

# Midland Center Lot 2 Condominium Association, Inc.

## Collections Policy

Effective October 10<sup>th</sup>, 2022

The following Policy has been adopted by the Midland Center Lot 2 Condominium Association, Inc., a Colorado nonprofit corporation (the “Association”) pursuant to C.R.S. 38-33.3-209.5, at a regular meeting of the Board of Directors (the “Board”) for the benefit of the Association and its owners and members (the “Owner(s)”).

Purpose: To adopt policies and procedures to address the collection of past due assessments, fines, fees, and any other amounts owed to the Association by Owners.

**NOW, THEREFORE, IT IS RESOLVED** that the Association does hereby adopt the following Policy to govern the collection of assessments, fines, fees, and other amounts owed to the Association by Owners:

1. Prompt Payment: Prompt payment of assessments, fines, and fees by all Owners is critical to the financial health of the Association. It is in the best interest of the Association to adopt these policies and procedures, and, in accordance herewith, refer delinquent accounts promptly to its attorney for collection so as to minimize the Association’s loss of revenue.

2. Owner Contact Information: To facilitate collection efforts of the Association, each Owner must provide the Association, in writing, with the following information (collectively, “Owner Contact Information”):

- a. The Owner’s preferred mailing address;
- b. The Owner’s preferred email address;
- c. The Owner’s preferred cell phone number;
- d. The Owner’s preferred language for notices and other correspondence from the Association; and
- e. If desired, a designated contact person to be contacted on the Owner’s behalf.

3. Association Records: The Association shall maintain records of the Owner Contact Information provided by an Owner, as well as a record of all contacts between the Association and the Owner in regard to an Owner’s delinquent account, including the type of communication, the date of the communication, and the time of the communication.

4. Monthly Billing and Due Dates: The monthly installments of the annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the first (1<sup>st</sup>) day of the first day of each month. Assessments, fines, fees, or other charges not paid in full to the Association within ten (10) days of the due date shall be considered past due and delinquent, and the remaining balance of the annual assessment may be accelerated.

5. Collection Process: Upon delinquency, the Association shall proceed as follows:

a. *Notice of Delinquency*: After a monthly installment of the annual assessment, fines fees or other amounts due to the Association becomes delinquent, the Association shall provide a notice of delinquency (“Notice of Delinquency”) to the Owner to be (1) sent by certified mail, return receipt requested; (2) physically posted at the Owner’s address; and (3) either sent by first-class mail, text message to the Owner’s cell phone number of record, or emailed to the Owner’s email address of record. The Notice of Delinquency must be made by the Association, or any community association manager or property management company designated by the Association. The notice must be sent in English, and the language that the Owner has previously indicated a preference for correspondence and notices. The notice must include:

- i) A statement specifying whether the delinquency concerns unpaid assessments, unpaid fines, fees, charges, or a combination of the foregoing and, if the notice concerns unpaid assessments, the notice must notify the Owner unpaid assessments may lead to foreclosure;
- ii) The total amount due to the Association along with an accounting of how the total amount was determined;
- iii) Advise the Owner whether he/she/it is qualified to enter into a payment plan, the details of the payment plan outlined in Section 10 of this Policy, and provide instructions for contacting the Association to enter into the payment plan;
- iv) The 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 owed to the Association;
- v) A statement indicating 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 an attorney, a collection agency, the filing of a lawsuit against the Owner, the filing and foreclosure of a lien against the Owner’s property (if the unpaid amounts include assessments) or other remedies available under Colorado law, including revoking the owners right to vote, right to use common amenities, and the termination of services;
- vi) Notice of the late fees and interest that may accrue;
- vii) A description of the steps the Association will take before legal action may be taken against the Owner, including, for unpaid fines, any cure processes that applies under the Association’s Enforcement Policy; and
- viii) A description of what legal action the Association may take against the Owner, including the types of matters that may be taken to small claims court, including injunctive matters for which the

Association seeks an order requiring the unit Owner to comply with the Association's governing documents.

b. *Filing of Lien:* If (a) thirty (30) days has elapsed since the Association delivered the initial Notice of Delinquency to an Owner in compliance with Section 5(a); (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner's account remains delinquent, the Association may file a lien on the Owner's Lot or Unit. The Association shall provide an Owner with notice within a reasonable time after lien has been filed.

c. *Referral to Collection Agency or Attorney:* If (a) thirty (30) days has elapsed since the Association delivered the initial Notice of Delinquency to an Owner in compliance with Section 5(a); (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner's account remains delinquent, the Board of Directors may refer the Owner's delinquent account to an attorney and/or collection agency. In addition, if an Owner has defaulted on an agreed upon payment plan, the Association may refer the matter to an attorney and/or collection agency. However, the Association may only refer a delinquent account or payment plan in default to an attorney and/or collection agency if a majority of the Board votes to refer the matter in a recorded vote at an executive or open meeting. Upon referral to the Association's attorney and/or collection agency, the attorney and/or collection agency shall consult with the Association to determine what collection procedures are appropriate. After an account has been referred to an attorney and/or collection agency, the account shall remain with the attorney and/or collection agency until the account is settled, has a zero balance, or is written off.

6. Schedule of Notices: The Association shall use the following table for delinquent accounts:

Due Date for Assessments (date payment is due)	First day of each month
Due Date for Fines, Fees, and other Charges (date payment is due)	30 days after receipt of valid notice from the Association
Past Due Date (date payment is late if not received on or before that date)	10 days after the Due Date
First Notice (Notice of Delinquency)	Any time after the Due Date
File Lien	More than 30 days after Notice of Delinquency is delivered
Delinquent account turned over to the Association's attorney.	More than 30 days after Notice of Delinquency is delivered

7. Monthly Notice For Delinquent Accounts and Statement of Account. On a monthly basis, the Association shall send, by first-class mail and email to any Owner with delinquent account, an itemized list of all assessments, fines, fees, and other charges due to the

Association. At any time, an Owner may request a statement of account (*i.e.*, a ledger) detailing any amounts the Owner owes the Association. The Association shall not assess a fee or other charge for providing a statement of account to an Owner.

8. Late Fees: The Association shall impose, on a monthly basis, a twenty-five dollars (\$25.00) late fee for any assessment, fines, fees, or other amounts more than ten (10) days past the Due Date. The late charge shall be a “common expense” for each delinquent Owner. Additionally, an Owner’s assessment, fines, or fees balance held by the Association is subject to an eight percent (8%) per annum interest fee on the amount owed for each Owner who fails to timely pay the balance. The late fees shall be the personal obligation of the Owner(s) for which such assessment or installment is unpaid. All late charges shall be due and payable immediately in the manner provided in the Declaration (and as set forth herein) for payment of assessments, fines, fees, or other amounts owed to the Association.

9. Returned Check Charges: In addition to any and all charges imposed under the Declaration, Articles of Incorporation, Bylaws, the Rules and Regulations of the Association, policies, or procedures, a return check fee, not to exceed \$25.00, shall be assessed on 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. Returned check charges shall be the obligation of the Owner(s) for which payment was tendered to the Association for payment of sums due under the Association’s governing documents. 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 return check charge shall be in addition to any late fees incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the monthly installment of the annual assessment, fines or fees is not timely made within thirty (30) days of the due date.

10. Payment Plan: If qualified to do so, an Owner who becomes delinquent in payment of assessments, fines, fees or other amounts due to the Association, may enter into a payment plan with the Association, over a period of eighteen (18) months. Under the payment plan, the Owner may choose the amount to be paid each month, so long as each payment is at least twenty-five dollars (\$25.00). The Owner may elect to pay the remaining balance due at any time during the payment plan. Such payment plan shall be offered to each Owner prior to the Association referring any account to an attorney or collection agency. The Owner will be deemed to default on the payment plan if the Owner fails (a) to pay three (3) or more of the agreed upon installments within fifteen (15) days after the monthly installments were due or (b) to remain current with regular assessments as they come due during the pendency of the payment plan. In the event that the Owner defaults on the payment plan, the Association may, without additional notice, refer the delinquent account to an attorney or collection agency for collection action. Each Owner is qualified to enter a payment plan, unless:

a. The Owner does not occupy the property and acquired title to the property by foreclosure 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 with the Association.

11. Recovery of Attorney Fees and Collection Costs: 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 the Association from a delinquent Owner; provided, however, that such fees shall only be recoverable after the Association has provided a Notice of Delinquency in accordance with this Policy. The reasonable attorney fees and collections costs incurred by the Association shall be due and payable immediately when incurred, upon demand.

12. Application of Payments: All sums collected on a delinquent account shall be remitted to the Association's treasurer, manager, equivalent, or attorney (as directed to Owner) until the account is brought current. All payments received on account of any Owner or the Owner's property, shall be applied first to the assessments owed and any remaining amount to the fines, fees or other charges owed.

13. Legal Remedies. The Association may pursue any and all legal remedies available to the Association by Colorado law or the Association's governing documents for collection on any delinquent account, including, without limitation: (a) recording a lien against the delinquent Owner's property; (b) filing a suit against the delinquent Owner for a money judgment; (c) instituting a judicial foreclosure action of the Association's lien, upon approval by the Association's Board of Directors; (d) filing the necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interests; (e) filing a court action seeking appointment of a receiver; and (f) garnishment and attachment. Until an Owner has paid delinquent accounts in full, the Association may suspend the Owner's right to vote and right to use the Association's recreation facilities. Any party seeking to enforce its rights under the Declaration, Bylaws, Covenants, or governing documents of the Association pursuant to this Collections Policy for disputes regarding assessments, fines or fees owed to the Association for seven thousand five hundred dollars (\$7,500.00) or less, exclusive of interest and costs, may file a claim in small claims court.

14. Judicial Foreclosures. The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment, except where the debt securing the lien consists only of fines or fees the Association has imposed on the Owner and/or collection costs or attorney fees incurred by the Association that are only associated with assessed fines. 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 shall consider individually each recommendation for a foreclosure and may only approve a foreclosure action after the delinquency equals or exceeds six months of common expenses assessments based on a periodic budget adopted by the Association. Such foreclosure shall be approved by a vote by the Board of Directors. Upon foreclosure, any Board member, employee of the Association's management company, or employee of a law firm representing the Association, or any immediate family member of the foregoing, shall not be permitted to purchase the foreclosed unit. The Association shall not commence a foreclosure proceeding for delinquent assessments unless:

- a. The Association has followed all notice requirements provided in this policy;
- b. The Association has made a good faith effort, by written offer, to coordinate with the Owner for a payment plan; and
- c. Within thirty (30) days after providing offer of payment plan, the Owner has either (a) declined the plan; (b) accepted the plan and failed to pay at least three (3) monthly installments within fifteen (15) days of the due date

15. Supplement to Law. The provisions of this Policy shall be in addition to and in supplement of the terms and provisions of the Declaration and the law and the State of Colorado governing the Association.

16. Modification. The Board reserves the right, from time to time, to amend or repeal this Policy, subject to any limitations placed on the Board in the Governing Documents or by law.

17. Definitions. Unless otherwise defined in this Policy, capitalized terms shall have the same meaning ascribed by the Declaration.

18. Replacement. This Policy supersedes and replaces prior policies adopted by the Board dealing with the subject matter herein.

19. Mailing Address. Payment of assessments, fines, fees and other charges shall be made to:

**Midland Center Lot 2 Condominium Association, Inc.**

% **Treasurer**

**[insert address]**

**Midland Center Lot 2 Condominium Association, Inc.,**

**Karen Urnise / Secretary**

By: \_\_\_\_\_

[Name]

[Position]

This Collections Policy was adopted by the Board of Directors on April 27, 2023, and it is attested to by the Secretary of the Midland Center Lot 2 Condominium Association, Inc.



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Secretary