

# **BRITTANY LAKES HOMEOWNERS' ASSOCIATION, INC.**

## **COLLECTION POLICY FOR DELINQUENT ACCOUNTS**

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### **A. INTRODUCTION**

The Board of Directors ("Board") of Brittany Lakes Homeowners' Association, Inc. ("Association") is charged with the responsibility of collecting assessments from owners of lots located within the community as provided for in the recorded Declarations of Covenants, Conditions and Restrictions for the various sections of the community, and as further provided in the Association's By-Laws. In an effort to assist the Board in the collection of the assessments, the Board has developed the following procedures for the billing and collecting of the assessments.

### **B. BILLING AND COLLECTION PROCEDURES**

1. Initial Invoice and Record Address. On or before December 1 of each year, the Board shall cause to be mailed to each owner of a lot in the, an Assessment Advisory and Invoice ("Initial Invoice") setting forth the annual assessment amount. The Initial Invoice shall be sent to the owner by regular U. S. First-Class Mail. The Initial Invoice and any other correspondence, documents, or notices pertaining to the applicable lot shall be sent to the address that appears in the records of the Association for the owner, or to such other address as may be designated by the owner in writing to the Association. The fact that the Association or its management company may have received a personal check from an owner reflecting an address for the owner different from the owner's address as shown on the records of the Association, is not sufficient notice of a change of address for the Association to change its records regarding such owner's address.
2. Assessment Due Date. All annual assessments shall be due and payable on or before January 1. It is the responsibility of the owner to ensure and verify that payments are received by the Association on or before that date, and the Association will not be responsible for delay by mail or any other form of delivery. Non-receipt of an invoice shall in no way relieve the owner of the obligation to pay the amount due by January 1.
3. Delinquent Balances. If payment of the total assessment and any other charges which may be due is not received by the Association on or before January 1, the account shall be delinquent. The Association may send a postcard reminder to each delinquent owner stating the amount due and that late charges, interest and costs will be added to the delinquent amount. If an owner defaults by failing to pay the entire sum owing against the owner's property on or before January 31, the owner shall be charged interest from January 1 at the maximum rate of interest allowed by law, regardless of whether any demand letter has been sent to the owner. Further, owners who remain delinquent after January 31 shall be subject to the following collection procedures, which may be modified on a case-by-case basis by the Board as circumstances warrant:

- (i) Final Notice. The Association will send a Final Assessment Advisory and Invoice (“Final Notice”) to the owner by certified mail, return receipt requested, and by regular U. S. First-Class Mail, showing that the account is delinquent, and that interest is accruing. The Final Notice will advise the owner that if the account is not paid within 30 days of receipt of the Final Notice, the Association intends to turn the account over to an attorney for further handling, and the owner will thereafter be responsible for the attorneys’ fees and costs incurred, and such fees and costs will be charged to the assessment account. The Final Notice will also inform the owner that pursuant to Chapter 209 of the Texas Property Code, the owner has the right to request a hearing before the Board. If the owner does not pay the delinquent balance in full or request a hearing within the 30-day period, the Association intends to thereafter pursue its remedies regarding the matter.
- (ii) Notice of Lien. To further evidence the Association’s lien securing the unpaid Assessments, the Association may, but is not required to, prepare a document entitled Lien Affidavit and Notice of Delinquent Assessments setting forth the amount of the delinquent Assessment, the name of the owner of the property and a description of the property (the “Notice of Lien”). The decision to file a Notice of Lien shall be made by the Board on a case-by-case basis, if the Board determines that the circumstances merit such action, in the Board’s sole discretion. The Notice of Lien may be filed in the real property records of Galveston County, Texas, and will constitute further evidence of the lien against an owner’s property.
- (iii) Remedies for Non-Payment. If the delinquent balance is not paid in full or a hearing requested in writing within 30 days of receipt of the Final Notice, the Association may suspend the owner’s right to vote on Association matters during any period for which the Assessment is delinquent. Further, the Association will forward the delinquent account to its attorney for further handling. It is contemplated that the attorney will send one (1) or more demand letters to the delinquent owner as the attorney deems appropriate. If the owner does not satisfy the Assessment delinquency pursuant to the attorney’s demand letter(s), the attorney shall pursue any and all of the Association’s legal remedies to obtain payment of the delinquent balance, including pursuing a suit against the owner personally, and/or pursuing a foreclosure action against the applicable property.

C. ENFORCEMENT COSTS.

All costs incurred by the Association as a result of an owner’s failure to pay Assessments and other charges when due (including any attorneys’ fees and costs incurred) will be charged against the owner’s Assessment account and shall be collectible in the same manner as a delinquent Assessment.

D. DISCRETIONARY AUTHORITY.

The Board may, but shall not be obligated to, enter into a payment agreement (“Payment Agreement”) with an owner who demonstrates a situation of bona-fide personal hardship. Any request for a Payment Agreement must be in writing and must describe the situation of personal hardship. All Payment Agreements must be in writing and signed by the owner. The Association will determine minimum acceptable payment terms. The standard Payment Agreement shall require: (i) a down payment of not less than one-fourth (1/4) of the total amount owed by the owner to the Association, including but not limited to the delinquent Assessment amount and any legal expenses, interest, and other costs incurred on the account; and (ii) monthly payments thereafter in an amount sufficient to bring the account current in three such monthly payments. Provided however, if the Payment Agreement by its terms includes the month of January, the owner will not be obligated to make such monthly payment during that month, but instead will pay the applicable annual assessment during January, and will thereafter resume making the monthly payment(s) until the account is paid in full. If the owner defaults under the Payment Agreement, the account will immediately be turned over to the attorney without any further notice to the owner. The Board may consider and approve an alternative Payment Agreement if the Owner presents sufficient evidence acceptable to the Board that an alternative Payment Agreement is justified. The Board may require that the owner present such evidence in person at a hearing before the Board. The Board may accept the Payment Agreement proposed by the owner or any alternative the Board deems appropriate.

E. PARTIAL PAYMENTS AND APPLICATION OF FUNDS.

Partial payments will not prevent the accrual of interest on the unpaid portion of the Assessment. The owner will still be considered to be delinquent upon making partial payments. Payments received from an owner will be credited in the order of the following categories: fines, attorneys’ fees, returned check fees, any lien notice fees, interest, expenses, and Assessments. The payment will be applied to the oldest amount due in each of such categories until charges in that category are paid in full.

F. BANKRUPTCY.

In the event a delinquent owner files bankruptcy, the Association reserves the right to file a proof of claim, pursue a motion to lift the automatic stay, or take any other action it deems appropriate to protect its interests in the pending bankruptcy action, including modifying any procedures hereunder as necessary or advisable. To the full extent permitted by the United States Bankruptcy Code, the Association shall be entitled to recover any and all attorneys' fees and costs incurred in protecting its interests, and such fees and costs shall be charged to the owner's Assessment account.

G. RETURNED CHECKS.

At the election of the Association, an owner will be charged a reasonable fee for any check returned by the bank, which fee will be charged to the owner’s Assessment account. A notice of the returned check and the fee will be sent to the owner by the Association’s management company. If two or more of an owner’s checks are returned unpaid by the bank within any one-year period, the

Board may require that all of the owner's future payments for a period of two years be made by cashier's check or money order.

H. OWNER'S AGENT OR REPRESENTATIVE.

If the owner expressly or impliedly indicates to the Association that the owner's interest in the property is being handled by an agent or representative, any notice from the Association to such agent or representative pursuant to this Collection Policy shall be deemed to be full and effective notice to the owner for all purposes.