

# Falls Creek Ranch Association, Inc.

## Collection Policy

Updated March 31st, 2015

The following procedures have been adopted by Falls Creek Ranch Association, Inc. (the "Association") in Durango, CO. pursuant to C.R.S. 38-33.3-209.5 and HB 1276, at a regular meeting of the Board of Directors.

**Purpose:** To establish a uniform and systematic procedure for collecting assessments, water bills, and other charges, including fines.

**Collection Philosophy:** All members are obligated by the Falls Creek Ranch Protective Covenants and amendments thereto (the "Covenants") and Bylaws for Falls Creek Ranch Association to pay all assessments, water bills, fines, and any other charges in a timely manner. Failure to do so places an undue burden on other Association members, and could jeopardize the Association's ability to pay its bills. Accordingly, the Association, acting through the Board of Directors, must take steps to ensure timely payment of assessments and other Association fees.

NOW, THEREFORE the Association does hereby adopt the following procedures and policies for the collection of assessments, water bills and other charges, including fines:

- I. Due Dates.
  - a. Annual assessment: The annual assessment, as determined by the Association, shall be due and payable in one full payment or two equal payments, at the election of the owner. The first payment is due August 1<sup>st</sup>. The second payment, if applicable, is due February 1<sup>st</sup>.
  - b. Water billing charges: Water bills are due on the 10<sup>th</sup> of the month.
  - c. Special assessments, and other charges (i.e. equipment rental fees) including fines, may be assessed or made from time to time by the Association in accordance with the Covenants and are due and payable within 30 days after the invoice date unless otherwise specified by the resolution authorizing such special assessment or charge.
  - d. All assessments, water bills, other charges or fines not paid to the Association within the permissible time frame shall be considered past due and delinquent.
- II. Late fees and interest.
  - a. Annual assessment: Pursuant to the Bylaws, section 5.3, interest on overdue assessments shall accrue interest at a rate determined by the Board as of the date when such payment/assessment was due. Interest at the rate of 18% per annum (1.5% per month) is currently charged; however, the Association's Board may, by resolution, adopt a higher interest rate so long as in compliance with Colorado law. The late fee is automatically applied on any assessment not paid within thirty (30) days of the due date. Late fees will be imposed on September 1<sup>st</sup> or March 1<sup>st</sup> as applicable.
  - b. Water billing charges: The Association shall automatically impose a late interest charge at the rate of 18% per annum (1.5% per month) on any water bill not paid within thirty (30) days of the due date with a balance over \$10.00 due.

- c. Special assessments: Pursuant to the Covenants paragraph 29, in authorizing the levy of a special assessment, the notice to the members shall include the penalties and interest that shall be applicable for delinquent payment.
  - d. Other Charges: The Association shall impose interest at a rate determined by the Board as of the date when such payment was due. Interest at the rate of 18% per annum (1.5% per month) is currently charged; however, the Association's Board may, by resolution, adopt a higher interest rate so long as in compliance with Colorado law. The late fee is automatically applied on any Other Charges not paid within thirty (30) days of the due date.
  - e. Fines: Pursuant to *Policy #1: DISPUTE RESOLUTION and ENFORCEMENT of COVENANTS and RULES; SCHEDULE OF FINES POLICY*, interest on overdue fines shall accrue interest at a rate determined by the Board as of the date when such payment was due. Interest at the rate of 18% per annum (1.5% per month) is currently charged; however, the Association's Board may, by resolution, adopt a higher interest rate so long as in compliance with Colorado law. The late fee is automatically applied on any fine not paid within thirty (30) days of the due date.
  - f. All such late fees and interest shall be added to the owner's account ledger according to the above-described schedule and shall be owed like any other Association payment obligation or assessment.
- III. Return Check Charges.
- a. 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. Such amount shall be in addition to any charges made by the bank due to the dishonored check. Notwithstanding this provision, the Association shall be entitled to all additional remedies as provided by applicable law.
  - b. If two or more of an owner's checks are returned unpaid by the bank within any twelve (12) month period, 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.
- IV. Attorney Fees on Delinquent Accounts.
- a. The Association shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collect of assessments, water bills or other charges due the Association from a delinquent owner per paragraph 28 of the Covenants.
- V. Application of Payments Made to the Association.
- a. The Association may apply all payments received on account of any owner in this order:
    - 1. to the payment of any and all legal fees and costs (including attorney fees)
    - 2. to the costs and expenses of enforcement and collection
    - 3. to late charges, interest, returned check charges, lien fees, and other costs owing or incurred with respect to such owner,
    - 4. any remaining amounts shall be applied to the assessments, water bills, other charges or fines due with respect to such owner.
  - b. For purposes of collecting an outstanding judgment, the Association may, but shall not be required, to first apply payments received following entry of a judgment towards:
    - 1. post-judgment attorney's fees and costs

2. Assessments, water bills and/ or other charges and water bills coming due following the entry of the judgment.

VI. Offer a Payment Plan.

- a. Subject to the following requirements and conditions, the Association shall offer a payment plan to any delinquent owner and make a good faith effort to coordinate a payment plan that meets the requirements of this Section VI with the owner:
1. The payment plan must allow the delinquent owner the right to pay off the delinquency in equal installments over a period of at least six (6) months.
  2. The Association is not required to offer a payment plan if the owner does not occupy the Lot and has acquired the Lot as a result of a default of a security interest (i.e., mortgage) or foreclosure of an Association lien.
  3. The Association is not required to offer a payment plan or negotiate such a plan with an owner who has previously entered into a payment plan with the Association.
  4. The owner's failure to remit payment of an agreed-upon installment, or to remain current with assessments, water bills or other charges as they come due during the period of the payment plan, constitutes a failure to comply with the terms of the payment plan.
  5. The Association may pursue legal action against the owner if the owner fails to comply with the terms of the payment plan.

VII. Notice of Delinquency.

- a. After an installment of an assessment, water bill, other charge or fine owed to the Association becomes thirty (30) days past due, and before the Association begins recovery efforts such as legal action or the use of a collection agency, the Association shall cause a Notice of Delinquency to be sent to the owner who is delinquent in payment. The Notice of Delinquency shall specify the following:
1. the total amount due, with an accounting of how the amount was determined;
  2. whether an opportunity to enter into a payment plan exists under the requirements and conditions set forth in Paragraph VI above, and the instructions for contacting the Association to enter into such a payment plan;
  3. the name and contact information for the person the owner may contact to request a copy of the owner's ledger to verify the amount owed;
  4. that action (i.e., payment) is required to cure the delinquency and failure to cure the delinquency within thirty (30) days may result in the 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 and other remedies available under Colorado law.
- b. The Notice of Delinquency shall be mailed to the owner at the official address on file with the FCR Secretary unless the owner has given notice in writing of an alternate address via US certified mail. The Association may, but shall not be required to, send periodic follow-up notices to the owner for as long as amounts remain past due on the owner's account.

VIII. Liens.

- a. If payment in full of any assessment, water bill, other charges or fines is not received by the due date stated in the Notice of Delinquency, the Association may cause a notice of lien to be filed against the property of the delinquent owner. The lien shall include assessments, water bills and / or other charges; fees, charges, late charges, attorney fees, fines and interest owed by the delinquent owner.
- IX. Referral of Delinquent Accounts to Attorneys.
- a. After the due date stated in the Notice of Delinquency has expired, the Association may, but shall not be required to, refer delinquent accounts to its attorneys for collection. Upon referral to the attorneys, the attorneys upon consultation with the Board of Directors, shall take all appropriate action to collect the accounts referred, including filing of a statement of lien, initiating foreclosure or obtaining a judgment in an applicable court of law. All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney unless otherwise determined by the Board of Directors.
- X. Foreclosure of Lien.
- a. Notwithstanding any provision of this policy to the contrary, the Association may only foreclose upon an Association lien if so authorized by the Board of Directors' formal resolution after the balance of the assessments, water bills, or other charges, including fines, secured by the lien, has been delinquent for 6 months or more.
- XI. Referral of Delinquent Accounts to Collection Agencies.
- a. The Association may, but shall not be required to, assign delinquent accounts to one or more collection agencies for collection, subject however, to the same terms and conditions as specified herein, including the payment plan and foreclosure authorization requirements.
- XII. Waivers.
- a. Nothing in this policy shall require the Association to take specific actions other than to notify owners of the adoption of this policy. 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 an owner showing a personal hardship. Such relief granted an 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 except as may be prohibited by Colorado law.
- XIII. Delinquencies Constitute Covenant Violations.
- a. Any delinquency in the payment of assessments, water bills or other charges shall constitute a violation of the Covenants.
  - b. Loss of membership vote: Pursuant to Covenant 28 and By-Law Section 2.2 (t), the Board shall determine if voting privileges are to be suspended when an Owner is found to be delinquent in the payment of any charges as a violation of the Association Covenants.
- XIV. Superseding Effect.

- a. This policy shall replace and supersede any previous policy rules or provisions addressing the collection of past due assessments.

Approved and Adopted by the Board of Directors this 31<sup>st</sup> day of March 2015.

Falls Creek Ranch Association, Inc.