

**THE FAIRWAY CLUB OWNERS' ASSOCIATION**  
**POLICY FOR COLLECTION OF UNPAID ASSESSMENTS**  
**Effective: April 1, 2025**

**1. Introduction.** The Board of Directors ("Board") of The Fairway Club Owners' Association, a Colorado nonprofit corporation ("Association"), acting pursuant to the powers set forth in the Association's Bylaws, Articles of Incorporation, the Restated Condominium Declaration for The Fairway Club Phases I and II, as amended ("Declaration") (such documents being collectively referred to as the "Association Documents"), and the Colorado Common Interest Ownership Act, as amended ("CCIOA"), has enacted the following Policy effective as of the date set forth above. Unless the context otherwise indicates, capitalized words and terms shall have the meanings set forth in the Association Documents and, if not defined in the Association Documents, then as set forth in CCIOA. This Policy supersedes any previously adopted Policy on the same subject matter.

**2. Policy Purpose.** The purpose of this Policy is to emphasize that collection of unpaid Assessments is an important part of governing the Association and such collection should be done in a uniform manner in accordance with the Association Documents and CCIOA, specifically as CCIOA has been amended by HB 22-1137, HB24-1233, and HB24-1337. It is the intent of this Policy to provide a framework for the collection of past due Assessments in a timely and efficient manner.

**3. Collection of Unpaid Assessments.** To assist with the collection of unpaid Assessments in a timely and efficient manner, the Association shall do the following:

3.1 Due Date/Delinquent Payments. Assessments are due upon the date specified by the Board. Any Assessment not paid within 30 days after its due date is considered past due and delinquent. The Association shall impose interest at any rate up to 8% per annum on past due Assessments from the date of delinquency. Daily late fees are prohibited.

3.2 Returned Check Charge. In addition to any other charges under the Association Documents and this Policy, if an Owner makes payment of Assessments to the Association by a check which is not honored by the bank on which it was written or is returned by such bank for any reason whatsoever, including but not limited to insufficient funds, the Owner shall immediately pay the Association, as part of the Owner's Assessment, a reasonable returned check charge not to exceed \$20.00.

3.3 Notice to Owner/Payment Plan. If any Assessments are 30 days past due, and before the Association turns over a past due account over to a collection agency or an attorney for collection, the Association must contact the Owner, by written notice, regarding the delinquency. The required written notice must be delivered to the delinquent Owner by certified mail, return receipt requested. Additionally, the Association must also contact the Owner by two of the following means:

- telephone call to a telephone number that the Association has on file because the Owner or Designated Contact has provided the number to the Association. If the Association attempts to contact

the Owner or Designated Contact by telephone but is unable to contact the Owner or Designated Contact, the Association shall, if possible, leave a voice message for the Owner or Designated Contact;

- text message to a cellular number that the Association has on file because the Owner or the Designated Contact has provided the cellular number to the Association; or
- email to an email address that the Association has on file because the Owner or the Designated Contact has provided the email address to the Association.

The cost associated with sending the notice of delinquency via certified mail shall be charged to the delinquent Owner in an amount not to exceed the actual cost of the certified mailing.

The Association must keep a written record of all attempts to contact an Owner regarding a delinquency, specifically including the date of each attempt, the time of each attempt, and the method by which Association made each attempt.

The Owner may designate another contact person for the Association to contact regarding any delinquency. Such designation shall be made in writing and sent to the Association. In such instance, the Association shall send the notice of delinquency to both the Owner and the Owner's designated contact person.

The Owner may designate that all notices regarding delinquency are to be in a language other than English. Such designation shall be made in writing and sent to the Association. In such case, the Association must provide the notice to the Owner in the preferred language as designated by the Owner and in English.

The delinquency notice to all Owners must include the following:

- An itemization of the past due balance, listing the past due amount broken down into past due assessments, fines, fees or other charges owed to the Association.
- That unless the Owner acquired the Owner's Unit or Lot through a foreclosure and does not occupy the Unit or Lot, the Owner will have an opportunity to enter into a payment plan that allows the Owner to pay off the past due amount in equal payments over eighteen (18) months, with monthly payments to be at a minimum \$25.00 per month. Under such a payment plan, the Owner will be required to make payment of the past due Assessments and also remain current with payment of the regular Assessments as they come due during the term of the payment plan. If the Owner does not comply with the payment plan, the Association can then pursue legal action against the Owner as set forth in this Policy.
- If the Owner enters into a payment plan, the Owner can pay the full past due amount at any time, without penalty.

- The contact information for the Association's property manager in the event the delinquent Owner wishes to enter into a payment plan or has any other questions about the amount owing to the Association.
- That action is required to cure the Owner's delinquency and if the Owner fails to do so within 30 days following the date of the Association's letter, the Owner's past due account may be turned over to a collection agency or an attorney, a lawsuit may be filed against the Owner, a lien may be filed and foreclosed against the Owner's Unit or Lot if the delinquency is related to non-payment of Assessments, and the Association may pursue any other remedies available under Colorado law including the recovery of attorney fees and costs of collection.
- A description of the steps the Association must take before commencing legal action for collection of any unpaid assessments and a description of what legal action the Association may take to small claims court, including injunctive relief.

3.4 Owner's Failure to Respond or Comply with Repayment Plan. If after 30 days of the delinquency notice being sent to any delinquent Owner the Owner has not responded or has declined the offer of the eighteen (18) month repayment period, the Association may commence collection pursuant to Section 3.7 or Section 3.8 below.

If the Owner enters into a repayment plan of any length, should the owner fail to make any three (3) of the agreed upon monthly payments within fifteen (15) days of their due date or fails to pay three (3) regular assessments within fifteen (15) days of their due date then the Association may commence the collection process pursuant to Section 3.7 below.

3.5 Monthly Notice of Delinquency. The Association shall send monthly notices to all Owners with an outstanding balance. The monthly notices shall be sent via 1<sup>st</sup> class mail and email, if Owner provided the Association in writing with Owner's email address and shall include an itemized listing of the past due amount broken down into past due assessments, fines, fees or other charges owed to the Association. The monthly notice shall be sent to the Owner in English and such other preferred language as designated by the Owner. The Association shall not charge any Owner for an account statement showing the total amount the Owner owes.

3.6 Application of Payments on Delinquent Accounts. All payments received with regard to a delinquent Owner's account shall be applied in the following order:

3.6.1 Current Assessments;

3.6.2 Past due assessments;

3.6.3 Outstanding fines;

3.6.4 Association's attorneys' fees and costs and expenses of enforcement and collection;

3.6.5 Late charges and interest (if any);

3.6.6 Returned check charges; and

3.6.7 Other costs owing under the Association.

3.7 Collection Remedies. Before a delinquent Owner can be sent to a collection agency or to an attorney for collection, the majority of the Association's Board of Directors must vote to take such action with regard to the delinquent Owner in an open Board of Director's meeting and in compliance with the Association's Conduct of Meetings Policy. The Board shall record its vote. The Association's Manager may not commence any collection action without first obtaining the approval of the Association's Board as set forth above. Discussion of the delinquency shall be in executive session pursuant to the Association's Conduct of Meetings Policy.

In the event payment is not received from any delinquent Owner within 30 days after the date of the Association's letter referenced above, the Association may pursue any one or all of the following remedies:

3.7.1 File an Assessment lien against the delinquent Owner's property;

3.7.2 Commence and maintain legal proceedings (lawsuits seeking personal judgments and foreclosure actions) for the recovery of delinquent Assessments, late fees, interest, attorney fees and costs as may be allowed by the Association Documents or CCIOA (foreclosure actions may not be initiated for unpaid fines, interest or late fees alone);

3.7.3 Pursue collection of judgments obtained against Owner;

3.7.4 Take all other lawful action necessary to collect delinquent Assessments in accordance with the Association Documents and Colorado law; and

3.7.5 Suspend the voting rights of the delinquent Owner during the duration of the delinquency.

If the Association fails to follow the procedures set forth above it shall not be construed as any waiver or release of a delinquent Owner's obligation to pay Assessments or the Association's right to collect the Assessments in accordance with this Policy, the Association Documents and CCIOA.

3.8 Collection Reimbursement. For any Owner that fails to pay assessments, or any money owed to the Association, the Association may require, without the necessity of commencing a legal action, reimbursement for the following, in addition to all assessments or owed money:

3.8.1 Actual collection costs of the unpaid assessments or owed money;

3.8.2 Reasonable attorney fees incurred as a result of the failure to pay; except that the Association is not entitled to reimbursement for attorney fees that exceed Five Thousand Dollars (\$5,000.00), adjusted for inflation pursuant to C.R.S. § 38-33.3-123(1)(g), or fifty percent (50%) of the assessments and/or any owed money, whichever is less; and

3.8.3 Other actual costs incurred as a result of the failure to pay assessments and/or owed money.

If the Association fails to follow the procedures set forth above, or the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association, other than the payment of assessments owed to the Association, the association, any Owner, or any class of Owners adversely affected by the failure to comply may seek, without the necessity of commencing a legal action, reimbursement for the following:

- Action collection costs incurred as a result of the failure to comply; and
- Reasonable attorney fees incurred as a result of the failure to comply; except that the Association is not entitled to reimbursement for attorney fees that exceed Five Thousand Dollars (\$5,000.00), adjusted for inflation pursuant to C.R.S. § 38-33.3-123(1)(g), or fifty percent (50%) of the actual costs the Association or the Owner incurred as a result of the failure to comply, whichever is less.

In any legal action to enforce or defend the procedures set forth above, or the Declaration, Bylaws, Articles of Incorporation, or Rules and Regulations of the Association, the Court shall award reasonable attorney fees, actual costs, and actual costs of collection to the prevailing party, except that the Court shall not award attorney fees to the Association in an amount in excess of Five Thousand Dollars (\$5,000.00), adjusted for inflation pursuant to C.R.S. § 38-33.3-123(1)(g), or fifty percent (50%) of the actual cost the Association incurred as a result of the failure to follow the procedures set forth above, or the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association; whichever is less; provided, that the court may award attorney's fees in excess of the lesser of Five Thousand Dollars (\$5,000.00), adjusted for inflation pursuant to C.R.S. § 38-33.3-123(1)(g), or fifty percent (50%) of the actual cost incurred by the Association, based on the Court's discretion, if the court finds that the Owner was financially, physically, and reasonably able to comply with the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association but willfully failed to comply. The factors to be considered by the court in making this determination are as set forth in C.R.S. §§ 38-33.3-123(1)(f) and (g).

**4. Foreclosure of Assessment Lien.** The Association shall not commence a legal action to initiate a judicial foreclosure proceeding against any Owner that is in compliance with an approved repayment plan pursuant to this Policy.

Further, the Association shall not commence a legal action to initiate a judicial foreclosure proceeding based on an Owner's delinquency in paying assessments unless:

4.1 The Association has obtained a personal judgment against the Owner in a civil lawsuit to collect the amounts due or has attempted to bring a civil lawsuit against the Owner but was (a) prevented by the death or incapacity of the Owner, (b) unable to serve the Owner within One Hundred and Eighty (180) days, or (c) the Owner filed a bankruptcy petition or an involuntary bankruptcy petition was filed against the Owner and the amount due to the Association is subject to the bankruptcy action;

4.2 The Association has provided the Owner with a written offer to enter into a repayment plan in compliance with Section 3.3 of this Policy, above; and

4.3 After the Association has provided the Owner with the written offer to enter into a repayment plan, the Owner has either:

4.3.1 Failed to accept the repayment plan within thirty (30) days after the written offer was made; or

4.3.2 After accepting the repayment plan, failed to pay at least three (3) of the monthly installments after the monthly installments were due.

The above applies exclusively to a Unit owned by an individual who occupies the Unit as the Owner's principal residence, unless the Unit is used for workforce housing, does not apply to a Unit owned by an entity other than an individual or a Unit that is not occupied as the Owner's principal residence, unless the unit is used for work force housing; and applies to a Unit used for workforce housing.

In addition to the above, at least thirty (30) days prior to commencing legal action to initiate a judicial foreclosure, the Association shall (a) provide written notice and electronic notice to the Owner, or the Owner's Designated Contact, that the Owner has the right to engage in mediation prior to litigation and (b) provide written notice and electronic notice, which must include the amount of any outstanding assessment and other money owed, to all lien holders identified on the Unit Owner property records of the pending legal action for foreclosure. To initiate mediation, the Owner must respond within thirty (30) days after the date of the written and electronic notice.

To participate in mediation, both the Association and the Owner must select a mutually agreeable mediator knowledgeable about the legal requirements for judicial foreclosure of an association lien and common interest community disputes and must schedule the mediation within thirty (30) days after the date of the written or electronic notice. The Owner's failure to comply with the foregoing does not bar the Association from filing a civil action to foreclose its lien.

If a Unit has been foreclosed pursuant to a lien as set forth above, the following persons shall not purchase the foreclosed Unit:

- A member of the Association's executive board;
- An employee of a community association management company representing the Association;

- An employee of a law firm representing the Association;
- An immediate family member, as defined in C.R.S. § 2-4-401(3.7), of any executive board member, community association management company employee, or law firm employee; or
- A community association management company representing the Association.

The above prohibition applies to any individual or community association management company that was, at any time during the five (5) year period immediately prior to the sale of the foreclosed Unit, an individual or community association management company as described above.

A person that purchases a foreclosed Unit, as set forth above, acquires the Unit subject to any covenants or limitations on the use or sale of the Unit to which the previous Owner was subject.

**5. Enforcement.** Either the Association or an Owner seeking to enforce this Policy, or any rights and responsibilities under the Governing Documents or this Policy related to disputes arising out of assessments, fines or fees owed to the Association and for which the amount does not exceed \$7,500.00, exclusive of interest and costs, may file a claim in Small Claims Court for such enforcement, including injunctive relief.

**6. Violation of Foreclosure Laws.** Should the Association violate this Policy, or any law of the State of Colorado with regard to foreclosure, the affected Owner may, within five (5) years of the violation, file a civil lawsuit in a court of competent jurisdiction to seek damages. The court may award up to \$25,000.00, plus costs and reasonable attorney fees, if the Owner proves the violation by a preponderance of the evidence.

**7. Association's Attorney Fees and Costs.** Any delinquent Owner shall be responsible for attorney fees, subject to the limitations of C.R.S. § 38-33.3-123(1)(c), (f), and (g) and actual costs incurred by the Association in the collection of past due Assessments pursuant to this Policy, the Association Documents and CCIOA. No attorney fees shall be assessed to any delinquent Owner until all notice requirements set forth in this Policy have been complied with. Where litigation is filed to collect past due Assessments, the Court shall determine the reasonableness of all attorney fees and costs.

**8. Foreclosure and Bankruptcy Notices.** If the Association receives any bankruptcy or foreclosure notice regarding an Owner with unpaid Assessments, the Association may seek advice from its attorney regarding the appropriate action to be taken.

**9. Variances.** The Board may from time to time vary from the requirements set forth in this Policy if the Board determines in its sole discretion that such variance is reasonable under the circumstances.

**10. Amendment.** This Policy may be amended from time to time by the Board.

## **CERTIFICATION**

The undersigned, being the duly elected and acting President or Secretary of The Fairway Club Owners' Association, a Colorado nonprofit corporation ("Association") certifies that the foregoing Policy for Collection of Unpaid Assessments was approved by the vote of a majority of the Association's Directors at a meeting of the Association's Board of Directors held on

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The Fairway Club Owners' Association, a Colorado  
nonprofit corporation

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