

Elk Springs Homeowners Association, Inc.

Policy and Procedure for Collection of Unpaid Assessments, Fines and Other Charges

Pursuant to the authority granted by Article 4.14 (A) of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, (the “Declaration”) and as further authorized and required by the Colorado Common Interest Ownership Act, C. R. S. 38-33.3-209.5 (1) (b) (i), et seq. (the “Act”), the Board of Directors of Elk Springs Homeowners Association, Inc. (the “Association”) adopts the following policy and procedures for the collection of unpaid assessments, fines and other charges. Unless otherwise defined in this Policy and Procedure, initially capitalized or terms defined in the Declaration shall have the same meaning herein. This Policy and Procedure may be amended at any time by the Board of Directors of the Association (the “Board”).

Annual and Special Assessments. Annual assessments are billed in two equal semiannual installments on January 1st and July 1st of each year. The installments are then respectively due and payable on or before February 1st and August 1st of each year. Special assessments or other charges may be assessed or made from time to time by the Association in accordance with the Declaration and are due and payable as provided by the Board in making such assessment. Assessments or other charges not paid to the Association by the last day of the month in which they are due shall be considered past due and delinquent.

Fines and Other Charges. The Association has the authority to levy fines against any Unit Owner in violation of the Association’s governing documents in accordance with the Association’s Amended and Restated Covenant Enforcement Rules and Regulations, Hearing Procedures and Schedule of Fines, as amended from time to time. Any fine levied pursuant to such Policy will be due as stated in the Board’s Notice of Decision. If any fine is not paid when due, collection thereof shall be subject to this Policy.

Late Charges and Interest Charges on Past Due Assessments, Fines and Other Charges.

Any Annual or Special assessment or any fine or other charge not paid within ten (10) days after the due date thereof shall be charged a late fee of twenty-five dollars (\$25.00). In addition, the delinquent assessment, fine or other charge shall bear interest from the due date at the rate of eight percent (8%) per annum. All such charges shall be due and payable immediately, without notice, in the manner provided for payment of assessments, fines and other charges. These charges are considered a “Common Expense” and may be subject to a statutory lien, but are not subject to a foreclosure action.

Return Check Charges. The Association will assess a thirty dollar (\$30.00) fee against a Unit Owner in the event any check or other instrument is not honored or is returned by the bank for any reason whatsoever, including, but not limited to, insufficient funds.

Payment Plan. Any Unit Owner who becomes delinquent in the payment of assessments may enter into a payment plan with the Association in accordance with C.R.S. § 38-33.3-209.5 which will provide the Unit Owner the ability to pay off the delinquency in equal installments over a period of at least eighteen (18) months; except that (I) this section does

not apply if the Unit Owner does not occupy the Unit and has acquired the Unit as a result of (a) a default of a security interest encumbering the Unit or (b) foreclosure of the Association's lien; and (II) the Association or a holder or assignee of the Association's debt is not obligated to negotiate a payment plan with a Unit Owner who has previously entered into a payment plan under this section.

Every payment plan entered into by the Association and a delinquent Unit Owner shall allow the Unit Owner to make equal monthly installments to bring their account current. The Unit Owner may choose the amount to be paid each month with a minimum requirement of twenty-five dollars (\$25.00). The Unit Owner shall be in default and plan will be null and void if within thirty (30) days of notification, the Owner has declined (either by written rejection or failure to respond); or if after accepting a payment plan the Unit Owner fails to pay at least three (3) monthly installments within fifteen (15) days after the monthly installments were due. All Unit Owners who enter into a payment plan with the Association shall remain responsible for any assessments that become due during the payment period plan.

In the event the Unit Owner defaults or otherwise does not comply with the terms and conditions of the payment plan and this policy, the Association shall provide any additional notice to comply with the Notice of Delinquency as set forth below and refer the delinquent account to an attorney or collection agency for collection action, or may take such other action as it deems appropriate in relation to the delinquency.

A Unit Owner who has entered into a repayment plan may elect to pay the remaining balance owed under the plan at any time during the duration of the repayment plan.

Notice of Delinquency. At any time after any assessment, payment plan installment, fine, or any other charge owed to the Association is more than thirty (30) days past due, but in any event at least thirty (30) days prior to the date any unpaid assessment, fine, or other charge is referred to an attorney or collection agency for collection action, the Association shall send a Notice of Delinquency to the Unit Owner who is delinquent in payment by certified mail with return receipt requested. The notice shall additionally be posted on the Unit, and notification will be either via text message, email (if valid address or number is on file) or first-class mail addressed to the Unit Owner at the last known address for such Owner as maintained in the records of the Association. The Notice shall be in English and any language specified by the Unit Owner as preferred language. Said Notice of Delinquency shall specify:

- a) The total amount due, with an accounting of how the total was determined;
- b) The name and contact information of the individual that the delinquent Unit Owner may contact to request a copy of the Unit Owner's ledger to verify the amount claimed due;
- c) Whether the Unit Owner has the opportunity to enter into a payment plan as provided in this Policy and instructions for contacting the Association or its managing agent to enter into such a payment plan. Notification of payment plan shall include requirements to remain current and state failure to make any 3 payments pursuant to the plan within 15 days of the due date may result in legal action without further notice. Failure to respond to the notice will be considered a rejection of the offer; and

- d) That the Unit Owner must take action to cure the delinquency within thirty (30) days and that failure to do so within such thirty (30) day periods may result in the Unit Owner's delinquent account being turned over to an attorney or to a collection agency, a lawsuit may be filed against the Unit Owner, the filing and foreclosure of a lien against the Unit Owner's property, or any other remedy available under the Declaration and 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 Unit Owner that unpaid assessments may lead to foreclosure.
- f) A description of the steps the Association must take before any legal action against the Owner may be pursued. This includes a description of the Association's covenant violation cure process as laid out in the Enforcement policy.
- g) A description of the legal action the Association may take against the Owner, including a description of the types of matters 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.

Any account with an outstanding balance, regardless of the collection status, shall receive a monthly itemized list of all assessments, fines, fees, and charges that the Owner owes the Association. This monthly notice shall be sent in English or the language specified by the Unit Owner (if other than English). It shall be sent via first-class mail and email, if there is a valid address on file.

All notifications shall be sent to the Unit Owner and the Owner's designated contact, if one has been listed.

Application of Payments Made to the Association. All payments received on a delinquent account shall first be applied to the assessments owed, then to any and all legal fees, attorney fees and costs that have accrued to the Association for collection of the debt; then to costs and expenses of enforcement and collection, interest, returned check charges, late fees, lien fees, and other costs owing or incurred with respect to such Unit Owner.

Referral of Delinquent Accounts to Attorneys. If payment in full is not received or if the parties have not entered into an acceptable payment plan within thirty (30) days after the date the Notice of Delinquency is mailed to the Unit Owner, the Association may, but shall not be required to, refer delinquent accounts to its attorneys or to a collection agency for collection. If an account is to be referred to attorneys or a collection agency, the Board of Directors shall first approve by majority vote to send the account for collection in a recorded meeting. Upon referral to the attorneys, the attorneys may take all appropriate action permitted by the Declaration to collect amounts owed by the Unit Owner, including, without limitation, filing suit against the Owner, filing a lien against the Owner's property, judicial foreclosure of such lien and appointment of a receiver. Furthermore, all fees of any kind, including court filing fees, county filing fees, process server fees, attorney fees, late fees and title company fees will be included in the debt of the Unit Owner and shall be sought by the Association in any legal action taken.

If an account remains delinquent for two (2) years and the Unit Owner has not entered into a payment plan with the Association or the Unit Owner has failed to meet the terms of the payment plan or settlement, the Association shall place the lien on the Unit up for sale to the general public pursuant to the Association's lien sale rules. The policy of the Association will be to protect its limited lien priority in the event of a foreclosure upon a Unit within the Association. The Board will cause statements of account to be provided to the Unit Owner or the Unit Owner's representative upon request. The statement of account will be provided in the manner prescribed in the Act and will include all outstanding assessments, fines, other charges, late fees, attorney fees, interest, collection and processing fees owed to the Association by the Unit Owner in foreclosure.

In the event a Unit has been foreclosed on by the Association, the Unit shall not be purchased by a member of the Board of Directors, an employee of the Association's management company representing the Association, an employee of the law firm representing the Association or an immediate family member of any of these individuals.

Communications. All communications made by the Association, or by an agency on behalf of the Association, shall be maintained; including the information regarding the type of communication that was used, and the date and time the contact was made.

A Unit Owner may identify another individual to serve as a designated contact on behalf of the Owner. Any collection correspondence and notice shall be sent to the designated contact and Unit Owner. In the event of a collections process, communication will only be provided to the Unit Owner unless further authorization by the Owner is provided to the attorney conducting the collection.

An Owner may identify a preferred language to receive notices. If a different language is preferred, notices shall be sent in the preferred language and English. If none is indicated, all notices will be provided in English.

Good Standing. To remain in good standing, a Unit Owner must pay his/her account balance within thirty (30) days of the past due date. Owners not in good standing cannot vote on matters coming before the Association, nor can they use and enjoy the Common Area until such time as their account balances are paid in full.

Waivers. Nothing in this Policy shall require the Association to take specific actions or pursue specific legal remedies. The Association has the option and right to continue to evaluate each delinquency on a case-by-case basis. The Association may grant a waiver of any provision herein upon petition in writing by a Unit Owner showing a personal hardship. Such waiver requires the approval of a majority of the members of the Board. Such relief granted a Unit Owner shall be appropriately documented in the files with the name of the person or persons representing the Association granting the relief and the conditions of the relief. In addition, 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 may determine appropriate under the circumstances.

PRESIDENTS CERTIFICATION:

The undersigned, being the President of the Elk Springs Homeowners Association, Inc. Board of Directors certifies that the foregoing Policy and Procedures for the collection of unpaid assessments, fines and other charges was adopted by the Board of Directors at a duly called and noticed meeting of the Board of Directors held on August 15, 2022 and in witness thereof, the undersigned has subscribed her name.

/s/ Patrick Fitzgerald

President, Elk Springs Homeowners
Association, Inc. Board of Directors

August 15, 2022

Date Adopted

FORM of Notice of Delinquency

Elk Springs Homeowners Association, Inc.
P. O. Box 3167
Glenwood Springs, CO 81601

To Unit Owner:

Your HOA Assessment Statement was not timely paid and **your account is currently in arrears in the amount of \$_____**. This amount includes [unpaid assessments that became due on _____ day of _____, 20__.] OR [unpaid covenant violation fines, fees or charges associated with the covenant violation(s)] OR [both unpaid assessments and unpaid covenant violation fines, fees or charges associated with the covenant violation(s) AND unpaid assessments that became due on ____ day of _____ 20__.]

If this balance includes unpaid assessments, please be aware that unpaid assessments may lead to the foreclosure of your property. Additional missed assessments, fines, and other charges will be included, and interest at 8% per annum from the date of default.

A copy of your accounting ledger verifying the amount due is attached.

(This section shall be removed if the Unit Owner is exempt from a payment plan pursuant to the Policy.) You are entitled to enter into a payment plan with the Association of at least eighteen (18) months to bring your account current. To discuss a payment plan with the Association, please contact the Managing Agent: Integrated Mountain Management, Attn: Samantha Engen, at 970-930-6322 or samantha.engen@integratedmtn.com.

If you enter into a payment plan and fail to make any 3 payments pursuant to the terms of the agreed repayment plan within 15 days of the due date of the 1st of each month, the Association may proceed with legal action against you without further notice to you. Failure to respond to this offer by contacting the agent above will be considered a rejection of the repayment offer.

PLEASE NOTE ACTION IS REQUIRED BY YOU TO CURE THE DELINQUENCY. FAILURE TO DO SO WITHIN 30 DAYS OF THE DATE OF THIS LETTER MAY RESULT IN YOUR DELINQUENCY BEING TURNED OVER TO A COLLECTION AGENCY, A LAWSUIT BEING FILED AGAINST YOU OR THE FILING OF A FORECLOSURE OF A LIEN AGAINST YOUR PROPERTY OR ANY OTHER REMEDIES AVAILABLE PURSUANT TO COLORADO LAW.

To request further information please contact the Managing Agent above or send a written request to:

Elk Springs Homeowners Association, Inc.
P.O. Box 3167
Glenwood Springs, CO 81601

The Association is required to follow Colorado law and the Association's Covenant and Rule Enforcement Policy before taking action against you regarding covenant violations. Before proceeding with action against you regarding the covenant violations, the

Association shall provide time to cure the violation, confirm if the violation has been cured or not, and notify you regarding any unpaid fines, as laid out in the Covenant and Rule Enforcement Policy.

In addition to County Court and District Court, Small Claims Court is available to you or the Association to adjudicate many issues, including injunctive matters for which the Association may seek an order requiring you to comply with Declaration, Bylaws, Covenants, or other governing documents of the Association.

Sincerely,

Elk Springs Homeowner's Association, Inc.

This letter has been sent to you by the following means:

Certified mail, return receipt requested to _____ (name and address)AND

Physical posting to your door at the following address:

AND

First class mail to: _____

[OR] Email to: _____

[OR] Text Message to: _____

**COLLECTION TURNOVER
RESOLUTION OF
ELK SPRINGS HOMEOWNERS ASSOCIATION, INC.**

WHEREAS, the Owner of (PROPERTY ADDRESS) is currently delinquent in payment of assessments and other charges in the amount of \$_____, which amount includes late fees, penalties, interest, attorney fees and/or covenant enforcement violation fines; and

WHEREAS, the Association, on (DATE OF REQUIRED LETTER) did notify such Owner of the delinquent assessments and did offer the Owner a payment plan pursuant to the Association's Collection Policy for the repayment of the delinquent assessments; and

WHEREAS, the Owner defaulted in the terms and conditions of the payment plan, or conversely, failed to enter into a payment plan with the Association; and

NOW, THEREFORE, BE IT RESOLVED, by a vote of _____ FOR and _____ AGAINST the Board of Directors, pursuant to the Association's Collection Policy and in accordance with the Colorado Common Interest Ownership Act, does hereby approve sending the Owner of (PROPERTY ADDRESS) to collections as soon as practical.

PRESIDENT'S CERTIFICATION:

The undersigned, being the President of Elk Springs Homeowners Association, Inc., a Colorado nonprofit corporation, 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 ___ day of _____, 20___, witness thereof, the undersigned has subscribed his/her name.

**Elk Springs Homeowners Association,
Inc.,**
a Colorado nonprofit corporation

_____, President

**FORECLOSURE
RESOLUTION OF
ELK SPRINGS HOMEOWNERS ASSOCIATION, INC.**

WHEREAS, the Owner of (PROPERTY ADDRESS) is currently delinquent in payment of assessments in an amount equal to or exceeding six months of common expense assessments allocated to the Owner's Unit/Lot pursuant to the Association's annual budget; and

WHEREAS, as of the date of this resolution, the debt securing the lien consists of more than:

- (a) fines assessed against the Owner as a result of covenant violations; or
- (b) collection costs or attorney fees that the Association has incurred that are only associated with assessed fines as a result of covenant violations; and

WHEREAS, the Association, on (DATE OF NOTICE) did notify such owner of the delinquent assessments and did offer the Owner a payment plan of at least 18 months for the repayment of the delinquent assessments; and

WHEREAS, the aforementioned Notice of Delinquent Assessments was provided to the Owner in the following manners: (1) Certified Mail, return receipt requested; and (2) physically posted on the Owner's Unit/Lot within the Association; and (3) First-class mail, or text message or email; and

WHEREAS, the Owner did default in the terms and conditions of the payment plan by failing to pay at least three (3) of the monthly installments within fifteen (15) days after the monthly installments were due or, conversely, failed to enter into a payment plan with the Association;

NOW, THEREFORE, BE IT RESOLVED, by a vote of _____ FOR and _____ AGAINST the Board of Directors, pursuant to the Association's Collection Policy and in accordance with the Colorado Common Interest Ownership Act, does hereby approve the commencement of a foreclosure action on (PROPERTY ADDRESS) within Terrace Condominiums Homeowners Association, Inc., to be commenced forthwith.

PRESIDENT'S CERTIFICATION:

The undersigned, being the President of Elk Springs Homeowners Association, Inc., a Colorado nonprofit corporation, 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 ____ day of _____, 20 __, witness thereof, the undersigned has subscribed his/her name.

**Elk Springs Homeowners
Association, Inc.,**
a Colorado nonprofit corporation

_____, President