

Daniel's Loft Owner's Association Policy on Collection of Unpaid

Association Assessments

AUTHORITY: Daniel's Loft Owner's Association Declaration, Articles of Incorporation and Bylaws; and Colorado law.

EFFECTIVE DATE: April 30, 2017

In order to comply with the requirements of Colorado Revised Statutes (herein "C.R.S.") 38-33.3-209.5 the Association hereby institutes the following policy governing the collection of unpaid Association assessments.

1.1 Regular assessments are due and payable in advance on the first (1st) day of the month (the "due date"), and if not paid in full to the Association on or before the tenth (10th) day of the month are past due and delinquent. Special assessments are due and payable on the date(s) specified in the special assessment notice, and if not paid in full to the Association on or before the date specified in the special assessment notice (the due date) are past due and delinquent. Regular assessments and special assessments are collectively referred to in this policy as "**Assessments**".

1.2 If an Assessment is not paid on or before the due date, the Association is entitled to impose and will impose a late fee charge on the unit owner in the amount of \$35.00 for each month delinquent.

1.3 In addition, if an Assessment is not paid on or before the due date, the unit owner shall pay interest to the Association on each Assessment from the due date to the date paid to the Association, at the rate of eighteen percent (18%) per annum, provided however that in no event shall interest in excess of the maximum rate allowed by the law of the State of Colorado be charged under this Policy.

1.4 In the event a check given by a unit owner is returned or rejected, the Association will charge the unit owner the Association's direct costs as a result of a returned or rejected check or other instrument, plus the Association will charge a return check charge in the amount of \$35 per returned check.

1.5 After the Assessment is five (5) days delinquent, the Association or the Association Manager will send a **Reminder Notice** to the unit owner (at the email address of the unit unless the unit owner has provided written notice to the Association of a different email address for

the unit owner) that the payment is delinquent and the unit owner must pay the Assessment plus applicable fees, charges, late charges, and interest.

1.6 On or after the date that the **Reminder Notice** has been sent, the Association Manager will send a **Notice of Delinquency (Exhibit "A")** to the unit owner email address described above in Section 1.5, in the form attached or form substantially similar to the attached, before the Association turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action. The information contained in Exhibit "A" is incorporated hereat by this reference as if set forth in full.

1.7 After a **Notice of Delinquency** has been sent, the unit owner must pay the delinquent Assessment to the Association by check or money order or other funds directly deposited into the Association's bank account.

1.8 A unit owner's payment of less than the full amount owed to the Association at any time shall be applied to pay the following (if applicable) in the order listed, from the oldest to the most recent in each category:

- (a) Attorney's fees and legal costs
- (b) Association costs and expenses
- (c) Late charges
- (d) Return check fees and charges
- (e) Interest
- (f) Fines
- (g) Assessments

1.9 The remedies available to the Association to collect on a unit owner's delinquent account pursuant to the governing documents of the Association and Colorado law, are to file: (a) a collection action against the unit owner individually to collect past due Assessments and any associated fees, charges, late fee charges, fines and interest, plus attorney's fees and costs and the unit owner will be responsible for the fees and costs of such action; and (b) to file an Assessment lien against the unit and to file a foreclosure action on the Assessment lien for all past due Assessments and any associated fees, charges, late fee charges, fines and interest plus attorney's fees and costs and the unit owner will be responsible for the fees and costs of such action.

1.10 After or concurrent with sending the **Notice of Delinquency**, the Association will make a good faith effort to coordinate with the delinquent unit owner for a payment plan agreement, if the unit owner has not previously been given a payment plan agreement, as set forth in C.R.S. 38-33.3-316.3, and as set forth below.

(a) A payment plan shall not be available to a unit owner who does not occupy the unit and who acquired the unit as a result of: (i) a foreclosure of the Association's lien or (ii) a default of a security interest encumbering the unit.

(b) A **Payment Plan Agreement** will be sent to the delinquent unit owner in the form of Exhibit "B" or substantially in that form, which shall include a statement of the balance of the Assessments and any associated fees, charges, late fee charges, attorney fees, fines and interest charged against the unit owner's account.

(c) Under the **Payment Plan Agreement**, the unit owner shall be permitted to pay the delinquent amount in equal installments over a period of six (6) months from the date of the **Payment Plan Agreement** plus interest, and the unit owner shall agree to remain current on payment of all future regular and special Assessments as they come due during the six (6) month period of the **Payment Plan Agreement**.

(d) Failure of the unit owner to comply with the terms of the **Payment Plan Agreement** or failure of the unit owner to remain current on payment of all regular and special Assessments as they come due during the six month period of the payment plan, will constitute a failure of the unit owner to comply with the terms of the payment plan and the Association will have the right to immediately go forward with legal action and enforce its rights, as set forth in Sections 1.9 and 1.11 of this policy.

1.11 The Association has the legal right to file an Assessment lien against the unit and to file a foreclosure action on the Assessment lien, as well as bring a personal action against the unit owner individually for all past due amounts plus attorney's fees and costs and the unit owner will be responsible for the fees and costs of such action, if:

(a) The balance of the Assessment charge that is secured by the lien equals or exceeds six (6) months of common expense assessments to the subject unit, based on the periodic budget adopted by the Board of Directors, as required by C.R.S. 38-33.3-316;

(b) There has been an affirmative recorded vote by the Board of Directors to authorize the filing of legal action against the specific unit on an individual basis, as required by C.R.S. 38-33.3-316; and

(c) There is no payment plan in effect as described in Section 1.9 above, or the unit owner has failed to comply with the terms of the payment plan.

Exhibits: "A": Notice of Delinquency, "B": Past Due Assessment Payment Plan Agreement

Exhibit "A" Notice to Owner of Deficiency

Re: Notice to Owner of Delinquency

To : _____ (herein referred to as "Owner")

You are hereby notified pursuant to the provisions of CRS 38-33.3-209.5 that you are past due and indebted to the Daniel's Loft Owners Association in the amount of \$_____. This amount was calculated as follows:

Assessments:	\$_____
Interest Charges:	\$_____
Late Fees:	\$_____
Return Check Fees:	\$_____
Collection Fees:	\$_____
Attorney's Fees:	\$_____

You may have the opportunity to enter into a payment plan pursuant to the provisions of C.R.S. 38-33.3-316.3 if this is your first past due account and your first opportunity to enter into such a plan, and if you did not do not occupy the unit and acquired the unit as a result of a default of a security interest encumbering the unit or foreclosure of the Association's lien on the unit. A blank copy of the form of plan is attached. It is necessary that you contact Diane Heirshberg at the email address of dbheirshberg@gmail.com, telephone number 805-290-2779, or if she is not available, Mark Ruport at mark.ruport@gmail.com, telephone number 719-645-9629, in order to enter into such a plan. You must enter into this payment plan agreement within thirty days of the date of this letter if you desire to enter into a payment plan agreement.

You may contact Laurie Sullivan at the email address of rltsull@comcast.net , telephone number 719-338-8188 to request a copy of your ledger in order to verify the past due amount. Action is required to cure the delinquency. Failure to make payment or enter into a payment plan within 30 days may result in your account being turned over for collection to the Association's attorney and foreclosure of the lien against your property or other remedies available under Colorado law. You will be responsible for all Association attorney's fees and costs.

Payments made by you against the delinquent account shall be applied as follows:

- (a) Attorney's fees and legal costs
- (b) Association costs and expenses
- (c) Late charges
- (d) Return check fees and charges
- (e) Interest
- (f) Fines
- (g) Assessments

The Association has the legal right to file an assessment lien against your unit covering Assessments, late fees, interest and attorney's fees and to bring a foreclosure action of said lien against your unit and/or a personal action against you individually for all past due amounts plus attorney's fees and costs. You will be responsible for the attorney's fees and costs of such an action. From the time your account is turned over to a law firm, you must communicate only with the law firm to pay or settle the account.

You must contact the Association within thirty (30) days to enter into the payment plan if you are eligible for a payment plan and desire to enter into one.

Daniel's Loft Owners Association

BY _____

Its _____

Exhibit "B": Past Due Assessment Payment Plan Agreement

Daniel's Loft Owner's Association (herein the Association")
and _____ (herein the "Owner") agree as follows:

RECITALS:

A. Owner is owner of the unit designated as _____ N. Tejon, Colorado Springs, Colorado.

B. Owner is indebted to Association in the amount of \$ _____ as of the effective date of this agreement which is _____.

C. The parties wish to enter into this agreement to comply with the provision of CRS 38-33.3-209.5 and CRS 38-33.3-316.3.

NOW THEREFORE, the parties agree as follows:

1. Owner shall pay the amount of \$ _____ set forth in Recital B above in six (6) equal monthly installments of \$ _____ each month, on the 1st day of each month commencing on _____, to be paid on each of _____, _____, _____, _____, _____, and _____, until paid in full.
2. Interest shall continue to accrue at the rate of 18 % per annum.
3. During the term of this agreement, Owner shall pay all regular and special assessments on time. If Owner fails to pay the amounts set forth in paragraph 1 above on the agreed upon date, or fails to pay any regular or special assessment as and when due during the term of this agreement, that shall constitute a failure by Owner to comply with the terms of this agreement, and shall allow the Association to pursue any and all legal actions against a unit owner for failure to comply with the terms of this agreement.
4. The agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
5. The parties agree that any action under or interpreting this agreement shall be solely in Colorado Springs, Colorado, and that such action shall apply the laws of the State of Colorado.
6. If any court of competent jurisdiction strikes down one of the clauses contained herein, all other portions of this agreement shall remain in full force and effect.

7. This is the entire agreement of the parties and shall not be modified except by a written instrument signed by the parties thereto.

8. In any action, litigation, or dispute arising under, interpreting or in any way relating to rights created by this agreement, the prevailing party shall recover its attorney fees and costs. Prevailing party shall be the party in whose favor the net final judgment or resolution of the controversy is entered.

9. This instrument may be executed in one or more counterparts, all of which taken together shall constitute the same agreement.

10. Facsimile signature of this instrument will be accepted as original signatures.

11. The parties executing this agreement on behalf of a party represent and warrant that they are authorized to execute the agreement on behalf of such party.

ASSOCIATION

OWNER

Daniel's Loft Owner's Association

By _____

Its _____