Board Action to Refer Delinquent Account. Before a delinquent account is referred to a collection agency or attorney, a majority of the Board must vote to refer the matter by recorded vote conducted in executive session.

10. Referral of Delinquent Accounts to Attorneys. After an account has been referred to the Association's attorney, the account remains with the attorney until it is settled, has a zero balance, or is otherwise resolved. Once accounts are turned over to the Association's attorney, Owners will make payments to the Association at the attorney's address. The Association's attorney is authorized to take whatever action is necessary, in consultation with the Board President or other person designated by the Board, believed to be in the Association's best interest.

After a delinquent account has been referred to the Association's attorney, all communication with the delinquent Owner will be handled through the Association's attorney. Neither the manager, if any, nor any member of the Board may 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. Action by the Association's attorney may include the following:

A. Notice of Lien. If not already recorded, a notice of lien may be recorded against the delinquent Owner's property to provide record notice of the Association's claim against the property.

B. Filing Lawsuit. The Association may file a lawsuit against the delinquent Owner seeking a money judgment. If a personal judgment is entered against the delinquent Owner, the Association may pursue remedies such as garnishing the Owner's wages or bank account to collect judgment amounts.

C. Judicial Foreclosure. The Association may 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 in other circumstances that may favor such action. If the Association forecloses on its lien, the Owner will lose the Owner's property, having the same effect as if a first mortgagee institutes a foreclosure action against the property (though the procedure is different).

The Association will not commence a judicial foreclosure action unless the balance of the assessments and charges secured by its lien (which may include late fees, fines, and other charges as well as other assessments) equals or exceeds 6 months of common expense assessments based on the Association's periodic budget. Additionally, the Association will not pursue foreclosure against an Owner solely based on fines owed to the Association and/or collection costs or attorney's fees the Association incurred that are only associated with such fines. Prior to filing a foreclosure action, the Board will resolve by a recorded vote in executive session to authorize the filing of the foreclosure action against the particular property against which the foreclosure action will be filed.

D. Receivership. A receiver is a disinterested person, appointed by the court, who manages rental of the Owner's property and collects 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 waste deterioration of the property.

E. Bankruptcy Filings. Filing necessary claims, documents, and motions in Bankruptcy Court to protect the Association's claim.

11. Certificate of Status of Assessment Estoppel Letter. The Association will furnish to an Owner, or such Owner's designee, upon written request delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against the Owner's property. The statement will be delivered within 14 calendar days after receipt of the request personally or by certified mail, first-class postage prepaid, return receipt requested. If the Owner's account has been turned over to the Association's attorney, the statement will include any attorney's fees incurred in providing the statement.

12. Return Check Charges.

A. If any check or other instrument payable to or for the benefit of the Association is not honored by the bank or is returned by the bank for any reason, including, but not limited to insufficient funds, the Owner is liable to the Association for one of the following amounts, at the option of the Association:

i. An amount equal to the face amount of the check, draft, or money order and a return check charge of: (a) \$20.00; or (b) 20% of the face amount of the check, draft, or money order, but not less than \$20.00, if it has been assigned to a collection agency for collection; or (c) an amount equal to the actual charges incurred by the Association levied by the party returning the check, whichever is greater; or

ii. If notice has been sent as provided in 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, the person issuing the check, draft, or money order will be liable to the Association for three times the face amount of the check, but not less than \$100.00.

B. If two or more of an Owner's checks are returned within any fiscal year, the Association may require that future payments, for a period of one year, be made by certified check or money order.

13. Bankruptcies and Public Trustee Foreclosures. Upon receipt of any bankruptcy notice or a foreclosure notice by any holder of an encumbrance against any property within the Association, the Association may advise the Association's attorney of the same and turn the account over to the Association's attorney.

14. Waivers. The Association may modify these procedures as the Association determines appropriate under the particular circumstances. Any accommodation may be documented in the Association's files. Failure to require strict compliance with this policy is not deemed a waiver of the Association's right to require strict compliance and will not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney's fees, and/or costs as described and imposed by this policy.

#### RECORD OF REVISIONS

2001-05 – Establish Policy

2003-04 – Update Policy

2005-03 – Update Policy

2013-07 – Update Policy

2016-05 – Update Collections Policy

2018-04 – Update Collections Policy

2021-07 – Update Collections Policy

2022 – 05 – Update Collections Policy

2022 – 10 - Update according to new CCIOA Requirements

## NOTICE OF DELINQUENCY

[Date]

[Owner name]  
[Mailing Address]

Re: Association Name  
Notice of Delinquency  
Property Address: \_\_\_\_\_ ("Property")

Dear:

The Association's records indicate that your account is delinquent. As of the date of this Notice, the total amount due is \$\_\_\_\_, which is comprised of unpaid assessments, fines, late fees, interest, or other charges. **[The Notice must specify what charges make up the balance. If fines are not included, then the reference to fines should be deleted.]** Included with this Notice is a copy of your current account ledger. **[If you do not include a current ledger, you must provide a name and contact information for the owner to receive a current ledger.]**

Be advised that payment is required to cure the delinquency and that failure to do so **within thirty (30) days** may result in your account being turned over to an attorney or a collection agency, a lawsuit being filed against you, the filing and foreclosure of a lien against the Property, or other remedies available under Colorado law.

You may be entitled to request a payment plan for up to eighteen (18) months. To request a payment plan, you must contact the Association at \_\_\_\_\_ **[phone number and/or email address]** within thirty (30) days of the date of this Notice. A payment plan would include payment of any additional assessments or charges as they become due.

Before the Association may take legal action against you, a majority of the members of the Board of Directors must vote to approve referral of your account to an attorney or a collection agency. To the extent there are any pending or outstanding violations of the governing documents other than non-payment of assessments as set forth in this Notice, you may be entitled to certain cure rights as more particularly described in the Association's covenant and rule enforcement policy and C.R.S. § 38-33.3-209.5(1.?) (b).

Unpaid assessments may lead to foreclosure of the Property. The Board of Directors must authorize any foreclosure action by a formal, recorded vote. Before commencing foreclosure, you will be provided a written offer to enter into a repayment plan for up to eighteen (18) months. Under this plan, you may choose the amount to be paid each month (no less than \$25 per month) in addition to regular assessments. You may elect to pay the remaining balance at any time during the duration of the repayment plan.

If your account is referred to the Association's attorney, the Association may elect to file a personal lawsuit for failure to pay or foreclose its lien against the Property for unpaid assessments. The Association or you may utilize the small claims court where the amount in controversy does not exceed \$7,500, including disputes arising from assessments, fines, or fees owed to the Association, matters pursuant to C.R.S. § 13-6-403, or as otherwise permitted by Colorado law. Additionally, the small claims court may issue an order for injunctive relief (to cease or perform an action) to enforce a restrictive covenant.

Sincerely,

Name of Association