

RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
BANNING LEWIS RANCH METROPOLITAN DISTRICT No5

Establishing Guidelines for the Processing and Collection of Delinquent Fines, Charges and
Reimbursement Assessments

WHEREAS, Banning Lewis Ranch Metropolitan District No 5 (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, pursuant to §32-1-1004.5(3), C.R.S., the Board of Directors of the District (the "Board") is authorized to fix and from time to time increase or decrease, fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District (collectively, the "Charges") to properties within and without (each property individually referred to herein as the "Property") the District's boundaries; and

WHEREAS, CRS 32-1-1004.5(3) states as follows:

“(a) In furnishing covenant enforcement and design review services for units, a board may fix, and from time to time increase or decrease, fees, rates, tolls, fines, penalties, or charges for covenant enforcement and design review services furnished pursuant to this section and section 32-1-1004 (8).

(b)

(i) Until paid, any fee, rate, toll, fine, penalty, or charge described in subsection (3)(A) of this section constitutes a perpetual lien on and against the unit for which covenant enforcement and design review services were provided.

(ii) The board of a metropolitan district furnishing covenant enforcement and design review services pursuant to this section and section 32-1-1004 (8) shall not foreclose on any lien described in this subsection (3)(B) that arises from amounts that a unit owner owes the metropolitan district as a result of a covenant violation or enforcement of a failure to comply with any instrument.

(iii) In addition to any other means provided by law, a board, by resolution and at a public meeting held after notice has been provided to an affected unit owner, may elect to have certain delinquent fees, rates, tolls, fines, penalties, charges, or assessments made or levied for covenant enforcement and design review services certified to the treasurer of the county in which the metropolitan district is located, and for the delinquent fees, rates, tolls, fines, penalties, charges, or assessments to be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected and paid over pursuant to section 39-10-107.”

WHEREAS, CRS 32-1-1004.5(4)(a) states, “For any unit owner's failure to comply with an instrument, a metropolitan district, without needing to commence a legal proceeding, may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of the failure to comply.”

WHEREAS, the property within the District's boundaries is subject to that certain Declaration of Covenants, Conditions and Restrictions for Banning Lewis Ranch MD5, recorded in the real property records of the Clerk and Recorder of Adams, Colorado on August 08, 2001 at Reception Number C0939237 (the "Declaration"); and

WHEREAS, pursuant to the Declaration, the District is responsible for providing covenant enforcement, architectural review approval and other administrative services for the Property within the District and subject to the Declaration; and

WHEREAS, pursuant to the Declaration, the District has the authority to impose reasonable fines upon owners of Property subject to the Declaration for violations of the Declaration and any rules and regulations of the District, after providing such owner with notice and the opportunity for a hearing; and

WHEREAS, pursuant to §32-1-1001(1)(j)(I), C.R.S., until paid, the Charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanics' liens; and

WHEREAS, by this Policy (the "Policy"), the District desires to set forth guidelines for the processing and collection of unpaid and/or delinquent Charges imposed by the District, together with any and all Penalties and Costs of Collections (each defined separately in this Policy), (collectively, the "Delinquent Charges"); and

WHEREAS, notwithstanding anything in this Policy to the contrary, the guidelines set forth in this Policy are intended to create orderly and fair procedures for the processing and collection of Delinquent Charges and Reimbursement Assessments and any deviation from the guidelines shall not affect the status of the Lien (as defined below) in any way; and

WHEREAS, the Board desires to adopt this Policy.

NOW, THEREFORE, the Board hereby RESOLVES:

1. Statement of Lien Guidelines

- a) Perpetual Lien. Pursuant to § 32-1-1001(1)(j)(I), C.R.S., all Delinquent Charges shall constitute a perpetual lien on and against the Property served by the District or the property subject to the Fine or Charge, as applicable (the "Lien"). Every Lien shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Property and shall run with the Property and remain in effect until paid in full. Every Lien contemplated herein may be foreclosed as authorized by law at such time as the District, in its sole discretion, may determine.
- b) In the event any or all of the guidelines set forth in this Policy are not followed, such deviation shall not affect the status of the Lien in any way.

2. Reimbursement Assessment

"Reimbursement Assessment" shall mean a charge against a particular Lot for the purpose of reimbursing the District for expenditures and other costs and expenses incurred by the District which arise from or are related to (a) any actions or violations of the Declaration or the Rules and Regulations by an Owner, or such occupant of a Lot or (b) damages to District property caused by an Owner or resident of a Lot.

3. Collection Process

- a) District's Manager Procedures. The District's Manager, (the "Manager") is responsible for collecting Charges and Reimbursement Assessments imposed by the District against the Property. In the event payment of Charges and Reimbursement Assessments is delinquent, the Manager may perform the procedures listed below. The Manager is not required to provide a payment plan, as discussed below in Section b(i)(b), if the owner does not occupy the unit and has acquired the property as a result of a default of a security interest encumbering the unit or foreclosure of the District's Lien; or, if the owner had previously entered into a payment plan with the District. The Charges and Reimbursement Assessments are considered delinquent when they have not been paid by their corresponding due date (the "Delinquent Account"):

- i. Fifteen (15) Calendar Days Past Due: A delinquent payment "Reminder Letter" shall be sent to the address of the last known owner of the Property according to the Manager's records. In the event the above mailing is returned as undeliverable, the Manager shall send a second copy of the Reminder Letter to: (1) the Property; and (2) the address of the last known owner of the Property as found in the real property records of the Adams Assessor's Office (the "Assessor") (collectively, the "Property Address"). Said Reminder Letter shall: (1) request prompt payment; (2) notify the Property owner that a Reminder Letter Fee in the amounts set forth in this Policy have been assessed; (3) reference the url address of the District's webpage where this Policy is displayed, if available and requested by the Board; and (4) shall include the following:
 - A. The total amount due to the District along with an accounting of how the total amount was determined; and
 - B. Whether the Owner may enter into a payment plan and instructions for contacting the District to arrange for and enter into a plan; and
 - C. A 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; and
 - D. A statement indicating that action is required to cure the delinquency and that failure to do so within 30 days may result in the Owner's delinquency account being turned over to an attorney, a collection agency, the filing of a lawsuit against the owner, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado Law.

- ii. Fifteen (15) Calendar Days From the Postmark Date of the Reminder Letter: A "Warning Letter" may be sent to the Property Address: (1) requesting prompt payment; (2) warning of further legal action should the Owner fail to pay the total amount due and owing; and (3) referencing the url address of the District's webpage where this Policy is displayed, if available. Along with the Warning Letter, a copy of the most recent account ledger reflecting the total amount due and owing to the District according to the records of the Manager may also be sent.

- iii. Fifteen (15) Calendar Days from the Postmark Date of the Warning Letter: Once the total amount of Charges and Reimbursement Assessments owing on the Property has exceeded **\$800.00 and the 30-day timeframe in the Reminder Letter has expired**, the Manager may refer the Delinquent Account to the District's General Counsel (the "General Counsel") or to a collection agency. At the time of such referral, the Manager may be requested to provide General Counsel with copies of all notices and letters sent pursuant to Section 1(b), if any, as well as a copy of the most recent ledger for the Delinquent Account.
- c) General Counsel Procedures. Upon referral of a Delinquent Account from the Manager, General Counsel may perform the following:
 - i. Upon Referral of the Delinquent Account From the Manager: A "Demand Letter" may be sent to the Property Address, notifying the Owner that (a) the Property has been referred to General Counsel for further collections enforcement and (b) a statement of lien will be recorded with the County Clerk and Recorder's Office (the "Clerk and Recorder") within no sooner than ten (10) days from the postmark date of the Demand Letter. Along with the Demand Letter, a copy of the most recent account ledger reflecting the total amount due and owing the District according to the records of the Manager may also be sent.
 - ii. No Sooner than Ten (10) Calendar Days from the Postmark Date of the Demand Letter: A Statement of Lien for the total amount due and owing as of the date of the Statement of Lien may be recorded against the Property with the County Clerk and Recorder no sooner than ten (10) days from the postmark date of the Demand Letter is sent to the Property. Notwithstanding the amount due and owing reflected on the Statement of Lien, all Delinquent Charges and Reimbursement Assessments will continue to accrue on the Delinquent Account and will run with the Property until the total amount due and owing to the District is paid in full.
- d) Foreclosure or Bankruptcy. In circumstances where the Property is being foreclosed upon or where the Owner has declared or is declaring bankruptcy and notice of such bankruptcy action has been provided to the District, the Manager may be permitted, in his or her discretion, to refer the Delinquent Account directly to General Counsel in order to avoid unnecessary, costly and time-consuming procedures. Upon referral of the Delinquent Account to General Counsel, General Counsel may, in his or her discretion, immediately file a Statement of Lien on the Property. The District may choose to foreclose on its lien. The District shall consider individually each recommendation for a foreclosure. Any foreclosure action shall be approved by the Board of Directors of the District via resolution or a vote of the Board recorded in the minutes of the meeting at which the vote was taken.

5. Late Fees and Interest

- a) Late fees shall not be assessed on the Property for failure to make timely payments of Charges and Reimbursement Assessments.
- b) Interest shall not accrue on any delinquent Charges and Reimbursement Assessments.

6. Penalties

"Penalties" may be charged on Delinquent Accounts at a rate determined by the Board and may include, but are not limited to, pro-rated costs associated with collection efforts on behalf of the District for all Delinquent Accounts combined.

7. Return Check Charges

A return check fee, not to exceed \$20.00, shall be assessed against the Property in the event any check or other instrument attributable to or payable for the benefit of such Property is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. Such return check charge shall be due and payable immediately, upon demand. Notwithstanding this provision, the District shall be entitled to all additional remedies as may be provided by applicable law. Returned check charges shall be the obligation of the Property for which payment was tendered to the District. Returned check charges shall become effective on any instrument tendered to the District for payment of sums due. If two or more checks are returned unpaid by the bank within any fiscal year, the District may require that all of the Owner's future payments, for a period of one year, be made by certified check or money order. This return check charge shall be in addition to any Penalties incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the underlying Charges and Reimbursement Assessments is not timely made within 15 days of the due date.

8. Costs of Collections

"Costs of Collections" include, but are not limited to, attorneys' fees and all costs, fees and charges associated with the processing and/or collection of delinquent Charges and Reimbursement Assessments.

- a) Attorney Fees and Costs. Upon transfer of a Delinquent Account to General Counsel, all attorneys' fees and costs, including, but not limited to, litigation and expert witness fees and costs, litigation guarantees, service of process and/or publications incurred by the District to collect or defend the Delinquent Charges and Reimbursement Assessments are assessed to the Delinquent Account and become part of the perpetual Lien on the Property. All such attorneys' fees and costs shall be reasonable.

9. Recovery of Costs of Collections

In accordance with §29-1-1102(8), C.R.S., nothing in this Policy shall be construed to prohibit the District from recovering all Charges and Reimbursement Assessments whether or not outlined above. For all Delinquent Accounts where (1) unpaid Charges and Reimbursement Assessments exceeds \$150 and (2) the Owners have either failed to enter into a payment plan with the District or are delinquent on their payment plan with the District, the District Manager shall submit the Charges and Reimbursement Assessments for all such Delinquent Accounts to the Board for consideration to turn over such amounts to the County Treasurer ("County Treasurer") for collection. In accordance with §32-1-1004.5(3)(b), the Board may elect, by resolution, at a public meeting held after issuing notice via certified mail to the respective Property owners, to have all unpaid Charges and Reimbursement Assessments certified to and collected and paid over by the County Treasurer in the same manner as taxes are authorized to be collected by the County Treasurer.

9. Waiver of Fines and Costs of Collections

- a) The Manager has authority and discretion to waive or reduce positions of the Delinquent Account attributable to Fines. When determining whether to waive Fines, the Manager may consider several factors including, but not limited to the following:
- history of violations issued on the property,
 - the nature of the property violations,
 - property owner's remediation plans (or lack thereof),
 - nature of communications between the property owner and the District,
 - factors that may have prevented timely correction of a violation

Notwithstanding the foregoing, the Manager shall not have the authority to waive Fines which, in the aggregate, exceeds One Hundred Fifty Dollars (\$150.00) each calendar year. In such case, the Owner of a Property owing in excess of One Hundred Fifty Dollars (\$150.00) in Fines and requesting such a waiver shall submit a request, in writing, to the Board, and the Board may make the determination in its sole discretion.

- b) Neither the Manager nor General Counsel is authorized to waive any portion of the Costs of Collections. Should the Property owner desire a waiver of such Costs of Collections, s/he may submit a written request to the Board and the Board may make the determination in its sole discretion.
- c) Any waiver or reduction of Fines or Costs of Collections granted pursuant to Sections 6(a) or (b) hereof shall not be construed as a waiver or reduction of future Fines or Costs of Collections, or as the promise to waive or reduce future Fines or Costs of Collections. Nor shall any such waiver or reduction be deemed to bind, limit, or direct the future decision-making power of the Board, Manager, or General Counsel, whether related to the Property in question or other properties within the District.

10. Payment Plans

An Owner of Property that is delinquent in payment of Charges and Reimbursement Assessments who had not previously entered into a payment plan with the District, may enter into a payment plan with the District, which plan shall be for a minimum of six months or such other term as may be approved by the Board of Directors. This payment plan is not available to Owners who previously entered into a payment plan with the District or Owners who do not occupy the unit and acquired the property as a result of a default of a security interest or foreclosure of the District's lien. In the event the Owner defaults or otherwise does not comply with the terms and conditions of the payment plan, including the payment of ongoing Charges and Reimbursement Assessments imposed by the District, the District may, without additional notice, refer the Delinquent Account to an attorney or collection agency for collection action or may take such other action as it deems appropriate in relation to the delinquency and the entire amount owed becomes immediately due and payable. The Manager and General Counsel each have the authority to enter into or establish payment plans for the repayment of a Delinquent Account up to a maximum period of twelve months. Should the Manager or General Counsel elect not to enter into a payment plan with the Owner or the Owner requests a payment plan

longer than twelve months, the Owner may submit a written request to the Board and the Board may make the determination in its sole discretion.

11. Application of Payments

Payments received will be applied to the balance due in the following order of priority: (1) Costs of Collections; (2) legal fees and Costs; (3) the earliest imposed and unpaid Charges and Reimbursement Assessments; (4) any successive unpaid Charges and Reimbursement Assessments in chronological order from the earliest unpaid Charges and Reimbursement Assessments to the most recently imposed Charges and Reimbursement Assessments.

12. Ratification of Past Actions

All acts, omissions, waivers and/or payment plans heretofor undertaken by the Manager or General Counsel that would otherwise have been authorized by or not required by this Policy are hereby affirmed, ratified and made effective as of the date said acts, omissions, waivers and/or payment plans occurred.

13. Additional Actions

The Board directs its officers, staff and consultants to take such additional actions and execute such additional documents as are necessary to give full effect to the intention of this Policy.

14. Deviations

The District may deviate from the procedures or waive guidelines set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances. Notwithstanding the foregoing, the guidelines set forth in this Policy are intended to create orderly and fair procedures for the processing and collection of Delinquent Charges and Reimbursement Assessments and to provide additional notice to interested parties, including, but not limited to, title companies and the Owner.

15. Supersedes Prior Policies

This Policy shall supersede and replace in their entirety all prior policies addressing the processing and/or collection of Delinquent Charges and Reimbursement Assessments, including the Prior Policy. To the extent that any term or provision in this Policy conflicts with any term or provision in a previously enacted and valid policy of the District, the term or provision in this Policy shall prevail.

16. Severability

If any term, condition or provision of this Policy shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other provision contained in this Policy, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Policy a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

17. Savings Provision

The failure to comply with the procedures set forth herein shall not affect the status of the Delinquent Fines, Charges and Reimbursement Assessments as a perpetual Lien subject to foreclosure in accordance with law. Failure by the Manager, General Counsel or other authorized representative to take any action in accordance with the guidelines provided herein shall not invalidate subsequent efforts to collect the Delinquent Fines, Charges and Reimbursement Assessments.

18. Amendment

This Policy may be amended from time to time by the Board at its discretion.

ADOPTED this 17th day of June 2027.

BANNING LEWIS RANCH METROPOLITAN DISTRICT
No5

Signed by:

Steve Langer

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Steve Langer, Board President

ATTEST:

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Susan Greulich

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Susan Greulich, Board Secretary