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Dear Folks:

We are writing to tell you that we appreciate having your association as a client and we look forward to advising and assisting you whenever the need may arise.

We are regularly involved in all aspects of homeowner and condominium association law, including the following:

1. Collection of delinquent assessments;
2. Enforcement of CC&Rs and rules and regulations;
3. Compliance with statutory requirements;
4. Interpretation, adoption, and amendment of governing documents;
and
5. Damage and insurance claims.

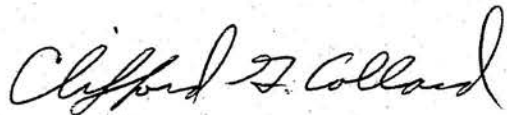
While the Oregon legislature did not meet this year to produce changes in the Oregon Planned Community Act and the Oregon Condominium Act, there are two items that we thought you might appreciate having more information regarding. Collection of delinquent assessments and proper use of executive sessions are two areas where we receive many questions so we have included a brief summary of these two areas. If we can assist you in any way please give us a call.

Thank you again for the opportunity to serve you.

Very truly yours,



DENNIS L. BARTOLDUS



CLIFFORD G. COLLARD

COLLECTION OF DELINQUENT ASSESSMENTS

Condominium and planned community associations ("HOAs") depend on the payment of assessments by their members to pay operating expenses and fund reserves. Directors have a duty to exercise reasonable care to collect assessments. Therefore, they should have a basic understanding of the laws and provisions of their association's declaration and bylaws relating to the collection of assessments. The following are some of the general points directors should be aware of.

1. Late Charges. The interest rate on delinquent assessments prescribed in most declarations or bylaws does not provide much incentive for owners to pay assessments in a timely manner. Both the Oregon Condominium Act ("OCA") and the Oregon Planned Community Act ("PCA") authorize boards of directors to adopt late charges that may be more effective. A late charge is generally either a fixed amount or a percentage of the monthly assessment amount, and is imposed once each time a monthly payment is late by more than a certain number of days. Both the OCA and PCA require the late charge to be adopted in the form of a resolution, and that a copy of the resolution be provided to all of the owners, if the charge is not specified in the declaration or bylaws.

2. Assessment Liens. Both the OCA and PCA now provide that the HOA automatically has a lien on the unit or lot for which assessments, interest, late charges, or attorney fees are delinquent, whether or not the association has recorded a notice of lien at the courthouse. Because of this, title companies must contact the HOA and request a written statement of unpaid assessments and related charges that will then be paid when closing escrow in a sale or refinance. It is vital that this information be provided upon request by a title company. If not provided, not only will the HOA lose an easy opportunity to get paid, but it will also lose its lien rights.

Prior to 2003, an HOA did not have a lien until it recorded a claim of lien. Since 2003, as mentioned above, the law no longer requires such recording to create a lien, but recording a claim of lien is necessary before the lien can be foreclosed. HOA declarations and bylaws written before 2003 often reflect prior law and state that the association will have a lien when it records a claim of lien. There is some uncertainty as to whether the changes in lien rights under the 2003 legislation apply to those older HOAs with that language in their documents. Therefore, HOAs with the older language in their governing documents should seek to amend those documents to make them consistent with the current law regarding HOA liens.

3. Priority of Liens. An HOA's lien for unpaid assessments has priority over all other liens on a lot or condominium unit EXCEPT liens for property taxes and any first trust deed (mortgage) on the property that was recorded before the assessments became due (with one exception for condominiums, discussed later). The rule that a first trust deed held by a lender generally has priority over an HOA's lien means that a completed foreclosure of the first trust deed by a lender will generally extinguish the HOA's lien. Similarly, if the HOA completes a foreclosure of its lien before

the lender forecloses its first trust deed, the lot or unit will remain subject to the first trust deed after the property is sold at the HOA's foreclosure sale and can be foreclosed on again by the lender if payments are not made.

ORS 100.450(7) allows the lien of a condominium HOA to jump ahead of a first trust deed in priority under certain circumstances. This can occur if the unit owner is in default in payments to the lender, the HOA sends the lender a notice that the unit owner is in default of assessments and containing certain other information, and the lender fails to start foreclosure of its trust deed within 90 days after the notice. This is an important right. Lenders will sometimes elect to pay the delinquent HOA assessments and add the amount to the unit owner's loan balance. Even if that does not occur, giving the notice gives the condo HOA a chance of jumping ahead of the lender's trust deed and significantly improving the HOA's chances of collecting the delinquent assessments.

4. Benefits of Acting Promptly. One of the worst things that can happen when an HOA lets delinquent assessments slide is that the owner will eventually default on his or her loan, the lender will foreclose, and the HOA's lien will be extinguished, making it unlikely that the HOA will ever collect. Waiting to take action until the amount owed is large increases the risk that this scenario will unfold and the large amount owed will become uncollectable. Here are some suggestions to reduce that risk:

- a. Make sure your HOA implements a valid late charge to provide an incentive for owners to pay assessments in a timely manner;
- b. Adopt a collection policy calling for a series of letters to be sent to delinquent owners at specified times (consider having your forms reviewed by us first);
- c. Consult us if your letters are unsuccessful, as a demand letter from an attorney may be more effective (you may be able to add the cost to the assessments owed);
- d. Try to obtain information from the owner about the nature and extent of the owner's financial difficulty, particularly whether there is a loan on the property and whether it is in default.
- e. Authorize us to prepare, record, and send the owner and the owner's lender a written Notice of Claim of Lien to further motivate the delinquent owner.
- f. Let us help you decide whether foreclosure of the HOA's lien, or another remedy, may be successful and cost effective. Reimbursement of attorney fees and costs you incur will generally be included in any court judgment, but the chances of collecting the judgment must be carefully evaluated.
- g. Finally, contact us if you receive formal notice that a lender has started a judicial or non-judicial foreclosure of its trust deed. If you do nothing, you may lose an opportunity to assert your lien rights and collect the delinquent assessments.

PROPER USE OF EXECUTIVE SESSIONS

Board meetings in homeowners and condominium associations must be open to all owners who wish to attend. The only exception to this rule allows the board to close a meeting to owners other than members of the board in order to meet in "executive session." However, the use of executive sessions is strictly limited by Oregon law.

First, an executive session can only be used to consider personnel matters (including salary negotiations and employee discipline), negotiation of contracts with third parties, the collection of unpaid assessments, or to consult with legal counsel on any subject. The bylaws of your association may be more restrictive, however, reflecting previous statutory language. If so, your bylaw provision will probably control and the board should consider proposing that the bylaws be amended to conform to the broader scope permitted by current law.

Second, there are several procedural requirements that must be followed. Except in an emergency, the board must vote in an open meeting whether to meet in an executive session. The presiding officer must then explain the general subject to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to the owners. The motion and vote to meet in executive session, along with the explanation given, must be included in the minutes of the meeting.

No minutes are taken during the executive session. The board can privately discuss and deliberate, but cannot vote on any action. The board must reconvene the open meeting and then there must be a motion and vote on any action to be taken, which must be included in the minutes, for the action to be effective. Records and documents considered by the board in an executive session, including communications with legal counsel on the subject of the session, can also be withheld from inspection by owners and mortgagees.

An executive session is a useful tool when private discussion is important to allow the board to function effectively, but board members must understand and comply with the legal requirements for its use.