

**AMBERLAKE HOMEOWNERS' ASSOCIATION, INC.**  
**COLLECTION POLICY AND PAYMENT PLAN GUIDELINES**

STATE OF TEXAS                   §  
  §  
COUNTY OF BRAZOS           §

WHEREAS, the property encumbered by these Collection Policy and Payment Plan Guidelines (the "Guidelines") is that property initially restricted by the Declaration of Covenants, Conditions and Restrictions for Amberlake Courts, recorded under Brazos County Clerk's File No. 473611, as same has been or may be amended from time to time ("Declaration"), and any other subdivisions which have been or may be subsequently annexed thereto and made subject to the authority of the Amberlake Homeowners' Association, Inc. (the "Association"); and

WHEREAS, pursuant to Chapter 209 of the Texas Property Code, the Board of Directors (the "Board") of the Association hereby adopts these Guidelines for the purposes of establishing a uniform and systematic procedure to collect assessments and other charges of the Association and identify the guidelines under which owners may request an alternative payment schedules for certain assessments; and

WHEREAS, the Board has determined that it is in the best interest of the Association to establish these Guidelines.

NOW, THEREFORE, BE IT RESOLVED THAT the Association does hereby adopt this Collection Policy and Payment Plan Guidelines, which shall run with the land and be binding on all owners and lots within the subdivision. These Guidelines replace any previously recorded or implemented guidelines that address the subjects contained herein.

**I.       COLLECTION POLICY**

1.     ASSESSMENT PERIOD

The Board has the duty of establishing and adopting an annual budget, in advance, for each fiscal year of the Association covering the estimated costs of operation of the Association during each calendar year.

2.     NOTICE

The Board shall fix the amount of the annual assessment against each lot for the following year and shall, at that time, prepare a roster of the lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Upon completion of the roster, written notice of the assessment

may be sent to every owner subject to the assessment. An owner may not escape liability or be entitled to a deferral of interest, fines or collection costs with regard to delinquent assessments on the basis of such owner's failure to receive notice, if such notice was sent via regular mail to the most recent address of the owner according to the records of Association. Each owner shall have the obligation to notify the Association in writing of any change in address which shall become effective five days after written notice has been received.

3. DUE DATE

All assessments are due on an annual basis, as determined by a majority of the Board for that assessment year. If any assessment due the Association is not paid on the date when due, then such assessment shall become delinquent thirty (30) days after the due date. Charges disputed by an owner are considered delinquent until such time as they are paid in full.

Payments received after the due date are considered delinquent and the entire amount due may be transferred to a Payment Plan as set forth in Section II of these Guidelines.

4. INTEREST

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate set forth in the Declaration until the assessment is paid in full.

5. DELINQUENCY NOTIFICATION

The Association may cause to be sent the following notification(s) to delinquent owners:

- a. PAST DUE NOTICE: In the event that an assessment account balance remains unpaid thirty (30) days from the due date, a Past Due Notice may be sent via regular mail to each owner with a delinquent account setting forth all assessments, interest and other amounts due. The Past Due Notice will contain a statement that the entire remaining unpaid balance of the Assessment is due and that the owner is entitled to a Payment Plan as set forth in Section II of these Guidelines. **In the event an owner chooses to enter a Payment Plan, a monthly charge may be added to each delinquent Owner's account balance for administrative costs related to the Payment Plan and such additional administrative costs will continue until the entire balance is paid in full.**

- b. FINAL NOTICE: In the event the entire assessment is not paid in full or there is a default on the Payment Plan, where an assessment account balance remains unpaid sixty (60) days or later from the due date, a Final Notice may be sent via certified mail to each delinquent owner. The Final Notice will set forth the following information and the result of failure to pay, including an explanation of:

1. AMOUNTS DUE: All delinquent assessments, interest and other amounts due;

2. HEARING: Owners shall be given notice and opportunity for a hearing before the Board. A hearing shall be granted if a written request for a hearing is received by the Association not more than thirty (30) days from the owner's receipt of the Final Notice.

If a hearing is requested within 30 days from receipt of the Final Notice, further collection procedures are suspended until the hearing process is completed. The Board shall set a hearing date not later than 30 days after receipt of owner's request for a hearing. Either party may request a postponement, which shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of both parties. Further collection steps will be determined by the action of the Board;

3. COMMON AREA RIGHTS SUSPENSION: If a hearing is not requested within 30 days from receipt of the Final Notice, the owner's use of recreational facilities and common properties may be suspended; and
4. MILITARY NOTICE: If the owner is serving on active military duty, the owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act.

- c. NOTICE OF TURNOVER TO COLLECTION AGENT/ATTORNEY: If a hearing is not requested within 30 days from receipt of the Final Notice, member privileges will be suspended, the account may be sent to a collection agent and/or the Association's attorney for collection and any fees and expenses will be charged to the owner's assessment account. An owner may not be charged fees of a collection agent (as same is defined in Property Code §209.0064) or legal counsel unless the Association first provides written notice to the owner by certified mail, return receipt requested, that:

1. Specifies each delinquent amount and the total amount of the payment required to make the account current;
2. Describes the options the owner has to avoid having the account turned over to a collection agent or legal counsel, including information regarding availability of a payment plan through the Association; and
3. Provides a period of at least thirty (30) days for the owner to cure the delinquency before further collection action is taken.

#### 6. REFERRAL OF ACCOUNT TO ASSOCIATION'S ATTORNEY

Upon referral of the account to the Association's attorney, the attorney is authorized to take whatever action is necessary, in consultation with the Board, including but not limited to: sending demand letters, filing a lawsuit against the delinquent owner for a money judgment, instituting an expedited foreclosure action; and, filing necessary claims,

objections and motions in the bankruptcy court and monitoring the bankruptcy case in order to protect the Association's interests.

In the event the Association has determined to foreclose its lien provided in the Declaration, and to exercise the power of sale thereby granted, such foreclosure shall be accomplished pursuant to the requirements of Section 209.0092 of the Texas Property Code by first obtaining a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas.

7. **BANKRUPTCIES**

Upon receipt of any notice of a bankruptcy of an owner, the account may be turned over to the Association's attorney so that the Association's interests may be protected.

8. **REQUIRED ACTION**

Nothing contained herein, not otherwise required by the Declaration or by law, shall require the Association to take any of the specific actions contained herein. The Board of the Association shall have the right, but not the obligation, to evaluate each delinquency on a case-by-case basis as in its best judgment deems reasonable.

9. **PAYMENTS RETURNED NON-SUFFICIENT FUNDS**

An owner will be assessed a service charge for any check that is returned or Automatic Clearing House (ACH) debit that is not paid for any reason, including but not limited to Non-Sufficient Funds (NSF) or stop payment order. The amount of the service charge assessed will be the customary amount charged.

**II. PAYMENT PLAN**

The Association hereby establishes a Payment Plan schedule by which an owner may make partial payments to the Association for delinquent regular or special assessments, or any other amount owed to the Association without accruing additional monetary penalties. Monetary penalties do not include interest or reasonable costs associated with administering the Payment Plan. The Payment Plan Schedule is as follows:

- a. The term for the Payment Plan is six (6) months;
- b. A Payment Plan shall require twenty percent (20%) of the delinquent amount to be paid at the inception of the Payment Plan, with the balance being due and payable in five (5) equal payments due on the first day of each month;
- c. Failure to pay the initial payment of twenty percent (20%) of the delinquent amount shall be considered a default of the Payment Plan;
- d. An owner, upon written request, may request a longer period of time;
- e. The Association is not required to honor the terms of a previous Payment Plan during the two (2) years following an owner's default under a previous Payment Plan;
- f. If an owner requests a Payment Plan that will extend into the next assessment cycle, the owner will be required to pay future assessments by the due date in addition to the payments specified in the Payment Plan.

### **III. APPLICATION OF PAYMENTS**

A. Except as provided in subsection B immediately below, a payment received by the Association shall be applied in the following order of priority:

1. Any delinquent assessment;
2. Any current assessment;
3. Attorney's fees or third party collection costs incurred by the Association associated solely with assessments or other charge that can be the basis of foreclosure;
4. Attorney's fees not subject to "3" above;
5. Fines;
6. Any other amount owed to the Association.

B. If/when an owner defaults on a Payment Plan, the remaining delinquent amount will become due in full and the Association may begin further collection action as set out above in Article I(5)(b). Any payment(s) received by the Association after such default of a Payment Plan shall be applied in the following order of priority:

1. Costs;
2. Attorney fees;
3. Interest;
4. Late fees;
5. Delinquent assessments;
6. Current assessments; and
7. Fines

As to each category identified in this subsection B, payment shall be applied to the most-aged charge first. The acceptance of a partial payment on an owner's account does not constitute a waiver of the Association's right to collect the full outstanding balance due on said owner's account.

**CERTIFICATION**

I hereby certify that, as Secretary of the Amberlake Homeowners' Association, Inc., the foregoing Collection Policy and Payment Plan Guidelines were approved on the \_\_\_\_ day of \_\_\_\_\_, 2012, at a meeting of the Board of Directors at which a quorum was present.

DATED, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Secretary

STATE OF TEXAS            §  
  §  
COUNTY OF BRAZOS       §

BEFORE ME, on this day personally appeared \_\_\_\_\_, the Secretary of the Amberlake Homeowners' Association, Inc., known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purposes herein expressed and in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public – State of Texas

After Recording Please Return To:  
Stephanie L. Quade  
Roberts Markel Weinberg P.C.  
2800 Post Oak Blvd., 57<sup>th</sup> Floor  
Houston, TX 77056