

**TWO RIVERS SUBDIVISION HOMEOWNERS ASSOCIATION, INC.**

**Resolution of The Board of Directors**

**COLLECTION OF UNPAID CHARGES**

WHEREAS, "Declaration" is the *Master Declaration of Covenants, Conditions and Restrictions of Two Rivers Subdivision*, "Bylaws" is *Bylaws of Two Rivers Subdivision Homeowners Association, Inc.*, and "Association" is *Two Rivers Subdivision Homeowners Association, Inc.*;

WHEREAS, "assessments," as used in this Resolution, includes all amounts validly assessed against a Lot or Unit Owner ("Owner") pursuant to the Declaration, the Association's Bylaws, Rules and Regulations, and any Board of Directors ("Board") Resolution, including, but not limited to, common expenses, interest, fees, fines, attorney fees and all collection costs;

WHEREAS, Article VII, Section 1, Paragraph A of the Bylaws allows the Association to adopt rules and enforce compliance with the Declaration, Bylaws, and administrative rules and regulations;

WHEREAS, Article III, Section III, Paragraph A and Paragraph C, Sub-paragraph 3 and Article IV, Section 3 of the Declaration and Article VII, Section 2, Paragraph C of the Bylaws authorize the Board to enforce provisions of the Declaration, Bylaws and Rules and Regulations, including action to collect unpaid assessments;

WHEREAS, Article III, Section III, Paragraph A of the Declaration and Article XI of the Bylaws 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;

WHEREAS, Article III, Section III, Paragraph I of the Declaration and Article VII, Section 2, Paragraph C and Article XI of the Bylaws authorize the Board, on behalf of the Association, to bring suit to foreclose the lien against the unit and to bring an action to obtain a money judgment against an Owner for damages and for unpaid assessments;

WHEREAS, Article III, Section III, Paragraph A of the Declaration and Article XI of the Bylaws 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;

WHEREAS, assessments are currently due and payable annual in advance on the due date established by the Board;

WHEREAS, from time to time Owners become delinquent in the payments of their assessments and fail to respond to the demands from the Board to bring their accounts current, and it is imperative assessment payments are timely received;

NOW, BE IT FURTHER RESOLVED, that a copy of this resolution shall be sent to all Owners at their last known address.

ATTEST:

  
\_\_\_\_\_  
President, Board of Directors

  
\_\_\_\_\_  
Secretary, Board of Directors

Date: 2/14/11

EXHIBIT "A"

**SAMPLE DEMAND LETTER TO BE SENT BY BOARD OF DIRECTORS ONCE  
ASSESSMENTS ARE 30 DAYS PAST DUE**

January 10, 2011

John Doe  
111 S.W. 11<sup>th</sup> Avenue  
Boise, ID 83714

RE: NOTICE OF UNPAID ASSESSMENTS

Dear Mr. Doe:

The records of Two Rivers Subdivision Homeowners Association, Inc. show that your assessment account is now past due. Our records reflect the following:

Principal Assessments Due:	\$ _____
Accrued Late Charges:	\$ _____
Accrued Interest:	\$ _____
Total Due:	\$ _____

Demand is hereby made for immediate payment of the balance in full. If you have any questions, please contact the undersigned.

Your prompt payment of the balance due is appreciated.

Sincerely,

Jane Smith

## Vial Fotheringham Collection Process

1. **Account Turnover** - Advantage Idaho prepares individual homeowner account information packet for turn over to Vial Fotheringham. When VF receives the packet (via email):
  - a. Account representative creates the file and inputs information provided by Advantage Idaho.
    - i. A Title Check for ownership, bankruptcies, foreclosures, liens, etc is performed.
    - ii. The charges turned over are reviewed for compliance with the Association Governing Documents.
2. **30 Demand Letter** - based on the Fair Debt Collection Practices Act, a 30 demand letter is mailed to the homeowner within a week of turnover from Advantage Idaho requesting payment, or notification of a dispute of the debt. The FDCPA requires the debtor be allowed a 30 day period to dispute the validity of the debt in writing.
3. **1<sup>st</sup> Phone Call** - after the 30 day letter is sent, a phone call to the debtor is made (prior to the end of the 30 day time period) to attempt to create a payment situation or at least start a dialogue for payment options.
4. **Attorney Review** – once the 1<sup>st</sup> phone call has been made, the attorney will review the account to ensure all title and legal requirements are fulfilled.
5. **2nd Phone Call** – a second phone call is made to either start, or continue dialogue on payment options and responsibility.
6. **10 Day Notice of Court Proceedings** – a letter stating the intent to sue is mailed to the homeowner if prior steps have not created a payment/payoff situation.
7. **3<sup>rd</sup> Phone Call** – a third phone call is made to continue discussion, or to continue attempts to initiate contact with the homeowner.
8. **4<sup>th</sup> Phone Call** - a fourth phone call continues the negotiation or contact process.
9. **COURT** – Court paperwork is filed and the process begins for suing the homeowner.
  - a. **Complaint and summons** – the first step is to file a complaint and summons with the court.
  - b. **Service** – the homeowner must then be served the paperwork – in person - within 60 days of filing.
  - c. **Response Period** – if the homeowner has been served, a response period of 20 days begins
    - i. **Settlement Conference** – if the homeowner has responded to the complaint, a settlement conference is scheduled by the court (could be as far as 90 days out) to determine resolution (summary judgment).
    - ii. **Default Judgment** – if the homeowner does not respond to the complaint within the time allotted, a default judgment can be awarded.
10. **POST JUDGMENT** – once a judgment of either kind is determined, Vial Fotheringham will notify Advantage Idaho of the outcome.
  - a. **Demand for Payment** – once the judgment is awarded, Vial Fotheringham sends a Demand for Payment letter to the homeowner, with a copy of the judgment from the court. They will give the homeowner what they deem is reasonable time to respond and/or make payment.
  - b. **Writ of Execution** – if the homeowner does not respond to the demand, a Writ of Execution will be applied for. This will take approximately 2 weeks to receive as it has to be applied for with the court, recorded and then returned to Vial Fotheringham.
  - c. **Sheriff's Instruction** – once Vial Fotheringham receives the Writ of Execution, they will request the Sheriff serve the writ and attempt a non-formal debtor's exam. This can include requesting the homeowner's employment information, requesting information on any assets, and requesting payment of the judgment. The Sheriff is NOT required to request this information when serving the writ, nor can the force the homeowner to comply. They can only ask. If no resolution of the Writ is completed within 90 days, it is returned to Vial Fotheringham as non-completed.

- d. **Debtor's Exam** – if the Writ of Execution is returned to Vial Fotheringham as incomplete, they will then file paperwork with the court to force a Debtor's Exam. The court will then schedule a time (usually about 90 days out) for the homeowner to prepare any financial and employment documentation – to include payroll, unemployment, tax and banking information – to provide at a hearing.
  - i. Should the homeowner not be present at the court scheduled debtor's exam, a bench warrant can be issued for the homeowner. This will not create a situation where someone goes out to find and arrest the homeowner, more if the homeowner is contacted by law enforcement for any other reason, this would be enforced.
- e. **Writ of Garnishment** – once the debtor's exam is complete, or the hearing has passed, a writ of garnishment can be requested. This can be for garnishing a bank account, payroll, or assets, depending on what the homeowner has available.

*\*It is important to Vial Fotheringham and Advantage Idaho to create an environment where each homeowner understands the legal obligations of dues payment and CC&R compliance. In doing so, every attempt is made to create payment plans/options to avoid court proceedings if possible. Helping a homeowner understand the obligation and bringing their account current can help the association as a whole with future payments being kept current. This can also create a more willing and compliant homeowner and help eliminate the potential of an unpleasant homeowner.*

#### Vial Fotheringham Timeline

Account Turnover -	1 Day
Input & Review	7 Days
30 Day Demand & 1 <sup>st</sup> – 3 <sup>rd</sup> Phone Call	30 Days
10 Day Notice of Court Proceedings & 4 <sup>th</sup> Phone Call	10 Days
Court Paperwork	10 Days
Serve Homeowner Court Paperwork	60 Days
Settlement Conference/Default Judgment	90 Days
Demand for Payment	30 Days
Writ of Execution	90 Days
Request Debtors Exam	90 Days
Writ of Garnishment	60 Days
<b>Total <u>Estimated</u> Time if all steps have to be completed</b>	<b>478 Days</b>



TWO RIVERS™

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C/O Advantage Idaho Association Management

PO Box 140273 • Garden City ID 83714 • 208-323-1080 • Fax 208-853-1080 • kate@advantage-idaho.com

March 9, 2011

Dear Two Rivers Homeowners:

With the economy being as difficult as it has been in recent months, we have experienced concerns at Two Rivers in collecting on a number of owners' assessments. The Homeowners Association Board and Advantage Idaho have limited options to collect past due collections on their own and in a cost effective manner. We have, therefore, decided to pursue an additional option. The Board has made the decision to work with the law firm of Vial Fotheringham, LLC to recover significantly past due accounts.

We will employ Vial Fortheringham to act on our behalf only when accounts become delinquent and the homeowner is not responsive. The Board, not Vial Fortheringham, makes the decision when and if to pursue collection. Vial Fortheringham's fees for collections are typically added to what is owed by the homeowner and do not become a cost to the Association.

In order to ensure that every homeowner is informed of the collections process, we have attached a Resolution passed by the Two Rivers Board of Directors. Advantage Idaho's attorney has carefully reviewed the Board's resolution and our agreement with Vial Fortheringham and found them consistent with our governing documents.

We appreciate your cooperation in making your assessment payments in a timely manner so we can continue to maintain our neighborhood in a manner that enhances our investment and the enjoyment of our homes.

Sincerely,

Two Rivers Board of Directors