

*To Virgil / Sommer*

## COLLECTION POLICIES AND PROCEDURES

The following policies and procedures were adopted by resolution of the Board of Directors of Topaz at the Mall Condominium Association ("the Association") pursuant to Colorado law at a regular meeting of the Board.

### RECITALS:

- A. The Colorado Legislature declared the continued economic prosperity of Colorado is dependant upon the strengthening of homeowners associations in common interest communities financially through enhancing the financial stability of associations by increasing the association's powers to collect delinquent assessments, late charges, fines, and enforcement costs. Based upon that declaration the Colorado Common Interest Ownership Act ("the Act") was adopted.
- B. Pursuant to the Association's governing documents and the Act the Association, acting through the Board of Directors, is obligated to collect the assessments and other charges owed to the Association.
- C. Subsection 209.5 of the Act requires the Association to adopt policies and procedures for collection of unpaid assessments.
- D. Subsection 302(1)(k) of the Act provides that subject to the provisions of the declaration the association, without specific authorization in the declaration may: impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments regardless of whether or not suit was initiated; and, impose reasonable charges for the preparation and recording of statements of unpaid assessments.
- E. Article VII of the recorded Condominium Declaration "Declaration") generally provides:
1. Each Owner of a Unit, by acceptance of a deed, is deemed to agree to pay the Association assessments or charges.
  2. The annual assessment is due in advance on the first day of the year; the annual assessment can be paid in twelve equal monthly installments due on the first of each month.
  3. Any assessment/installment not paid within 10 days of the due date shall be considered delinquent and subject to interest at the rate of 12 % per annum, and a late fee of \$10.00.

4. Assessments, as that term is defined in the Act, are the personal obligation of the Owner of the Unit when the assessment fell due and a charge against the Unit.

5. Assessments are used to pay the common expenses of all the Owners of Units within the community.

F. The Board of Directors deems it desirable to establish and operate by procedures that balance the Association's interest in the timely collection of Common Expense Assessments and other charges with the Owner's interest of being advised of any delinquent balance in their account and being treated fairly in the resolution of the delinquent account balance prior to the Association instituting legal action to collect the amount it alleges due.

G. The Board also deems it desirable to adopt and define the method in which the Association will apply partial payments on an Owner's account.

THEREFORE, IT IS RESOLVED THAT the following procedures shall apply to the Association's collection of sums alleged to be due from the Owner.

**1. Due Date, Late Fees, and Interest:**

By electing to pay the annual assessment in monthly installments the owner acknowledges the existence of a credit transaction between the owner and the Association.

Monthly installments of the Common Expense Assessment are due by on a date determined by the Board. Payments not received within (10) days of the due date are considered delinquent and the Owner's account will be subject to a late fee, and interest at the rate of 12 % per annum.

**2. Notice of Delinquent Account:**

The Association, through its agent, shall notify the owner of the delinquent payment: once after the payment was due; and a second time, within a reasonable time after the late fee and interest accrue on the account.

In the event the delinquent balance is not paid in full, the Board may suspend the Member's voting rights, and/or suspend the Member's use of the Common Element/Area facilities until the account is paid in full, provided notice and an opportunity to be heard is provided to the Owner at least 15 days prior to the assessment and/or suspension of privileges.

Notices shall be in writing and delivered to the Owner, via U.S. Mail first class postage prepaid, addressed to the property subject to the assessment obligation. The

Association, upon the written request of the Owner delivered to the Association personally or by certified mail, return receipt, postage prepaid, will mail the notice of delinquency to another address as set forth in the Owner's written request.

The Association, pursuant to its right to recover legal costs of collection, shall have the right to recover its actual costs of maintaining the delinquent balance, written notice to the Owner, and other costs associated with the Owner's delinquency.

### **3. Collection Procedure:**

In the event the alleged delinquent balance is not resolved within 30 days of the due date, the Board of Directors, through the delegated agent, may refer the Owner's account to the Association's attorney for collection.

Generally the Association's attorney/agent will prepare and record a Notice of Assessment Lien against the real property subject to the assessment obligation. The Association's attorney/agent may prepare and mail a letter demanding payment of a sum equal to the alleged delinquent assessment, late fees, interest, costs of collection including attorney fees, court costs, and other legal costs incurred through the date the letter was prepared.

If the delinquent balance is not resolved within thirty days of the letter demanding payment the Board of Directors, through its designated agent, may authorize the Association's attorney to file a lawsuit asserting claims against the Owner of property subject to the assessment obligation, an action to foreclose the Assessment Lien encumbering the real property subject to the assessment obligation, or both. The lawsuit shall claim the alleged assessment delinquency, late fees, interest, costs of collection including attorney fees, court costs, and other legal costs incurred through the date of judgment or decree.

Nothing in this policy precludes the Association from seeking the appointment of a receiver or implementing other legal and equitable methods to collect the alleged delinquent assessments, late fees, interest, costs including attorney fees.

The Board of Directors shall designate a Committee of the Board, Board Member, or the Managing Agent, to work with the Association's attorney for purposes of authorizing settlement agreements and authorizing collection efforts. The designated agent shall use diligent efforts to timely communicate with the Association's attorney with respect to changes affecting the account including, but not limited to, payments on account, additional debits on the account, bankruptcy filings, foreclosure proceedings, and conveyances.

### **4. Partial Payments on Account:**

The Colorado Supreme Court has held that a creditor is entitled to apply payments to the Debtor's account in a manner it chooses where the Debtor does not instruct creditor

otherwise. See: Westor Group, Inc. v. Hirschfeld Press, Inc., 845 P. 2nd 1162 (Colo. 1993).

Any payments of less than the full amount owed to the Association shall be applied to pay the following (if applicable) in the order listed, from oldest to most recent in each category:

- 1<sup>st</sup> to attorney fees and legal costs,
- 2<sup>nd</sup> to association's costs and other legal charges,
- 3<sup>rd</sup> to fines,
- 4<sup>th</sup> to late charges,
- 5<sup>th</sup> to interest,
- 6<sup>th</sup> to special assessments, and
- 7<sup>th</sup> to annual assessments.

The Association through its designated agent shall have the discretion to return any partial payment that directs the funds to be applied in a manner inconsistent with the Association's policy pertaining to partial payments set forth above.

#### **5. Miscellaneous Provisions:**

In the event the Owner intends to satisfy the entire debt to the Association by means of a restrictive endorsement of a check or money order for an amount less than the entire balance then due on the Owner's account, that check must be delivered to the Association's managing agent personally or by certified mail first class postage prepaid return receipt requested.


If a check or other instrument is tendered to the Association and the instrument is not honored by the financial institution the Association may impose a \$20.00 fee as a returned check fee, or pursue the statutory remedies which generally allow the Association to collect treble damages and attorney fees in the event the issuer fails to honor the instrument. The returned check fee, if charged, shall be the personal obligation of the issuer of the check as well as a lien against the real property subject to the assessment obligation.

The Association has the right to evaluate each delinquency on a case-by-case basis and take action on each case based on the Board's good faith business judgment.

Generally alleging a failure of the Association to maintain the Common Elements/Area or generally alleging a failure of the Association to comply with provisions of the Association's governing documents shall not constitute a defense or set-off of the lawfully imposed assessments.

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 effect.

These policies and procedures were adopted this \_\_\_\_ day of \_\_\_\_\_ 2009,  
by resolution of the Board of Directors of Topaz at the Mall Condominium Association.

By  \_\_\_\_\_  
Jeff Steere, Secretary  
Its \_\_\_\_\_