

**RESOLUTION OF THE HOMEOWNERS ASSOCIATION OF
WELLINGTON SOUTH REGARDING POLICY AND
PROCEDURES FOR COLLECTION OF UNPAID ASSESSMENTS**

RECITALS:

WHEREAS the Association is charged with certain responsibilities regarding the care, maintenance, and service of certain portions of the units and common elements;

WHEREAS the Association must have the financial means to discharge its responsibilities;

WHEREAS the Board of Directors has a responsibility to pursue collection of assessments and other charges from Owners pursuant to the Declaration of Covenants, Conditions and restrictions for Wellington South (“Declaration”), Bylaws of the Association (“Bylaws”), and the Colorado Common Interest Ownership Act C.R.S. § 38-33.3-101, et seq. (“CCIOA”);

WHEREAS Section 209.5 of CCIOA requires that the Association has a policy regarding the collection of unpaid assessments;

WHEREAS HB13-1276 requires various items to be included within that policy; and

WHEREAS, the Board of Directors believes it is in the best interest of the Association to refer delinquent accounts promptly to an attorney for collection so as to minimize the Association’s loss of assessment revenue. The Board of Directors has retained an attorney with experience in representing homeowner associations in collections and other matters;

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following resolution for the collection of assessments and other charges of the Association.

1. **Due Dates.** The Association’s Common Expense Assessment shall be due and payable, in full, on the 10th days of the month. Assessments or other charges not paid to the Association by the 10th day of each month shall be considered past due and delinquent.

2. **Receipt Date.** The Association shall post payments on the day that the payment is received in the Association's bank offices.

3. **Late Charges and Interest on Delinquent Installments.** The Association shall impose on a monthly basis a late charge of \$15.00 per month for each Owner who fails to pay the assessment on the dates monthly installments are due as provided above. This late charge shall be a "common expense assessment" pursuant to the Declaration and CCIOA for each delinquent Owner. The Association shall also impose interest at an annual percentage rate equal to 18% per annum, from the date it becomes due and payable if not paid within ten (10) days after such date.

4. **Personal Obligation for Late Charges.** In addition to being a lien on the unit, the late charge shall be the personal obligation of the Owner(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.

5. **Returned 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 twenty five dollar (\$25.00) fee shall be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner 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 assessment" pursuant to the Declaration and CCIOA for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such returned 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 Owner(s) of the unit 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 an Owner's checks are returned unpaid by the bank within any (fiscal) year, the Association may require that all of the owner's future payments, for a period of one (1) year, be made by certified check or money order. This returned check charge shall be in addition to any late fees or interest incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the monthly installment of the monthly assessment is not timely made within fifteen (15) days of due date.

6. **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 to the Association from a delinquent Owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred.

7. **Application of Payments.** Except as otherwise agreed to in writing by the Owner(s) and the Association, all sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late charges, returned check charges, lien fees, and other costs owing or incurred with respect to such Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution, prior to application of the payment to any special or regular assessments due or to become due with respect to such Owner.

8. **Payment plans.** Subject to the restrictions below, the Association shall offer a payment plan to any delinquent Owner and make a good faith effort to coordinate such a

plan. Such payment plan may be determined at the discretion of the board, but shall be for a term of not less than six months and shall provide that the Owner must remain current with regard to future assessments. No payment plan need be offered if the Owner does not occupy the unit and has acquired the unit as a result of either a default of a security interest encumbering the unit or foreclosure of the Association's lien. The Association is not required to offer a payment plan, or negotiate a plan with, an Owner who has previously entered into a payment plan with the Association. An Owner's failure to comply with the remit payments according to the terms of the payment plan, or to remain current with assessments as they come due during the period of the payment plan, constitutes a failure to comply with the payment plan. The Association may pursue legal action against the Owner if the Owner fails to comply with the payment plan.

9. **Notice of Delinquency.** After an installment of an assessment or other charge owed to the Association becomes thirty (30) days past due, and before the Association turns the delinquent account over to a collection agency or refers it to the Association's attorney for legal action, the Association shall cause a Notice of Delinquency to be sent to the delinquent Owner. The Notice of Delinquency must include:

- i) the amount past due with an accounting of how the total was determined;
- ii) whether the opportunity to enter into a payment plan exists; and instructions for contacting the association to enter into the payment plan
- iii) the name and contact information for the individual the Owner may contact to request a copy of the ledger to verify the amount of the debt; and
- iv) a notice that action is required to cure the delinquency and that failure to do so within thirty (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.

The Notice of Delinquency shall be mailed to the Owner at the unit address unless the Owner has given notice, in writing, of an alternate address. The Association may, but is

not required to, send periodic follow-up notices to the Owner for as long as amounts remain past due on the Owner's account.

10. **Acceleration of Assessment.** The Board reserves the right to accelerate and call due the entire unpaid annual assessment on any delinquent account. Such acceleration shall result in the entire unpaid annual assessment being due to the Association immediately. The Board also reserves the right to decelerate the entire unpaid annual assessment on any delinquent account, in its sole discretion.

12. **Certificate of Status of Assessment.** The Association shall furnish to an Owner or such Owner's designee upon written request, first class postage prepaid, return receipt requested, to the Association's agent a written statement setting forth the amount of unpaid assessments currently levied against such Owner's property for a fifty dollar (\$20) fee. However, if the account has been turned over to the Association's attorney, such request shall be handled through the attorney and subject to the fees and costs billed by the Association's attorney.

13. **Bankruptcies and Foreclosures.** Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any unit within the Association, the manager shall advise the Association's attorney of the same and turn the account over to the Association's attorney.

14. **Use of Certified Mail/Regular Mail.** In the event the Association shall cause a collection or demand letter or notices to be sent to a delinquent Owner by regular mail, the Association may also cause, but **shall not be required to** send, an additional copy of that letter or notice by certified mail.

15. **Referral of Delinquent Accounts to Attorneys.** Upon referral to the Association's attorneys, the attorneys 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 is authorized to take whatever action is necessary, in consultation with the President of the Board of Directors or other authorized representative, believed to be in the best interests of the Association, including but not limited to:

- (a) Filing a suit against the delinquent Owner for a money judgment;
- (b) Instituting a judicial foreclosure action of the Association's lien;
- (c) Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interests;
- (d) File a court action seeking appointment of a receiver.

All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney or as otherwise agreed to by the parties.

Upon referral of any matter to the Association's attorney, the manager, acting on behalf of the Association, shall pay the Association's attorneys their usual and customary charges as well as any costs incurred by the attorney on the Association's behalf, promptly upon receipt of the monthly invoice from the attorney.

16. **Appointment of a Receiver.** The Association may seek the appointment of a receiver if an Owner becomes delinquent in the payment of assessments pursuant to the Declaration and Colorado law. A receiver is a disinterested person appointed by the court that 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; correct any violations of the Declaration, Bylaws, or Rules and Regulations; and prevent the waste and deterioration of the property.

17. **Judicial Foreclosure.** The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner in county court 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 is unable to foreclose a lien against a delinquent owner until the balance due equals or exceeds six months of assessments. The Association's Board of Directors shall vote and formally approve the filing of a foreclosure action on any given account. The Board cannot delegate this responsibility to an attorney, insurer, manager or any other person. The Board shall provide a copy of meeting minutes, indicating such vote and approval, to the Association attorney at the commencement of the foreclosure process. The Association cannot foreclose its lien against a delinquent owner until the balance equals or exceeds six (6) months of assessment fees.

18. **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.

19. **Notification to and Communication with Owners.** The Association shall, upon request, provide all Owners with a copy of this Resolution which shall become effective upon its adoption. All communication with a delinquent Owner shall be handled through the Association's attorney once a matter has been referred to the attorney. Neither the manager nor any member of the Board of Directors shall 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.

20. **Ongoing Evaluation.** Nothing in this Resolution shall require the Association to take specific actions other than to notify the Owners of the adoption of these policies and procedures. Once an Owner's account is turned over to the Association's attorney, all communication regarding the account must be made through the attorney. However, the Association has the option and right to continue to evaluate each delinquency on a case-by-case basis.

21. **Sole Collections Policy.** This policy shall be the sole existing policy of the Association regarding the collection of unpaid assessments. This policy replaces any previously adopted policy which describes the same, or substantially same, subject matter.

22. **Defenses.** Failure of the Association to comply with any provision in this Collection Policy shall not be deemed a defense to payment of assessment fees or other charges, late charges, returned check charges, attorney fees and/or costs as described and imposed by this Collection Policy.

23. **Amendment.** This Collection Policy may be amended from time to time by the Board of Directors.

24. **Survival.** 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 force and effect.

Procedure adopted this ___ day of _____, 20___ by Resolution of the Board of Directors.

The Homeowners Association of Wellington South

by _____,

its _____.