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The Squeaky Wheel Gets The Grease (Why Collection Policies Are Essential)

HindmanSanchez P.C. *Attorneys at Law • Denver & Fort Collins*
5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com



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In today's world most people, at one time or another, juggle their financial obligations. And, for some owners and community associations, this juggling is a monthly fact of life. The decision of who to pay each month is made not based on responsible, honorable principles, but day-to-day, in-the-trenches financial pressures.

Last month when John and Mary DeLinquence of Cashpoor HOA were paying bills the conversation went something like this:

John: We've got to pay the mortgage.

Mary: Yea, and we skipped the car payment last month, so it has to get paid.

John: O.K., that leaves MasterCard, Discover, Public Service, US West, Texaco, Penny's and the HOA; plus gas and groceries.

Mary: Well, we also need new tires for the car, so we need to make sure we pay MasterCard or Discover since we will have to charge the tires.

John: We got the disconnect notice for the phone yesterday so we have to pay it too.

Mary: This isn't good.

John: Let's skip paying the association and use that to pay the Texaco bill so that when we have to charge gas on the trip to your mother's house, it's available.

Mary: That makes sense, besides other owners have told me that the association won't take any action or penalize us unless we don't pay for four or five months.

If you can imagine this conversation taking place between owners in your community then you can understand why a collection policy is an essential tool for your association.

A collection policy is nothing more than a resolution by the board of directors which sets out the association's expectations with respect to payment of assessments, the penalties in the event that an owner fails to meet those expectations and a systemized procedure for handling delinquent accounts. Collection policies serve two purposes. First, a collection policy can be used as a tool to educate owners regarding the repercussions of not paying assessments. For example, if John and Mary were aware that the association charges a \$25 late fee if an assessment is not paid on time, and that a lien is recorded against the property in the event that assessments are unpaid for two months, this may effect their decision whether to pay the association or Texaco.

In addition, the adoption of a collection policy also affords the association a defense in the event an owner claims that he or she is being singled out or discriminated against because of the association's collection methods. For example, a written collection policy that indicates which

actions will be taken by the association and/or its attorney at 30, 60 and 90 days, and sets out the conditions under which the association will foreclose upon its lien could easily refute a claim by an owner that he is being treated differently than other association members.

A comprehensive collection policy should contain the following provisions:

- Due dates and late dates
- Billing information - whether invoices or statements are sent
- When late charges are incurred
- What interest rates are charged and what interest is charged on
- When and why assessments are accelerated
- Returned check charges
- Attorney fees
- How payments are applied
- What actions will be taken on delinquent accounts
- Notices - use of certified or registered mail
- When liens are recorded
- Whether waivers or payment arrangements are allowed

Once the policy is drafted it should be reviewed by legal counsel in order to insure that it is in compliance with your association's governing documents and both federal and state law. It is very important that your collection policy be publicized and distributed either in total or in a summarized version to all owners within your community as often as possible. In addition to the standard provisions outlined above, a comprehensive collection policy should also address the association's possible enforcement remedies including utility shutoff, receivership, foreclosure and suspension of voting rights.

It does not take long for an association to develop a reputation among owners for either persistent or inconsistent collection efforts. Adopting and following a formal collection policy can go a long way towards creating the right reputation, and making sure that HOA assessments are not at the bottom of your homeowners' priority list.