

**FALL CREEK VILLAGE**  
A Colorado Common Interest Community  
Located in portions of Section 13 T43N R11W, and Section 18, T43N R10W, N.M.P.M.  
San Miguel County, Colorado

**FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION, INC.,**  
**A COLORADO NONPROFIT CORPORATION**

**RESPONSIBLE GOVERNANCE POLICY**  
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**POLICY #2-2010: COLLECTION OF UNPAID ASSESSMENTS**

Adopted 9/3/2010.

Amended 12/3/2013.

Amended: \_\_\_\_\_, 2023

The following policy has been adopted by the Fall Creek Village Homeowners Association, Inc., a Colorado Non-Profit Corporation (“Association”) pursuant to C.R.S. §38-33.3-209.5, and in accordance with C.R.S. §38-33.3-123, §38-33.3-315, §38-33.3-316, the Governing Documents of the Association, and the Act, at a regular meeting of the Board.

**Purpose:** All Members are obligated by the Declaration to pay all dues and Assessments in a timely manner, and failure to do so jeopardizes the Association’s ability to meet its financial obligations. Failure of Members to pay Assessments in a timely manner is also costly to the Association and unfair to other Members. Accordingly, the Association, acting through the Board must take steps to ensure timely payment of Assessments so that it may operate in a fiscally responsible manner. The purpose of this policy is to establish a uniform and systematic procedure for collecting Assessments and other charges of the Association, thus ensuring the financial well being of the Association.

[Note: This policy is amended to conform to C.R.S. §38-33.3-209.5, effective as of June 3, 2022]

**NOW, THEREFORE, IT IS RESOLVED** that the Association does hereby adopt the following policy governing the collection of Assessments and other charges of the Association:

**1. Statutory Lien.** The Association has a statutory lien on a Parcel for any Assessment levied against the Parcel and other fines and charges allowable under the Act as Assessments imposed against the Member. The recorded Declaration constitutes record notice and perfection of the lien, no further recordation of any claim of lien for Assessments is required for the statutory lien. The amount of the lien includes the amount of any Assessment and all allowed charges from the time they become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations. The Association’s lien has priority over other liens as provided by the Act.

**2. Due Dates.** Installments of the annual Assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the date included in the Assessment Notice. Assessments or other charges not paid in full to the Association within one (1) day of the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association within fifteen (15) days of the due date shall incur late fees and interest as provided below, and voting rights are automatically suspended. In the event notice of acceleration is given to delinquent Members(s), the Members(s) owning the Parcel shall also be charged any costs incurred by the Association in giving notice of such acceleration.

(a) *Transfer of Ownership.* In the event that the ownership of a Parcel is transferred on a day other than the first day of the month, the annual Assessment and any other Assessments, charges and payments due and payable to the Association as of the date of the closing shall be prorated to the date of closing. Unless otherwise allowed by the Association in writing, and if not sooner paid by the seller and/or buyer, all Assessments, charges, and payments due and payable to the Association shall be paid at closing.

**3. Receipt Date.** The Association shall post payments on the day that the payment is received in the Association's office.

**4. Late Charges on Delinquent Installments.** The Association shall impose on a monthly basis a \$5.00 late charge for each Member who fails to timely pay any assessment within fifteen (15) days of the due date. This late charge shall be a "common expense" for each delinquent Member. The Association shall impose interest from the date due at the rate of 8% per annum on the amount owed for each Member who fails to timely pay any assessment within days of the due date.

**5. Personal Obligation for Late Charges.** The late charge shall be the personal obligation of the Member(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.

**6. Return 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 return check fee, not to exceed \$20.00, shall be assessed against a Member in the event any check or other instrument attributable to or payable for the benefit of such Member 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 Member 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 Member(s) of the Parcel 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 a Member's checks are returned unpaid by the bank within any fiscal year, the Association may require that all of the Member'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 a Member. Any returned check shall cause an account to be past due if full payment of the monthly installment of the annual assessment is not timely made within 15 days of the due date.

**7. Service Fees.** In the event the Association incurs any type of service fee, regardless of what it is called, for the handling and processing of delinquent accounts on a per account basis, such fees will be the responsibility of the Member as such fee would not be incurred but for the delinquency of the Member.

**8. Repayment Plan.** Any Member who becomes delinquent in payment of assessments may enter into a repayment plan with the Association, which plan shall be for a minimum term of 18 months or such other longer term as may be approved by the Board of Directors.

(a) *Terms of Repayment Plan:*

(i) *General Terms.* Such repayment plan shall be offered to each Member prior to the Association referring any account to an attorney or collection agency for collection action. Under the repayment plan, the Member may choose the amount to be 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).

(ii) *Confirmation by Member Required.* If the Member does not confirm written acceptance of the repayment plan within thirty (30) days after the Association has provided the Member with a written offer to enter into a repayment plan, the offer shall be deemed to be declined.

(iii) *Default.* The Member shall be deemed to be in default of the repayment plan and the repayment plan with the Association shall be null and void if within thirty (30) days after the Association has provided the Member with a written offer to enter into a repayment plan, the Member either declined the repayment plan; or after accepting the repayment plan, failed to pay at least three (3) of the monthly installments within fifteen (15) days after the monthly installments were due.

(iv) *Referral to Collection.* In the event the Member defaults or otherwise does not comply with the terms and conditions of the repayment plan, including the payment of ongoing assessments of the Association, the Association may, without additional notice, 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.

(v) *Prepayment.* A Member who has entered into a repayment plan may elect to pay the remaining balance owed under the repayment plan at any time during the duration of the repayment plan.

(vi) *Voting Status.* A Member who has entered into a repayment plan in accordance with this Policy and is not delinquent in the payment plan, is eligible to vote in Association matters.

**9. 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 Member. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

**10. Application of Payments.** Once an account is referred to the Association's attorney, all sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. The Association may prohibit the Member from accessing any online payment portal until the account is brought current. All payments received on account of any Member or the Member's property (hereinafter collectively "Member"), shall be applied in the following manner: first to the payment of any Assessments owed, then to any and all legal fees and costs (including attorney fees), then to expenses of enforcement and collection, late charges, returned check charges, lien fees, and other costs owing or incurred with respect to such Member pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution.

### **11. Collection Process.**

(a) *First Notice.* After an installment of an annual assessment or other charges due to the Association becomes more than fifteen (15) days delinquent, the Board of Directors shall send a written notice ("First Notice") of non-payment, amount past due, notice that interest and late fees have accrued and request for immediate payment. This First Notice shall be sent by regular first class mail and by e-mail if the Association has a current e-mail authorization form on file with the Association.

(b) *Second Notice.* After an installment of an annual assessment or other charges due to the Association becomes more than 30 days delinquent, the Board of Directors shall send a second written notice ("Second Notice") of non-payment, amount past due, notice that interest and late fees have accrued, notice of intent to file a lien and request for immediate payment.

(i) *Notice Requirements.* The Association's notice, at a minimum shall include the following:

(1) The total amount due to the Association along with an accounting of how the total amount was determined.

(2) Whether the Member may enter into a payment plan and instructions for contacting the Association to arrange for and enter into a plan.

(3) A name and contact information for an individual the Member may contact to request a copy of the Member's ledger in order to verify the amount of the debt.

(4) A statement indicating that action is required to cure the delinquency and that failure to do so within thirty days may result in the Member's delinquency account being turned over to an attorney, a collection agency, the filing of a lawsuit against the Member, appointment of a receiver, the filing and foreclosure of a lien against the Member's property, or other remedies available under Colorado Law including revoking the Member's right to vote if permitted in the Bylaws or Declaration.

(5) Specify 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 Member that unpaid assessments may lead to foreclosure.

(6) Include a description of the steps the Association must take before the Association may take legal action against the Member, including a description of the Association's covenant violation cure process as laid out in the Association's Covenant and Rule Enforcement Policy.

(7) Include a description of what legal action the Association may take against the Member, including a description of the types of matters that the Association or Member may take to Small Claims Court, including injunctive matters for which the Association seeks an order requiring the Member to comply with the Declaration, Bylaws, Covenants, or other governing documents of the Association.

(ii) *Second Notice Delivery.* This Second Notice will be provided to the Member in the following manners:

- (1) Certified Mail, return receipt requested; and
- (2) Physically posted on the Member's Parcel at the Association; and
- (3) By one of the following manners:
  - (I) First-class mail;
  - (II) Text message to a cellular number that the Association has on file because the Member has provided the cellular number to the Association; or
  - (III) Email to an email address that the Association has on file because the Member has provided the email address to the Association.

(c) *Collection.* After an installment of an annual assessment or other charges due to the Association becomes more than 60 days delinquent, the Board of Directors shall turn the account over to the Association's attorney for collection.

(i) *Approval by Board.* Any collection account referred to an attorney for collections shall first be approved by the Board of Directors via resolution or a vote of the Board recorded in the minutes of the meeting at which the vote was taken, pursuant to the Association's Conduct of Meetings Resolution.

(ii) *Legal Action.* Upon receiving the delinquent account, legal counsel may file a lien and send a letter to the delinquent Member demanding immediate payment for past due assessments or other charges due. Upon further review, legal counsel may file a lawsuit or further collection action. If a judgment or decree is obtained, including without limitation a foreclosure action, such judgment or decree shall include reasonable attorney fees together with the cost of the action and any applicable interest and late fees.

(iii) *Monthly Statements.* In addition to the steps outlined above, even after the Member has been sent to the attorney for collections, on a monthly basis, the Association shall send any Member with an outstanding balance due an itemized list of all assessments, fines, fees, and charges that the Member owes the Association. A ledger going back to the last zero balance can

satisfy this requirement.

(1) This monthly notice shall be sent by first-class mail. The monthly notice shall also be sent by email if the Association has an email address for the Member.

(2) This monthly notice shall be sent in English unless the Member has indicated a preference for notices to be sent in another language.

(3) If the Member has identified a designated contact, this notice shall be sent to both the Member and a copy sent to the designated contact.

(4) This notice may not contain additional legal fees and legal costs that have been incurred by the Association but have not yet been posted to the ledger. As such, the Member is required to communicate with the collection attorney to obtain the most up to date balance.

**12. Acceleration and Deceleration of Assessments.** The Board reserves the right to accelerate and call due the entire unpaid annual Assessment on any delinquent account including such assessments that may become due during the pendency of a payment plan as described above. Such acceleration shall result in the entire unpaid annual Assessment being due to the Association immediately. The Board also reserves the right to decelerate any accelerated Assessment.

**13. Collection Procedures/Time Frames.** The following time frames shall be followed for use in the collection of monthly installments of the annual assessment and other charges:

Due Date (date payment due)	1st day of the month due
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Past Due Date (date payment is late if not received on or before that date)	One day after due date
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First Notice (notice that late charges and interest have accrued from due date). Voting rights are suspended.	Account is delinquent. Any time after 15 days after due date
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Second Notice (notice that late charges and interest have accrued, notice of intent to file lien, required disclosures of the Association and the availability of a payment plan if applicable)	Any time after 30 days after due date
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Legal Action (account turned over to Association's attorney; Lien filed; Demand letter sent to Member)	Any time after 60 days after due date
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The attorney may consult with the Association as necessary to determine if payment has been arranged or what collection procedures are appropriate.

**14. Certificate of Status of Assessment.** The Association shall furnish to a Member or such Member's designee upon the Member or designee's written request to the Association, made via first class postage prepaid, return receipt requested mail, a written statement from the Association, setting forth the amount of unpaid assessments currently levied against such Member's property at no charge

and delivered personally or by certified mail, first class-postage prepaid, return receipt requested. However, if the account has been turned over to the Association's attorney, such request may be handled through the attorney.

(a) *Status Letter*. A status letter provided to a title company or mortgage company in anticipation of a sale of the property or a refinance of the mortgage provides additional information beyond a statement of the total amount due and as such any charges incurred by the Association for providing a status letter shall be charged back to the Member.

**15. Bankruptcies and Foreclosures.** Upon receipt of any notice of a bankruptcy filing by a Member, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any Parcel within the Association, Board of Directors shall notify the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate.

**16. 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 Board of Directors, is authorized to take whatever action is necessary and determined to be in the best interests of the Association, including, but not limited to:

(a) *Money Judgment*. File a suit against the delinquent Member for a money judgment;

(b) *Judicial Foreclosure*. Instituting a judicial foreclosure action of the Association's lien, upon approval by the Association's Board of Directors;

(c) *Bankruptcy*. Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interests; and

(d) *Receiver*. Filing a court action seeking appointment of a receiver.

(e) *Payment Plans*. All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney.

**17. Appointment of a Receiver.** The Association may seek the appointment of a receiver if a Member 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.

**18. Judicial Foreclosure.** The Association may choose to foreclose on its lien in lieu of or in addition to suing a Member 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. The Association shall consider individually each recommendation for a foreclosure. Such foreclosure shall be approved by the Board of Directors via resolution or a vote of the Board recorded in the minutes of the meeting at which the vote was taken.

(a) *Foreclosure.* The Association may only approve a foreclosure action after the delinquency equals or exceeds six months of common expenses Assessments based on a periodic budget adopted by the Association.

(b) *Restrictions.* The Association may not foreclose on a Member's Parcel if the debt securing the lien consists only of one or both of the following:

(i) *Fines.* Fines that the Association has assessed against the Member as a result of covenant violations; and/or

(ii) *Collection Costs.* Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines as a result of covenant violations.

(c) *Limitation.* If a Parcel has been foreclosed on by the Association, the Parcel 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 or entities.

**19. 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.

**20. Communication with Members.** As to any communication sent by the Association or the Management company on behalf the Association, the Association or management company on their behalf, shall maintain a record of any contacts, including information regarding the type of communication used to contact the Member and the date and time that the contact was made.

(a) *Designated Contact.* A Member may identify another person to serve as a designated contact for the Member to be contacted on the Member's behalf. If the Member identifies as designated contact, the Association shall send any collection correspondence and notices to both the Member and their designated contact. However, once a Member is sent to the attorney for collections, all communication will be directly with the Member until or unless the Member provides permission directly to the Association's attorney giving permission for the attorney to discuss with the designated contact.

(b) *Language.* A Member may notify the Association if the Member prefers that correspondence and notices from the Association be made in a language other than English. If a preference is not indicated, the Association shall send the correspondence and notices in English.

(i) *Both Languages.* If the Member has notified the Association of a



preference other than English, any notices or letters sent pursuant to this Resolution shall be sent both in English and in the preferred language.

(ii) *Designated Contact.* If a Member has identified both a designated contact and a preference for a different language, the Association shall send the Member the correspondence or notice in the preferred language and in English and the designated contact the correspondence or notice in English.

(c) *Legal Counsel.* All communication with a delinquent Member 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 Member after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact.

**21. Communication by Members.** Members may communicate with the Association in any manner they choose including email, text, fax, phone, or in writing, when available. However, in doing so, the Member acknowledges that the Association and/or its agents may communicate via the same method unless otherwise advised.

**22. Defenses.** Failure of the Association to comply with any provision in this Resolution 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 Resolution.

**23. Definitions.** Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

**24. 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.

**25. Deviations.** The Board may deviate from the procedures set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances.

**26. Amendment.** This Resolution may be amended from time to time by the Board of Directors.

**PRESIDENT'S CERTIFICATION:** The undersigned, being the President of the Fall Creek Village Homeowners Association, Inc., a Colorado Non-Profit Corporation, certifies that the foregoing Resolution was approved and adopted by the Board, at a duly called and held meeting of the Board on (date) \_\_\_\_\_ and in witness thereof, the undersigned has subscribed his name.

**FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION, INC.,**

By: \_\_\_\_\_  
By: S. Mark Murray  
Its: President

ATTEST  
By: \_\_\_\_\_  
\_\_\_\_\_, Secretary