

**RIVENDELL UNIT 1 NEIGHBORHOOD ASSOCIATION, INC.
COLLECTIONS PROCEDURE
RESOLUTION**

Resolution 02/25/2021

WHEREAS, Rivendell Unit 1 Neighborhood Association, Inc., a Florida Not-For-Profit Corporation ("Association") is the entity organized and authorized to administer and enforce the Declaration of Restrictions of the subdivision Rivendell Unit 1 Neighborhood;

WHEREAS, pursuant to Article VI of the Bylaws of the Association, the Association's Board of Directors ("Board of Directors" or "Board") shall have all powers necessary to manage the affairs of the Association and to discharge its rights, duties and responsibilities; and

WHEREAS, Article IV of the Articles of Incorporation provides that the Association shall have all of the powers and duties provided in the governing documents and those powers and duties granted by the laws of the state of Florida to not-for-profit corporations under Chapter 617, Florida Statutes; and

WHEREAS, to efficiently and effectively perform its contractual duties and its statutory functions, it is imperative that Lot Owners timely remit payment of all assessments and special assessments to the Association; and

WHEREAS, Article 10 of the Association's Declaration provides that the common expenses of the Association shall be payable by quarterly and special assessments levied by the Board against the lots in the subdivision; and

WHEREAS, Article 10 of the Association's Declaration provides the Association's Board of Directors with the power to approve annual budgets of anticipated income and common expenses for each fiscal year and to thereupon levy an annual assessment against each lot, payable quarterly; and

WHEREAS, Article 10 of the Association's Declaration provides that any assessment, annual or special, which is not paid when due shall be subject to a late charge in accordance with the "Late Charge on Delinquent Assessment Resolution" and shall bear interest from the due date, until paid, at a rate of 18% per annum; and

WHEREAS, Section 720.3085(3)(a), Florida Statutes, provides the Association with the statutory construct for the collection of delinquent assessments and further provides the Association with the procedures for lien and foreclosing on properties for delinquent assessments; and

WHEREAS, the Association's Board of Directors desires to abide by and comply with Florida Statutes regarding delinquent assessments; and

WHEREAS, the Association's Board of Directors desires to set up a uniform set of procedures for the process of handling delinquent assessments to ensure that the delinquent assessments are collected quickly and in accordance with the requirements of the Association's governing documents and Florida law; and

NOW THEREFORE, the Association's Board of Directors hereby approves and adopts the following Delinquent Assessment Collection Policy ("Policy") and hereby directs its managers, attorneys, agents, representatives and employees to comply with the following procedures to collect delinquent assessments and special assessments:

1. **Due Date and Grace Period.** The annual assessment shall be due and payable in four (4) equal quarterly installments, due and payable in full on the first day of each quarter. Owners shall be provided a grace period

of ten (10) calendar days to pay the assessment to the Association. Assessments and other charges not paid to the Association on or before the 10th day of each month shall be considered past due and delinquent. Special assessments shall be due and payable on the date(s) and in the amount(s) established by the special assessment resolution adopted by the Board of Directors.

2. **30-day Delinquency Notice.** On or about thirty (30) days after the date the assessment is first due, the Association through our designated agent, will mail or transmit a first delinquency notice to each Lot Owner whose assessment payment has not been timely received by the Association. The first notice will be transmitted to the Lot Owner's official address of record with the Association and/or emailed to the Owner if the Owner has previously consented to receiving emailed notices from the Association.

A. **Late Fee.** Once a payment is past due and delinquent, the Association shall automatically impose an administrative late fee, in addition to the interest, in the amount as detailed on the Late Charge on Delinquent Assessment Resolution (currently, the greater of \$25 or 5% of the delinquent assessment or installment).

B. **18% Interest.** Once a payment is past due and delinquent, simple interest shall accrue at 18% per annum on all outstanding assessments on a per diem basis until paid in full.

C. **Application of Payments.** Pursuant to the applicable provisions of the Homeowners' Association Act, any partial payment received by the Association or its agents will be applied in the following order: (1) accrued interest, (2) late fees, if any (3) costs, (4) attorney's fees and then to the (5) delinquent assessment, as authorized and required by Section 720.3085, Florida Statutes.

D. **No Restrictive Endorsements.** Restrictive endorsements appearing on an Owner's check or documents accompanying a partial payment will be disregarded.

3. **60-day Delinquency Notice.** On or about sixty (60) days after the date the assessment is first due, the Association, through our agent, will mail a second delinquency notice to each Lot Owner whose assessment payment has not been timely received by the Association. The second notice will advise the Owner that if payment in full is not received within ninety (90) days after the date the assessment is first due, the matter will be turned over to the Association's attorney without further notice and all costs and attorney's fees incurred incident to the collection of the delinquent assessment will be charged to the Lot Owner in accordance with the applicable provisions of the Declaration and the Homeowners' Association Act. The second notice will be transmitted to the Lot Owner's official address of record with the Association and/or emailed to the Owner if the Owner has previously consented to receiving emailed notices from the Association.

4. **90-day File Transfers to Attorney for Legal Collection Efforts.** On or about ninety (90) days after the date the assessment is first due, the Association may automatically and without further notice to the Lot Owner, our agent shall report the account to the Association's Board of Directors and the Board shall refer the account to the Association's attorney for legal collection efforts. Once an account is referred to the attorney for legal action, all payments, correspondence and other communications concerning collection of the delinquent account must be referred to the attorney. Further, all statements and/or ledgers provided to the owner or to other authorized entities shall contain the following disclaimer:

"This account is delinquent and has been turned over to an attorney's office for collection, additional amounts have accrued on the account that are not included in this statement. A full payoff amount must be obtained from the attorney's office in order to bring the account current."

A. **45-day Notice of Intent to Lien Letter.** Upon receipt and review of the file, the Association's attorney will then promptly send the Lot Owner formal notice of the Association's intent to record a claim of lien against the Lot. The attorney will include all unpaid assessments, late fees, accrued interest, costs and attorney's fees in attorney's letter. If the Owner fails or refuses to pay the entire amount due as demanded by the Association's attorney within the time period provided, the attorney will record a claim of lien against the Lot.

B. **45-day Notice of Intent to Foreclose Letter.** After the expiration of the initial forty-five (45) days of Paragraph 4.A., the Association's attorney will then send the Lot Owner a second letter advising the Owner that a claim of lien has been filed against the Lot and notice that the Association intends to foreclose on the lien and collect the unpaid amount due. The attorney will include the total amount due to the Association, including unpaid assessments, late fees, accrued interest, costs and attorney's fees.

C. **Foreclosure on Lien and Personal Money Judgment.** If the Lot Owner does not pay all amounts due as directed on the Notice of Intent to Foreclose letter, the attorney shall forthwith prepare and file a lawsuit seeking to foreclose the lien on behalf of the Association and/or a personal money judgment against the Owner, unless the Association decides after consulting with its attorney that the filing of such a lawsuit is not in the Association's best interests. The purpose of the foreclosure lawsuit is to sell the Lot to the highest bidder at a judicial foreclosure sale.

D. **Satisfaction of Lien.** Upon full payment of all amounts due to the Association, the Association's attorney shall promptly prepare and the Association shall execute and record a satisfaction of claim of lien in the public records and/or dismiss the foreclosure lawsuit.

5. **Suspension of Voting Rights and Common Area and/or Facilities Use Rights; Right to Serve on the Board.**

A. **Suspend Voting Rights.** The Association, at a properly noticed Board meeting, will suspend the voting rights of a Lot Owner due to the nonpayment of any fee, fine, or other monetary obligation due to the Association which is more than \$1,000 and more than 90 days delinquent. Proof of such obligation will be provided to the Lot Owner 30 days before such suspension takes effect. The suspension ends upon full payment of all obligations currently due or overdue to the Association.

B. **Suspend Common Area Use Rights.** If a Lot Owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the Association, the Association will suspend, at a properly noticed Board meeting, the right of the Lot Owner and/or the Lot's occupant, licensee, or invitee to use common areas, common facilities, or any other Association property until the fee, fine, or other monetary obligation is paid in full. Upon approval, the Association will notify the Lot Owner and, if applicable, the Lot's occupant, licensee, or invitee by mail or hand delivery.

C. **Director Disqualification.** Any Owner who is delinquent in the payment of any fee, fine, or special or regular assessment is not eligible to be elected or appointed to the Board of Directors or to continue to serve on the Board of Directors.

6. **Seize Rent and/or Disapproval of Tenants.** If the residence is occupied by a tenant and the Owner is delinquent in paying any monetary obligation to the Association, the Association may demand that the tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Lot have been paid in full and the Association releases the tenant or until the tenant discontinues tenancy in the Lot. If the tenant fails or refuses to do so, the Association will promptly institute eviction proceedings against the tenant. If an Owner is delinquent in the payment of an assessment at the

time the Association's approval of a lease is sought, the Association may disapprove any proposed tenant, as more fully provided in Section 720.3085(8), Florida Statutes.

7. **Waiver or Abandonment.** The liability for assessments may not be avoided by waiver of the use or enjoyment of any common areas or facilities or by abandonment of the Lot for which assessments are made.

8. **Insufficient Funds Check.** In the event that any payment by check made by an Owner is not honored by the Owner's bank, the Association will charge the Owner the maximum fee allowed by Florida Statutes. The amount of such fee will be added to any other amounts due to the Association.

9. **Settlement and Deviation.** Based on good and sufficient cause presented by the Lot Owner or the Owner's representative, the Association's Board of Directors may elect to negotiate and settle any disputed collection matter on payment terms and with such written agreements as deemed reasonable and acceptable to the Association; however, the Association shall not waive assessments. The Association may also deviate from the procedures contained in Paragraphs 1 through 8 of the Policy as it determines to be appropriate and necessary based on the unique facts and circumstances of each collection matter.

10. **Bankruptcy of Lot Owner.** Upon learning that a Lot Owner has filed for or is in bankruptcy, the Association shall immediately stop all collection activities and efforts against the Lot Owner and/or the Owner's assets (for example, the Lot). The Association shall also immediately notify its manager, agents, representatives, employees and attorneys of the Owner's bankruptcy and advise them to stop all collection activities and efforts.

11. **Florida Consumer Collection Practices Act ("FCCPA") §559.72.** When collecting consumer debts, the Association and its agents shall act in strict accordance with Section 559.72, Florida Statutes. The Association hereby directs its agents, representatives and attorneys to review and strictly comply with the requirements of Section 559.72, Florida Statutes when attempting to collect consumer debts on behalf of the Association.

In collecting consumer debts, no person shall:

(1) *Simulate in any manner a law enforcement officer or a representative of any governmental agency.*

(2) *Use or threaten force or violence.*

(3) *Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).*

(4) *Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless the debtor gives her or his permission in writing to contact her or his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained.*

(5) *Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.*

- (6) *Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within thirty (30) days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding ninety (90) days.*
- (7) *Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.*
- (8) *Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.*
- (9) *Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.*
- (10) *Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not.*
- (11) *Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.*
- (12) *Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.*
- (13) *Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.*
- (14) *Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.*
- (15) *Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.*
- (16) *Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe."*
- (17) *Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.*
- (a) *The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.*
- (b) *If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone*

of the debtor's last known place of residence, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

(19) Cause a debtor to be charged for communications by concealing the true purpose of the communication, including collect telephone calls and telegram fees.

IN WITNESS WHEREOF the undersigned hereby certifies that the Board of Directors of **RIVENDELL UNIT 1 NEIGHBORHOOD ASSOCIATION, INC.** duly-adopted the above Delinquent Assessment Collection Policy on this 25 day of February, 2021, at a duly-noticed meeting of the Board of Directors and shall be effective on an even date herewith.

RIVENDELL UNIT 1 NEIGHBORHOOD ASSOCIATION, INC.

Sign: Marilee Casale

Print: Marilee Casale President

ATTEST: Katherine Webber

Print: Katherine Webber Secretary

(Corporate Seal)