

## HOA Collection Policy Requirements and Collection Limitations

(HB 13-1276)

June 1, 2013

**Bill Summary.** HB13-1276 establishes collection policy requirements for HOAs and regulates the collection of assessments.

**Effective Date.** January 1, 2014

**New Collection Policy Requirements and Collection Limitations.** Most associations already have collection policies. Prior to this bill, there were no specific state mandated requirements on the contents of a collection policy. This bill changes that. The bill provides that collection may not be pursued unless the association has adopted and follows a written collection policy, which at a minimum includes the following:

- **Due Date.** A due date must be established by which assessments must be paid
- **Late Fees.** Any late fees must be established
- **Interest.** Any interest charges must be established
- **Return Check Charges.** Any returned-check charges must be established
- **Initial Default Notice Required.** Before the association turns over a delinquent account to a collection agency or attorney, the Association must send the owner a notice of delinquency specifying:
  - The total amount due with an accounting
  - Whether the opportunity to enter into a payment plan exists and instructions for contacting the association
  - The name and contact information for a person the owner may contact at the management company
  - What is required to cure the delinquency
  - Failure to timely pay may result in the filing of a notice of lien, the account being turned over to the Association's attorneys or a collection agency, a lawsuit being filed and/or foreclosure against the owner's property
  - The method that payments may be applied on the delinquent account
- **Payment Plans.** Circumstances under which an owner is entitled to enter into a payment plan and the minimum terms of the payment plan must be established, before the account is referred for collection

- The payment plan must permit the owner to pay off the deficiency in equal installments over a period of at least six months (a longer payment plan term is allowed)
  - The association must make a good faith effort to coordinate with the owner to set up a payment plan
  - If the owner fails to pay an agreed installment or if the owner fails to remain current with regular assessments during the six-month period, the owner is in default of the plan and the association may pursue its remedies
  - For purposes of the payment plan, assessments include regular and special assessments, fees, charges, late charges, attorney fees, fines and interest
  - Associations are not required to enter into a second payment plan if the first payment plan was entered into under the terms of this statute
  - A payment plan is not required if the owner does not occupy the property or if the owner obtained title by foreclosure or deed-in-lieu of foreclosure
- Application of Payments. How payments will be applied on the delinquent account must be set forth in the collection policy
  - Remedies. The remedies of the association to collect on a delinquent account must be set forth in the collection policy

**Requirements Before Foreclosure of an Association Lien.** Before an association may foreclose on its lien, two requirements must be met:

- The balance must equal or exceed six months of budgeted common expense assessments
- The board must resolve, by a recorded vote, to authorize foreclosure against the specific unit (on an individual basis). This authority may not be delegated to a manager, account tech, attorney, insurer, or other person
- Results of failure to comply:
  - Any HOA foreclosure filed without evidence of the recorded vote authorizing the action must be dismissed
  - Associations may not recover from the owner any attorney fees court costs or other charges in connection with an action that is dismissed for failure to have evidence of authorization attached

**Assignees of Associations.** Persons who buy assessment accounts from associations and lenders who take assignments of an association's lien rights and assessments are subject to the requirements and limitations of this new law and to the terms of the bill and the association's collection policy

**Questions?** Contact the HOA law professionals at Orten Cavanagh & Holmes with any questions on this new law or an association collection policy