

Marston Slopes Homeowners Association

Assessments and Collections Policies

Adopted by the MSHA Board of Directors May 10, 2011

MSHA Assessments and Collections Mission Statement:

The Board of Directors strives to maintain a high quality neighborhood and enhance property values. Assessments are necessary to fund the proper operation of the Association. Every Marston Slopes homeowner purchased his/her home subject to the legally binding Protective Covenants of record and shares an equal responsibility to pay his/her fair share of assessments. In accordance with state and HOA legal authority and the governing documents of the Association, the assessments and collections process includes billing and due dates and sanctions for late payments. The collections procedure will be enforced in a timely, consistent and uniform basis.

Good communication is the cornerstone of an effective collections policy. The collections procedure will be written and will be regularly and clearly communicated to all owners. Owners will be treated with confidentiality and respect throughout the collection process. In unusual, one-time cases involving extenuating circumstances, if contacted by an owner in advance of due dates the Board of Directors retains the right to waive or delay sanctions.

MSHA Administrative Authority:

1. The Board of Directors will pass an administrative resolution setting forth and enacting the Association's Assessments and Collections Mission Statement and Assessments and Collections Procedures (the Policies).
2. The Policies will be communicated to all owners.

Assessments and Collections Procedures:

1. The billing and collection of MSHA assessments is directed by the Association Treasurer.
2. Annual Assessment bills including charges for late payments are mailed by January 31 and due on February 28 of each year.
3. Special Assessments are due as per official notice.
4. Late notices are mailed for nonpayment applying late charges plus interest.
5. A *Notice of Intent to Lien* is sent by the Association's Treasurer or attorney to owners more than 30 days delinquent, with 30 days to satisfy obligation. This is the final non-legal request for the owner to become current in payment of obligations.

6. A lien is recorded in the county against any owner more than 60 days late.
7. Liens will be released upon full payment of obligation.
8. The Association may file suit to collect obligations.
9. The Association may institute foreclosure actions for serious delinquencies.
10. After institution of lien foreclosure action, all payment plans or settlements require board approval.

Basis of Legal Authority:

➤ **Colorado Revised Statutes: Title 38 (Real Property), Article 33.3 (The Colorado Common Interest Ownership Act), effective July 1, 1992:**

1. Sec. 1: The Association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its owner. The amount of the lien shall include all those items as set forth in this section from the time such items become due. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this statute are enforceable as assessments under this article.
2. Sec. 5: A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments became due.
3. Sec. 6: This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.
4. Sec. 7: The association is entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action brought by the association under this section.

➤ **Colorado Court of Appeals: First Atlantic Mortgage, LLC v. Sunstone North Homeowners Association, 2005 WL 4277700 (Colo. App.):**

1. CRS 38-33.3-316 authorizes the existence of a lien on a unit for any assessment levied against that unit or fines imposed against its owner. Assessments may include fees, charges, late charges, attorney fees, fines and interest.
2. This lien is given first priority to the deed of trust on the property to the extent of an amount equal to the common expense assessments based on a periodic budget adopted by the association under CRS 38-33.3-315(1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a judicial foreclosure either to enforce or extinguish the lien.

➤ **Marston Slopes Declaration of Protective Covenants**, recorded 2-18-79 at Reception No. 79014324, and as revised, and amended and ratified 9-19-2000 at Reception No. F1487802:

1. Article V: Assessments

- a. Section 1. *Creation of the Lien and Personal Obligation of Assessments*: Each owner agrees to pay to the Association annual assessments or charges payable in advance; and special assessments for capital improvements; and assessments which may be levied by the Association for violations of the covenants or Rules and Regulations; and cost of collections or attorney fees. These assessments shall be a charge upon the land of the owners and shall be a continuing lien upon the property against which the assessments are made. The obligation shall remain a personal obligation of the owner and shall pass to their successor in title or ownership as a joint liability until paid.
- b. Section 2. *Purpose of Assessments*: a) repair and maintenance of any improvements in common areas; b) caring for the appearance and upkeep of common areas; c) payment of premiums for insurance policies; d) providing a reserve for repairs, maintenance and replacement items; e) expenses related to communication and the conduct of Association business; and f) legal obligations.
- c. Section 3: *Basis of Annual Assessment*: Each lot shall be subject to an annual assessment. The Board of Directors shall fix an annual Assessment and may raise or lower said Assessment amount as they may deem necessary in their discretion.
- d. Section 6. *Due Date of Assessments*: The due date for payment of the annual Assessment is February 28 of each year. The Board of Directors shall fix the amount of the annual Assessment by January 1 of each year and will notify the members in writing by January 31 of each year of the annual Assessment amount due, the date for payment, the address for rendering payment, and charges for late payments.
- e. Section 8. *Assessments for Violation of the Declaration and/or Rules and Regulations*: The Board of Directors shall have the authority to levy Assessments for any violation of the Declaration or the Rules and Regulations of the Association. Members must be notified in writing of any such Assessment and must be given thirty (30) days in which to pay the Assessment. The Board of Directors will have the authority to levy Assessments for late charges, interest, attorney fees, and payment collection costs.
- f. Section 9. *Effect of Non-Payment of Assessments. The Personal Obligation of the Owner, The Lien, and Remedies of the Association*: If the Assessments are not paid on the due date then such Assessments shall become delinquent and shall, together with interest and cost of collection become the personal obligation of the then Owner, their heirs, devisee, personal representatives and assigns. If the Assessment is not paid when due, then a delinquency charge of the larger of \$25.00 or 25% of the Assessment shall be charged to the Owner plus the Assessment shall bear interest from the due date at the rate of the bank prime loan rate for the week in which the Assessment was due, as reported by the Federal Reserve, plus 6%. The Association may bring an action at law against the Owner personally obligated to pay same or to foreclose the lien against the Owner's property, and shall be added to the amount of such Assessment all attorney's fees incurred by the Association, and in the event a judgment is obtained, such judgment shall include interest on the Assessment or fine as above provided and attorney's fee to be fixed by the court together with the cost of the action.

2. Article VIII: General Provisions

- a. Section 1. *Enforcement and Assessments*: The Association may enforce the Declaration, restrictions and limitations or covenants, the ACC procedures, and the published Rules and Regulations by proceedings at law or in equity against any person or persons violating or attempting to violate any of these requirements either to recover damages for any violation or to restrain violation or attempted violations or may recover such damages as may ensue because of such violation including cost of suit and attorney's fees.

➤ **Amendment and Restatement of the Bylaws of the Marston Slopes Homeowners Association, ratified 9-19-2000:**

- a. Article VII: *Powers of the Board of Directors*:
- b. Section 2: *Duties*: It shall be the duty of the Board to ... (e) foreclose the lien against any property for which Assessments (annual or special and appropriate interest and late charges) are not paid within thirty (30) days after the due date or to bring any action at law against the Owner personally obligated to pay the same.

➤ **Marston Slopes Homeowners Association Rules and Regulations, revised 4-16-10:**

- a. Section VI: *Procedures of Enforcement of Rules and Regulations*: 6.3/g. Hearing Procedures: The Board retains its right to file suit and record a lien and foreclose against Owners for unpaid fines; h. The Association is entitled to collect court costs and reasonable legal fees from the Owner for any and all violations.