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Clarifying the Collection Notice Requirements to Delinquent Homeowners

On January 1, 2014, new legislation went into effect requiring associations to provide a specific written notice to delinquent homeowners. This notice is required prior to turning over a matter for collections to an attorney or collection agency.

The details of the notice are as follows:

- a. It must contain the amount due with an accounting of how the total was determined (a running balance ledger going back to a -0- balance is sufficient);
- b. A statement as to whether the opportunity to enter into a payment plan exists and instructions for contacting the community association manager and/or board member to enter into such a payment plan;
- c. The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the delinquency; and
- d. A statement that action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property or other remedies available under Colorado law.

Although this legislation has been in effect for over a year, I still see a good number of associations who fail to provide notices with the information above. The consequences for failing to provide the requisite notice can be severe including, but not limited to, a court failing to award any attorneys' fees and costs to an Association prevailing in the litigation. One of the most misunderstood requirements of the notice is the 'payment plan' provision.

A payment plan must be offered to all owners (with the exception of owners who do not occupy a unit and acquired it through a foreclosure) who became delinquent after January 1, 2014, regardless of prior delinquencies and/or payment agreements with the Association. Additionally, the payment plan must be for a term of at least six months. Once a homeowner enters into a payment plan, there is no requirement to provide them with another payment plan for future delinquencies. However, if a homeowner subsequently pays off the debt (voluntarily or through subsequent legal action) after refusing the opportunity to enter into a payment plan, the Association must again offer them the opportunity to enter into the payment plan if they are subsequently delinquent. In other words, the notice requirement (to enter into a payment plan) does not cease until a homeowner has actually agreed to enter into a payment plan with the Association.

Practically, this can be very difficult for a self-managed association or community association manager to track. Some associations have elected to provide a six month payment plan each time an owner is delinquent without regards to whether a prior payment plan was in place. Ultimately, that decision is for the Association to decide once it weighs the feasibility of properly tracking the prior payment plans with delinquent homeowners.