

Hidden Springs Town Association, Inc.

Association Policy 210

Collection Procedure

Reason for Procedure:

A uniform and systematic procedure for the collection of unpaid assessments in a timely manner is in the best interests of the Hidden Springs Town Association ("HSTA"). The Town Council of HSTA ("Board") has concluded that the HSTA's interests are best served by establishing a relationship with a collections attorney to minimize the HSTA's loss of assessment revenue.

Applicable Definitions:

1. "Declaration" is the *Master Declaration of Covenants, Conditions and Restrictions for Hidden Springs Planned Rural Community*;
2. "Bylaws" is *Bylaws as incorporated in Articles 3, 7 and 8 of the Declaration.*;
3. "Assessments," as used in this Policy resolution, includes all amounts validly assessed against a Lot or Unit Owner ("Owner") pursuant to the Declaration, the HSTA's Bylaws, Rules and Regulations, including HSTA Policies 100 and 200 or any Board Resolution, including, but not limited to, common expenses, interest, fees, special assessments including all attorney fees and all collection costs; and
4. "Attorney" refers to Vial Fotheringham, LLP, or such other legal counsel as retained by the Board from time to time.

Governing Law: Article 3, Section 3.1.7.4 of the Declaration allows the HSTA to adopt rules and enforce compliance with the Declaration, Bylaws, and administrative rules and regulations; Article 3, Section 3.1.7.3, Article 4, Sections 4.1.1 and 4.2.1 and Article 5, Section 5.1.1 of the Declaration authorize the Board to enforce provisions of the Declaration, Bylaws and Rules and Regulations, including action to collect unpaid assessments; Article 4, Section 4.1.6 of the Declaration authorizes the Board to establish late charges; Article 4, Section 4.1.5 of the Declaration authorizes the Board to issue a limited assessment against any homeowners for costs incurred in having homeowner fulfill obligations of the Declaration; Article 4, Sections 4.1.1.1, 4.2.2.1 and 4.2.2.2 of the Declaration provide that all assessments, together with interest, attorney fees and costs of collection shall be a continuing lien upon the unit against which each such assessment is made; Article 4, Sections 4.1.6 and 4.2.3 of the Declaration authorize the Board, on behalf of the HSTA, to bring suit to foreclose the lien against the unit and Article 4, Section 4.2.1 of the Declaration authorizes the Board to bring an action to obtain a money judgment against an Owner for damages and for unpaid assessments; and Article 4, Sections 4.1.1.1, 4.1.6, 4.2.1 and 4.2.2.1 of the Declaration provide that Owners shall be obligated to pay reasonable fees and costs, including, but not limited to, attorney fees incurred in connection with efforts to collect delinquent and unpaid assessments, regardless of whether suit or action is commenced, and to enforce the provisions of the Declaration, Bylaws and rules and regulations.

Standard Collection Process:

1. Town Manager and/or his agent may engage in informal reminders and communications regarding assessments prior to referral to Attorney.

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2. All late assessments shall accrue interest and fees as provided in Assessment Procedure, Policy 200.
3. All costs, fees and collections expenses shall be limited assessments pursuant to Article 4, Section 4.1.5 of the Declaration;
4. If any assessment remains unpaid by an Owner for more than thirty (30) days from the due date for its payment, the Board shall send a notice to the Owner indicating the amount due, including notice of the late fees and interest, and demand for immediate payment thereof.
5. Once an Owner is delinquent for \$500 or more in assessments, special assessments, fees or interest a lien will be placed on the Owner's property, at Owner's expense. Owner will be given prompt written notice of the lien.
6. Any assessment that remains unpaid by the Owner for more than thirty (30) days from date notice of lien will be referred for collection to the HSTA's attorney ("Attorney"). The Board may, at its discretion, refrain from referring accounts to Attorney that have already entered into payment arrangements with the Board, or that have demonstrated substantial hardship, or that the Board deems "uncollectable," or that have demonstrated nonpayment due to active military service.
7. Once an account has been referred it is managed by Attorneys. This means there is no direct communication between HSTA, its representatives and the Owner shall occur regarding Assessments.
8. Attorney will send a written demand for payment and any notice as required by the federal Fair Debt Collection Practices Act, if applicable.
 - a. The demand amount will include all collection costs to date, including attorney's fees and the cost of preparing and recording the lien, and any notice of lien required by law, and any notice to a first mortgage holder, if applicable.
 - b. The demand for payment will notify the Owner of the Owner's liability for payment of charges imposed by Attorney to cover fees and costs associated with all collection efforts.
9. HSTA or its agent will inform Attorneys of newly accrued assessments or special or limited assessments on any referred account which Attorneys will be responsible for including in the collection process.
10. If any assessment remains unpaid by the Owner thirty (30) days after the date of Attorney's demand, Attorney shall send Owner a ten (10) day demand letter for payment notifying the Owner that if full payment is not received within ten (10) days of the date of the letter the HSTA intends to file suit to

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either obtain a money judgment or foreclose on the lien. The ten-day demand will include the updated amount owing, including all collection costs to date.

11. If any assessment remains unpaid by the Owner ten (10) days after the Attorney's ten-day demand letter, the Attorney will file suit for a money judgment, unless the Board, after recommendation by Attorney, determines that lien foreclosure is advisable under the circumstances. In such cases, the Attorney may file a lawsuit for a money judgment, for foreclosure, or for both a money judgment and foreclosure, as permitted by applicable law.
12. If the HSTA is successful in obtaining a money judgment, Attorney shall collect on the judgment in the followings sequence, unless Attorney determines other actions or another order of collection is appropriate under the circumstances:
 - a. File and send a ten (10) day demand to pay judgment;
 - b. Garnish accounts, wages, and rents;
 - c. Levy against any personal and or real property; and
 - d. Levy against the Owners property in Hidden Springs.
13. Additional steps may be necessary to determine the availability and location of the judgment debtor's assets. If the HSTA is successful in a suit to foreclose on the lien, Attorney shall proceed as necessary to complete the foreclosure unless otherwise directed by the Board.
14. Following resolution of the collection matter, either through payment in full, legal enforcement, foreclosure, exhaustion of all legal remedies or Attorneys determination that an account is uncollectible, Attorneys shall return accounts to HSTA control through a letter sent care of HSTA's Town Manager, describing the current status of the case and resolution of the matter.

Applicable Interest Rates and Late Fees: Are established by HSTA Policy 200. (As of 9/1/2010, these are 1% per month, plus a 10% late fee per assessment.)

Assessment of Costs and Fees: Each assessment, special assessment, limited assessment, cost and fee, all legal fees and costs incurred in the collection of a delinquent account shall be assessed against the delinquent Owner and shall be charged and collected as an additional assessment as provided in the Bylaws and the Declaration.

All Discussions Regarding Accounts Referred to Attorneys Require Attorney Participation: Once an account related to a lot has been referred to Attorney, all contacts and contracts about payments related to the lot or with the delinquent Owner regarding the delinquent assessment and additional assessments on the delinquent lot shall be through Attorney.

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Neither the Board, the hired management company, the Town Manager, nor any other agents of HSTA, will discuss the collection of the account or any payments directly with the Owner after it has been turned over to Attorney unless one of the Attorneys is present or has consented to the contact and contract. Any payments made directly to HSTA or its management company will be forwarded to Attorneys.

Settlement Authority: Attorney shall have the discretion to enter into an installment payment plan with a delinquent Owner in appropriate circumstances. In all cases in which a lawsuit has been filed, any such plan must be secured by a Stipulated Judgment. Any payment plan providing for a down payment of less than the greater of one-third (1/3) of the delinquent balance or twice the current assessment, or a duration in excess of twelve (12) months shall require approval of the Board president. All other settlement authority shall reside with the Board and be exercised solely in consultation with Attorney.

Limited Power of Attorney: The HSTA hereby grants to Attorney its limited power of attorney to endorse for deposit checks made payable to the HSTA (or its agent management company, if any) in satisfaction of accounts sent to Attorney for collection. Attorney shall deposit all payments in its trust account. All amounts collected shall be disbursed by Attorney according to the provisions of the HSTA and Attorney representation agreement.

No Waiver: Nothing in this Resolution precludes the Board from taking any action related to unpaid assessments permitted by the HSTA's governing documents or applicable law, including, but not limited to, adopting or enforcing rules regarding the termination of utility services paid for out of assessments of the HSTA and access to and use of recreational and service facilities available to Owners and, after giving notice and an opportunity to be heard, terminate the rights of any Owners to receive such benefits or services until the correction of any violation covered by such rule has occurred.

Publication: A copy of this resolution shall be sent to all Owners at their last known address, and maintained online with the other Hidden Springs policy documents.

ATTEST: This ____ day of September, 2010.

President, Hidden Springs Town Council

Secretary, Hidden Springs Town Council