

Orchard Meadows Homeowners Association, Inc.
Collection Policy

The following collection policy was adopted by the Board of Directors of the Orchard Meadows Homeowners Association, Inc. ("Association"), pursuant to C.R.S. § 38-33.3-209.5, at a meeting of the Board of Directors.

Effective Date: AUGUST 2022

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following Collection Policy:

ARTICLE I

(Due Date, Late Fees, Interest, Itemized List, Designated Contact, Language Preference)

1. **Due Date.** Assessments are due on or before the 1st day of each month. Assessments not received on or before the date due shall be past due. If the full amount of any past due assessment is not received by the Association within 15 days of the due date, the assessment shall be considered delinquent.

2. **Late Fees.** When an assessment is delinquent, a late fee of up to \$10.00 per month, but in no event on a daily basis, may be assessed to the delinquent account.

3. **Interest.** Delinquent assessments shall bear interest at the rate of eight percent (8%) per annum from the due date until paid in full.

4. **Itemized List.** For each Owner who has a delinquent balance owed to the Association, the Association shall send an itemized list of all assessments, fines, fees, and charges that the Owner owes to the Association. The Association shall send the itemized list as follows:

- a. *Period:* On a monthly basis, until the Owner is no longer delinquent.
- b. *Means of Sending:* To the Owner and, if applicable, to the Owner's designated contact by (i) first-class mail; and (ii) if the Association has the relevant e-mail address, by e-mail.
- c. *Language Preference:* The itemized list shall be sent in English unless the Owner has indicated a preference for receiving correspondence and notices from the Association in another language, per Section 6 herein below. If the Owner indicates a language preference other than English, then the itemized list shall be sent in the language indicated.
- d. *Designated Contact:* If the Owner has identified another person to serve as a designated contact for the Owner, per Section 5 herein below, then the Association shall also send a copy of the itemized list in English to the designated contact for the Owner.

- e. *Courtesy Notices*: The itemized list may be included in one or more courtesy notices sent to the Owner prior to sending a Notice of Delinquency in accordance with Section 10 herein below.

5. **Designated Contact.** An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to delinquency. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices any time communications are sent out. To identify a designated contact, an Owner must complete the attached Designated Contact Form, a blank copy of which is attached to this Policy, and return it to the Association by certified mail, return receipt requested.

6. **Language Preference for Delinquent Account.** An Owner may notify the Association if the Owner prefers that correspondences and notices sent to the Owner by the Association regarding the Owner's delinquent account be in a language other than English. If the Owner does not notify the Association of a language preference, then the Association shall send all correspondences and notices to the Owner in English. If the Owner does notify the Association of a language preference, then the Association shall send all correspondences and notices related to the Owner's delinquent account to the Owner in English and in the language identified by the Owner as the Owner's preferred language. NOTICE: The Association's obligation to provide notice and correspondence in a language other than English is expressly limited to notices and correspondences about an Owner's delinquent account and/or alleged violations that are sent to the Owner. The Association is not obligated to provide notices and correspondences to the Owner related to any other subject matter in a language other than English. To identify a preference that correspondence and notices from the Association be made in a language other than English, an Owner must deliver a written language preference request to the Association by certified mail, return receipt requested.

ARTICLE II

(Prior to Referral to Attorney or Collection Agency – Contact, Notices of Delinquency)

7. **Record of Contacts.** The Association shall maintain a record of any contacts with an Owner regarding a delinquency. These records shall include the following information:

- a. *Type of Communication*: The type of communication used to contact the Owner (e.g., letter by mail, e-mail, telephone call, text); and
- b. *Date and Time*: The date and time that the contact was made.

8. **Contact / Notices of Delinquency.** In the event of a delinquent assessment, the Association shall take the following steps:

Step	Action	When Action Taken (Not Earlier Than)
1.	Courtesy Notice, Itemized List.	Courtesy notice(s): at the discretion of the Board of Directors;

		itemized list: on a monthly basis when an account has an outstanding balance
2.	Notice of Delinquency. The Association shall alert the Owner of the delinquency by sending a Notice of Delinquency.	When an Owner has a delinquent account if a courtesy notice/itemized list has not already been sent to the Owner
3.	Referral Board Vote in Executive Session. The Association's Board shall vote on what action the Association will take, in a recorded vote at a meeting conducted pursuant to C.R.S. § 38-33.3-308(4)(e). See C.R.S. § 38-33.3-209.5(1.7)(a)(I)	If the Owner has not paid the delinquency within the time frame set forth in the Notice of Delinquency.

9. **Notice of Delinquency – Definition.** “Notice of Delinquency” means the written notice that an Association sends to an Owner to notify the Owner of any unpaid assessments, fines, fees, or charges that the Owner owes the Association, as required by C.R.S. § 38-33.3-209.5(1.7)(a)(I).

10. **Content of Notice of Delinquency.** The Notice of Delinquency must:

- a. Specify the total amount due, with an accounting of how the total was determined;
- b. Specify whether the opportunity to enter into a payment plan exists pursuant to C.R.S. § 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;
- c. Specify the name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt;
- d. Be written in English and in any language that the Owner has indicated a preference for correspondence and notices;
- e. Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges;
- f. If the Notice of Delinquency concerns unpaid assessments, the Notice of Delinquency must notify the Owner that unpaid assessments may lead to foreclosure; and
- g. Include:
 - i. A description of the steps the Association must take before the Association may take legal action against the Owner, including a

description of the Association's cure process for violations of the Association's governing documents established in accordance with C.R.S. § 38-33.3-209.5(1.7)(b); and

- ii. A description of what legal action the Association may take against the Owner, including a description of the types of matters that the Association or Owner may take to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the declaration, bylaws, covenants, or other governing documents of the Association;
- h. State the following or similar statement, depending on whether more than one Notice of Delinquency will be sent: "Action is required to cure the delinquency. Failure to do so within thirty (30) days may result in your account being turned over to a collection agency, a lawsuit being filed against you, the filing of a lien against your property and foreclosure of a lien against your property if the delinquency is for unpaid assessments, or other remedies available under Colorado law. The Association may but is not required to exercise these remedies, except for foreclosure of a lien against your property, in small claims court if the amount at issue does not exceed \$7,500, exclusive of interest and costs;" and
- i. The Association may send more than one Notice of Delinquency.

11. Means of Sending Notice(s) of Delinquency. In sending the Owner or a designated contact a Notice of Delinquency, the Association shall send the Notice of Delinquency by the following means:

- a. Certified mail, return receipt requested;
- b. Physically post a copy of the notice of delinquency at the Owner's unit at least one (1) time if more than one Notice of Delinquency is sent; and
- c. One of the following means:
 - i. First-class mail;
 - ii. Text message to a cellular number that the Association has on file because the Owner has provided the cellular number to the Association; or
 - iii. E-mail to an e-mail address that the Association has on file because the Owner has provided the e-mail address to the Association.

12. Owner's Mailing Address for Mail. All notices and correspondences shall be mailed to the address of the unit owned by the Owner that is within the Association's community. However, upon the written request of the Owner delivered to the Association personally, by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the

Association, the Association will mail Notices of Delinquency to another address as set forth in the Owner's written request.

13. Board Vote in Executive Session. If the Owner has not paid the delinquency within the time frame set forth in the last Notice of Delinquency sent to the Owner, then the Association may take any or all of the following actions:

- a. Refer a delinquent account to a collection agency or attorney only if a majority of the Board votes to refer the matter in a recorded vote at a meeting conducted pursuant to C.R.S. § 38-33.3-308(4)(e);
- b. Send an additional Notice of Delinquency;
- c. File a claim in Small Claims Court, pursuant to C.R.S. § 38-33.3-209.5(9); or
- d. Take no current action to collect the delinquency, except that the Association's statutory lien may continue to encumber the Owner's property, subject to the six-year statute of limitations, pursuant to C.R.S. § 38-33.3-316(5).

ARTICLE III (Payment Plans)

14. Legal Authority and Standard. The Association shall make a good-faith effort to communicate with an Owner to set up a payment plan that meets the requirements of C.R.S. § 38-33.3-316.3 and, if seeking foreclosure, §38-33.3-209.5(7)(a)(II), unless the Association is not obligated to negotiate or enter into a payment plan with an Owner.

15. Right to a Payment Plan. The Association is obligated to negotiate, coordinate, and enter into a payment plan with an Owner, unless:

- a. The Owner has previously entered into a payment plan with the Association under this Policy; or
- b. The Owner does not occupy the property and has acquired the property as a result of:
 - i. A default of a security interest encumbering the property; or
 - ii. Foreclosure of the Association's lien.

16. Minimum Period of Payment Plan and Minimum Installment Amount. The Association must permit the Owner to pay off the deficiency in installments over a period of at least eighteen (18) months. The Owner may choose the amount of each installment payment as long as each installment payment is at least \$25.00 and the total amount owed is paid by within the eighteen (18) month period and the Owner remains current on payment of regular assessments.

17. Failure to Comply with Payment Plan. An Owner fails to comply with the terms of the payment plan if the Owner fails:

- a. To remit payment of three (3) or more agreed-upon monthly 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 eighteen-month agreed-upon payment period.

18. Effect of Failure to Comply with Payment Plan. If an Owner fails to comply with the terms of his or her payment plan, the Association may pursue legal action against an Owner without further notice to the Owner.

ARTICLE IV (Remedies)

19. Remedies. The remedies available to the Association to collect on an Owner's delinquent account include:

- a. The Board of Directors or the Managing Agent may prepare and sign for recording a notice of assessment lien against a delinquent Owner's property, in addition to the Association's statutory lien;
- b. Bringing an action at law for entry of a money judgment in favor of the Association and against a delinquent Owner;
- c. Bringing an action for appointment of receiver, pursuant to C.R.S. § 38-33.3-316(9);
- d. Bringing an action for foreclosure of the Association's lien against the property of the delinquent Owner;
- e. Suspend voting rights;
- f. Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interest;
- g. File a claim in Small Claims Court, pursuant to C.R.S. § 38-33.3-209.5(9); and
- h. Turning over a delinquent account of an Owner to a collection agency or attorney.

ARTICLE V (Foreclosure of Association Lien)

20. Conditional Right to Foreclose. The Association shall not commence a legal action to initiate a foreclosure proceeding based on an Owner's delinquency in paying assessments unless:

- a. The balance of the assessments and charges secured by its lien equals or exceeds six (6) months of common expense assessments based on a periodic budget adopted by the Association;
- b. The Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis;
- c. The Association has complied with each of the requirements in C.R.S. § 38-33.3-209.5 and 316.3 related to an Owner's delinquency in paying assessments;
- d. The Association has provided the Owner with a written offer to enter into a repayment plan pursuant to C.R.S. § 38-33.3-316.3(2) that authorizes the Owner to repay the debt in monthly installments over eighteen (18) months. Under the repayment plan, the Owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least twenty-five dollars (\$25.00) until the balance of the amount owed is less than twenty-five dollars (\$25.00); and
- e. Within thirty (30) days after the Association has provided the Owner with a written offer to enter into a repayment plan, the Owner has either:
 - i. Declined the repayment plan. An Owner declines a payment plan by failing to accept in writing the Association's offer to enter into a payment within thirty (30) days from the date of the Association's written offer; or
 - ii. After accepting the repayment plan, the Owner failed, on at least three (3) separate occurrences, to pay a monthly installment within fifteen (15) days after the monthly installment was due or fails to pay ongoing assessments levied following the acceptance of the payment plan.

21. Conditions Under Which Foreclosure is Prohibited. The Association shall not:

- a. Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:
 - i. Fines that the Association has assessed against the Owner; or
 - ii. Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines; or
- b. Commence a foreclosure action based only on outstanding fees, charges, late charges, attorney fees up to the maximum amount authorized, fines, and/or interest.

ARTICLE VI
(Referral to Attorney)

22. **Post-Referral Communication.** After an Owner's delinquent account has been referred to the Association's attorney (hereinafter "Association Attorney") for legal action, the Owner and, if applicable, the Owner's designated contact shall direct all communications regarding the delinquent account to the Association Attorney.

23. **Association Attorney Demand Letter.** The Association Attorney shall mail a demand letter to the address of the property within the Association's community owned by the delinquent Owner, if any.

24. **Action After Attorney Demand Letter – Delinquency Cured.** If the amount set forth in the Association Attorney demand letter is received by the Association Attorney by the date set forth in such demand letter, the Association Attorney shall take no further action and shall return the account back to the Association.

25. **Action After Attorney Demand Letter – Delinquency Not Cured - Lawsuits.** If the Owner fails to timely pay the full amount set forth in the initial demand letter, the Association Attorney may file a lawsuit in County Court or District Court against the Owner. In the alternative, or in addition thereto, the Association Attorney may also pursue the other remedies set forth above in Article IV (Remedies). Lawsuits shall set forth the sum of alleged delinquent assessments, late fees, costs of collection, attorney fees, court costs, and any other expenses due as of the approximate date of the lawsuit. Lawsuits shall be prosecuted as the Association Attorney deems appropriate.

26. **Attorney Fees.** Except to the extent limited by Colorado law, the Association is entitled to costs and reasonable attorney fees that the Association incurs in collecting a delinquency under this Policy.

ARTICLE VII
(Application of Payments, Restrictive Indorsement, Accord and Satisfaction,
Returned-Check Charge, No Setoff, and Miscellaneous)

27. **Application of Payments.** Payments received by the Association or the Association Attorney shall be applied in the following order, as may be applicable:

- a. To the regular assessments owed, with partial payments being applied first to the oldest delinquent assessment and then continuing until the most recent assessment is paid;
- b. To any special assessments levied and owed;
- c. To attorney fees and legal costs and expenses;
- d. To the Association's other out-of-pocket costs, expenses and charges associated with the delinquency;

- e. To fines levied by the Association with regard to the delinquency or other violations of the Association's governing documents, regardless of when incurred;
- f. To late fees; and
- g. To interest.

28. **Restrictive Indorsement.** If an Owner intends to satisfy the entire debt of the Association by restrictive indorsement on a check or money order for an amount less than the full balance then due on the Owner's delinquent account, that check or money order must be delivered to the Association Attorney by prepaid certified mail, return receipt requested. Any payment of less than the outstanding balance that contains a writing that the Association's representatives, including but not limited to the Association Attorney, believe could be a restrictive indorsement or any other restriction, including an accord and satisfaction, on the receipt of the funds, or that is accompanied by any letter, note or other communication that could be considered a restrictive indorsement or any other restriction on the receipt of the funds may, at the discretion of the Association Attorney, be returned.

29. **Returned-Check Charge.** If a check or other instrument tendered to the Association is returned or dishonored for any reason, the Association may charge a returned check fee of up to \$20.00. Additionally, or in the alternative, the Association may pursue all other remedies available at law that may be applicable, including the right to seek treble damages plus costs and attorneys' fees.

30. **Collection Costs.** The Association may require reimbursement of collection costs incurred by the Association as a result of an Owner's failure to timely pay assessments or any money or sums due to the Association. Collection costs include, but are not limited to, mailing fees, the cost of posting notice at an Owner's Lot, and collection services provided by the Association's agent.

31. **No Setoff.** In the event of any legal action brought to collect delinquent assessments, an allegation that the Association has failed to comply with the terms of the Association's governing documents, including this Collection Policy, shall not constitute a defense for non-payment or entitle the Owner to a setoff of any assessments owed.

32. **Effective Date.** This Policy shall control the actions of the Association and Owners from the effective date of this Policy and going forward. This policy shall replace all previous policies, rules, and regulations regarding the subject matter of this Policy from the effective date of this Policy and forward, subject to the right of the Board to amend this Policy. Any transactions or conduct that occurred prior to the effective date of this Policy, but which were related to the subject matter of this Policy, shall be controlled by the policy, rule or regulation that was in effect at the time the conduct or transaction occurred or was supposed to occur.

33. **Terms.** Any terms not identified in this Policy shall have the meaning given them in the Association's recorded Declaration, together with all amendments and supplements thereto.

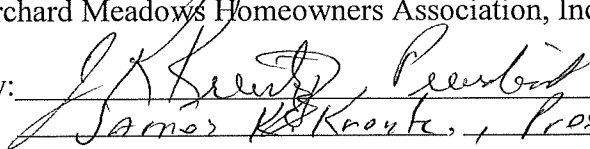
34. **Savings Clause; Reformation.** If a Court finds that any portions of this collection policy unenforceable, the Court shall reform this policy to the least extent necessary to give effect to the intent of this collection policy. In such event, all remaining portions of this collection policy shall remain in force and effect.

35. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

The undersigned hereby certifies that the foregoing resolution was adopted and made a part of the minutes of the meeting of the Board of Directors of the Association conducted on the _____ day of _____, 20____.

Orchard Meadows Homeowners Association, Inc.

By:


James W. Krout, President
(Print Name) (Print Title)

Orchard Meadows Homeowners Association, Inc.
Addendum to Collection Policy
Designated Contact for Delinquent Account Form

An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to delinquency. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices anytime communications are sent out. To identify a designated contact, an Owner must complete this Designated Contact Form and return it to the Association by certified mail, return receipt requested. Such notice is required due to the increased cost a designated contact imposes upon the Association.

Category	Information
Owner Name	
Owner Property Address	
Owner Mailing Address (if different from Property Address)	
Owner Telephone Number	
Owner E-mail Address	
Designated Contact Name	
Designated Contact Mailing Address	
Designated Contact Telephone Number	
Designated Contact E-mail Address	

By and through this Designated Contact Form, the Owner identifies the Designated Contact set forth above to be contacted by the Association, its agents, and representatives, on the Owner's behalf for purposes of contact related to delinquency.

Date: _____

Signature: _____