

# CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.

## COLLECTION POLICY

**Adopted December 10, 2014**

The following procedures have been adopted by the Crested Butte South Property Owners Association, Inc. ("Association") pursuant to C.R.S. 38-33.3-209.5, at a regular meeting of the Board of Directors.

**Purpose:** 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.

**Collection Philosophy:** All members are obligated by the Crested Butte South Property Owners Association, Inc. Covenants and Restrictions ("Covenants") to pay all dues and assessments in a timely manner. Failure to do so jeopardizes the Association's ability to pay its bills. Failure of members to pay assessments in a timely manner is also unfair to its other members who do. Accordingly, the Association, acting through the Board of Directors must take steps to ensure timely payment of assessments.

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

1. Due Dates. The annual assessment as determined by the Association shall be due and payable on the first day of January of each year, and assessments not paid to the Association before the first day of March in the year in which such assessments are due shall be considered past due and delinquent. Upon the Association's receipt and review of a written request from the Owner, the entire amount due may be transferred to a Payment Plan as set forth in Section 9 of this Policy.

2. Late Charges and Interest Charges. The Association shall be entitled to impose a statement processing late charge of five dollars (\$5.00) on each past due and delinquent property record each month. The Association may also impose interest on the amount owed at a rate of eight percent (8%) per annum from March 1 in the year in which such assessments are due, until paid. All late charges and interest charges shall be due and payable immediately, upon notice, in the manner provided for payment of assessments. The monthly statement processing late charge applies, though interest charges do not apply, to property records that have entered into a payment plan agreement.

3. Convenience Fees. The Association shall be entitled to impose a convenience fee for Owners choosing to utilize online payment options.

4. Return Check Charges. The Association shall be entitled to impose a return check fee, not to exceed fifty dollars (\$50.00), 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. All return check fees shall be due and payable immediately, without notice, in the manner provided for payment of assessments. Notwithstanding this provision, the Association shall be entitled to all additional remedies as may be provided by applicable law. If two or more of an Owner's checks are returned unpaid by the bank within any twelve month period, the Association may require that all of the Owner's future payments, for a period of one year, be made by certified check or money order.

5. Attorney Fees and Costs on Delinquent Property Records. As an additional expense permitted (collectible as an Assessment) under the Colorado Common Interest Ownership Act (the "Act"), 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 Owner when an attorney is retained regarding that Owner and the Owner's Property without commencing a lawsuit. The reasonable attorney's fees incurred by the Association shall be due and payable immediately when incurred, upon demand given to such delinquent Owner. In the event a legal action is commenced for the collection of Assessments or other charges due the Association from a delinquent Owner, the Court shall award the Association its reasonable attorney's fees and costs.

6. Application for Payments Made to the Association. Regardless of inscriptions or notations on the front of the check, the Association reserves the right to apply all payments received on account of any Owner first to payment of any and all legal fees and costs (including attorney fees) incurred for collection of assessments or for Owner's failure to comply with provisions of the Association's Governing Documents, then to costs and expenses of enforcement and collection, late charges, interest, returned check charges, lien fees, and other costs owing or incurred with respect to such Owner, and any remaining amounts shall be applied to the assessments due with respect to such Owner.

7. Delinquency Notice.

(a) After an installment of the common assessment or other charge owed to the Association becomes past due and delinquent, and whose property record is not currently with the Association's attorney or a collection agency for collection, the Association shall cause a notice of delinquency to be sent ("First Delinquency Notice") to the Owner who is delinquent in payment specifying:

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

ii. Whether the Owner may enter into a payment plan and instructions for contacting the Association to arrange for and enter into a payment plan, if applicable.

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

iv. A statement indicating that action is required to cure the delinquency and that failure to do so within thirty days may result in the Owner's property record being turned over to an attorney, a collection agency, the filing of a lawsuit against the Owner, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado law including revoking the Owner's right to vote.

- (b) If payment in full is not received within 60 days after the first notice of delinquency, the Association may, but shall not be required to, send via certified or registered mail, return receipt requested, a notice of default to the Owner.

8. Liens and Lien Fees. After 60 days, and within 90 days, after a property record becomes past due and delinquent from an Owner's failure to pay any assessment or other charge, the Association shall cause a second notice of delinquency to be sent ("Second Delinquency Notice") to the Owner that includes a notice of the intent to place a lien against the property of the delinquent Owner. The Owner shall have 15 days from the date of the Notice to cure the delinquency, thus preventing the lien from being filed. If the lien is filed, the Association shall be entitled to impose a lien processing fee, not to exceed seventy-five dollars (\$75.00), for each lien filed. The lien shall include fees, charges, late charges, attorney fees, fines and interest owed by the delinquent Owner.

9. Collection Process. The Association will make a good-faith effort to coordinate with an Owner delinquent in payments and set up a payment plan that meets the requirements of this Policy prior to the Association referring any property record to an attorney or collection agency for collection action, except that the Association is not required to enter into a payment plan if:

(a) If the Owner does not occupy the property and has acquired the property as a result of a default of a security interest encumbering the property or foreclosure of the Association's lien; or

(b) The Owner has previously entered into a payment plan under this Policy.

A payment plan negotiated between the Association or a holder or assignee of the Association's debt and the Owner must permit the Owner to pay the deficiency in equal installments over a period of at least six months. If the Owner fails to comply with the terms of the payment plan, this Policy does not prohibit the Association or holder or assignee of the Association's debt from pursuing legal action against the Owner. An Owner's failure to remit payment of an agreed-upon installment or failure to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of the payment plan.

10. Acceleration and Deceleration of Assessments. The Board of Directors reserves the right to accelerate and call due the entire unpaid annual assessment on any delinquent property record including such assessments that may become due during the pendency of a payment plan as described above.

11. Collection Time Frames. The timeframe for collection of annual assessments and other charges are as follows:

Due Date (date payment is due)	January 1st
Past Due Date (date payment is late/past due and delinquent if not received before this date)	March 1st
First Notice (notice that late charges and interest have accrued, required disclosures of the Association and the availability of a payment plan, if applicable)	Any time on or after March 1st
Second Notice (notice that late charges and interest have accrued, notice of intent to file lien)	Any time after April 30 <sup>th</sup> and before May 31 <sup>st</sup>

12. Foreclosure Procedure. The Association or a holder or assignee of the Association's lien may only foreclose the lien if (i) the balance of the assessments and charges secured by its lien equals or exceeds six months of common expense assessments based on the periodic budget adopted by the Association and (ii) the Board of Directors has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific Owner on an individual basis. A form of a Board of Director's resolution authorizing the foreclosure is attached to this Policy.

13. Communication with Owners. If the Association sends a collection or demand letter or notices to a delinquent Owner by regular mail, the Association may also, but shall not be required to send, an additional copy of that letter or notice by certified mail. The Association may send notices by electronic mail to an email address provided by the Owner to the Association or its manager. If an Owner communicates via electronic mail, text, fax, phone or any other method, the Owner authorizes the Association and its agents to communicate via the same method in the future.

All communications between a delinquent Owner and the Association must 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 may discuss the collection of the property record directly with an Owner after it has been turned over to the Association's attorney, unless the attorney is present.

14. Referral of Delinquent Property Records to Attorneys or Collection Agencies. The Association may, but shall not be required to, refer delinquent property records to its attorney or collection agency for collection after the First Delinquency Notice has been sent. Upon referral to the Association's attorney or collection agency, the attorney or collection agency shall take all appropriate action to collect the property records referred. The attorney or collection agency, in consultation with the Association or its manager, is authorized to take whatever action is necessary to collect, including, but not limited to:

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

15. Suspension of Voting. The Association may elect to suspend the voting rights of any Owner whose account is past due at the time of such voting.

16. Defenses. Failure of the Association to comply with any provision in this Policy is not a defense to the payment of assessments or other charges, late charges, return check charges or attorney's fees as described and imposed by this Policy.

17. Definitions. Unless otherwise defined in this Policy, initially capitalized or terms used in this Policy have the meanings set forth in the Covenants and Restrictions.

18. Supplement to Law. The provisions of this Policy are in addition to and in supplement of the terms and provisions of the Covenants and Restrictions and the laws of the State of Colorado.

19. Amendment. This Policy may be amended from time to time by the Board of Directors.

20. Waivers. Nothing in this Policy shall require the Association to take specific actions other than to notify homeowners of the adoption of these policies and procedures. 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.

21. Delinquencies Constitute Covenant Violations. Any delinquency in the payment of assessments shall constitute a violation of the covenants contained in the Covenants, and following notice and an opportunity to be heard, the Association shall be entitled to impose sanctions on the delinquent Owner consistent with the Association's Notice and Hearing and Enforcement Policy and Procedures.

Crested Butte South Property Owners Association, Inc.

By:

Kevin Van Horn – Signature on file  
President

Attest

Mark Trautman – Signature on File  
Secretary

This policy regarding inspection and copying of Association records was adopted by the Board of Directors at a regular meeting held on the 10th day of December, 2014, and is effective the 11th day of December, 2014, and is attested to by the Secretary of the Crested Butte South Property Owners Association, Inc.

**RESOLUTION OF  
Crested Butte South Property Owners Association, Inc.  
A Colorado Non-Profit Corporation**

WHEREAS, the Owner of Lot\_\_\_\_, Block\_\_\_\_ is currently delinquent in payment of assessments to the Crested Butte South Property Owners Association, Inc. (the "Association") in the amount of \$\_\_\_\_\_, which amount includes late fees, penalties, interest and attorney fees; and

WHEREAS, the Association, on \_\_\_\_\_ notified the Owner of the delinquent assessments and offered the Owner a payment plan of at least six months for the repayment of the delinquent assessments; and

WHEREAS, the Owner on \_\_\_\_\_ defaulted in the terms and conditions of the payment plan, or conversely failed to enter into a payment plan with the Association; and

WHEREAS, the current delinquent amount is equal to or exceeds six months of common expenses assessments allocated to the Owner's property pursuant to the Association's annual budget.

NOW, THEREFORE, BE IT RESOLVED, by a vote of \_\_\_\_\_FOR and \_\_\_\_\_ AGAINST, the Board of Directors, pursuant to the Association's Collection Policy and in accordance with the Colorado Common Interest Ownership Act, approves the commencement of a foreclosure action on Lot \_\_\_\_\_, Block\_\_\_\_\_, to be commenced as soon as practical.

IN WITNESS, the undersigned certifies that this Resolution was adopted by the Board of Directors of the Association on \_\_\_\_\_.

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.  
A Colorado Non-Profit Corporation

By: \_\_\_\_\_  
Name: Title: President