

# HOA COMMUNICATOR

HTS PROUDLY UNVEILS ANOTHER NEW SEGMENT TO OUR NEWSLETTER: THE COLLECTION COACH, STACY STEIN



The Collection Coach

STACY STEIN JOINED HTS LAST YEAR AS LEAD ATTORNEY IN THE FIRM'S COLLECTION DEPARTMENT AND BRINGS YEARS OF DEBT COLLECTION KNOWLEDGE AND MANAGEMENT TO HTS' HOA DEPARTMENT. STACY IS A VERY ENERGETIC AND DYNAMIC LAWYER WHO, PRIOR TO LAW SCHOOL, GAINED TREMENDOUS EXPERIENCE APPLYING HER NATURAL TALENTS IN MANAGING COLLECTION LAW FIRMS AND

DEPARTMENTS. STACY

LOOKS FORWARD TO BRINGING YOU VALUABLE AND OFTEN UNIQUE INSIGHT ABOUT THE COLLECTION OF HOA DUES IN THIS NEW SEGMENT IN THE HOA COMMUNICATOR.

COMMUNICATION IS THE CORNERSTONE OF EVERY ASPECT OF OUR PRACTICE, AND WITH COLLECTION OF DELINQUENT ASSESSMENTS, COMMUNICATION IS KEY. STACY HAS

RECENTLY PRESENTED WORKSHOPS ON HOW TO IMPROVE COLLECTIONS AND NOW SHARES WITH OUR READERS HER FIRST INSTALLMENT OF "THE COLLECTION COACH"



Stacy Stein

## Collecting Smarter, Not Harder

The purpose of a HOA is to provide people within a shared neighborhood an opportunity to enforce regulations and to protect property values. It is also to foster a sense of community. So, how does the collection of dues fit in with that essential purpose?

Through collection of dues, HOA's are able to benefit their neighborhood by maintaining common areas, structures, and amenities, as well as providing services such as water and trash removal. When certain residents stop paying dues, all of the residents of the community are adversely affected. This hurts the development of a community, by limiting the resources available to the Association. However, there is a delicate balance between keeping past due assessments to a minimum and alienating residents in your community. Before adopting a collection policy or when reviewing your current collection policy, it is important for a Board of Directors to consider what actions it would like to take to collect and how those actions will affect community relations.

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## SOLUTIONS OUTSIDE OF COURT

Believe it or not every dispute that an Association hands over to their attorney does not end up in litigation. One of the primary roles of an attorney is to resolve client problems. While fixing a leaky roof is not within most attorneys' skill sets, resolving disputes related to money and rules are why clients call upon their attorney. Not every dispute leads to litigation, whether your attorney is involved or not. Many disputes can be resolved through pro-active communication and a degree of reasonableness by all parties. The occasional encounter with a resident that threatens to hire an attorney to dispute a \$75 fine demonstrates that there are always some individuals who are not open to reasonable solutions.

Good attorneys like to solve problems. Client's disputes are puzzles to be solved by a variety of different solutions. While collection disputes frequently lead to litigation, it is only after there have been attempts at resolution. Litigation should be an escalation towards resolution only after negotiation fails. Periodically in the HOA Communicator, we will be



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## Collecting Smarter, Not Harder

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There are several approaches that are used to collect past due assessments, which we will label, “The Collection Agency Approach”; “The Stepped Approach”; and “The Aggressive Approach” (a/k/a “No Holds Barred Approach”). **The Collection Agency** approach consists of endless demand letters and phone calls intended to annoy a homeowner into paying. This method is rarely effective. **The Stepped Approach** starts with letters and calls, and becomes progressively more aggressive the longer the dues remain unpaid,



ending in collection of a court-awarded judgment, using legal methods. The Stepped Approach has proven to be a very effective collection method for HOA dues and is probably the most community friendly method.

**The Aggressive Approach** starts and ends with foreclosure and can quickly add significant attorneys’ fees and costs to a homeowner’s ledger and to the Association’s tab. While foreclosure has a place in the collection process, a lot of thought should be given to this enforcement action and, in our opinion, should be a measure of last resort. The Collection Agency approach is rarely utilized by Associations, so this article will focus on **The Stepped Approach** and **The Aggressive Approach**.

Prior to placement with a law firm, many boards have an internal process in place to collect past due assessments. Most start the collection process through their management company or in-house by sending letters and making phone calls directly to the homeowner. If a homeowner normally pays on time, but is experiencing a temporary hardship, working directly with the homeowner may be the best option. This method saves the homeowner attorney fees and costs that would otherwise make catching up more difficult. However, if a homeowner is unresponsive to HOA calls and letters, placement with a law firm is normally the next step. Once a past due homeowner’s account is placed with the law firm, the Board or the

Association’s management company gets to decide how to proceed, or at least should be given the choice on how to proceed.: The Stepped Approach or The Aggressive Approach;

## THE STEPPED APPROACH

While using the legal process can be very effective and is often necessary, suing people does not normally foster feelings of community. The Stepped Approach utilizes a gradual progression from letters to arrest warrants to collect past due assessments. By the time a homeowner is arrested on an outstanding bench warrant, they knew or should have known it was coming. The key to every step in the Stepped Approach is communication with the homeowner. Sometimes, there is no way to talk to the delinquent homeowner. Sometimes, they rent out the unit, live elsewhere, and can’t be reached. But, often, with persistence and good skip tracing, homeowners can be reached. Once reached, no matter what stage the collection case is at, the goal is to: (a) educate the homeowner about the consequences of not resolving the debt; (b) discuss options to resolve the past due amounts right away; and (c) create a sense of urgency to resolve the debt without more attorneys’ fees being incurred.

**Step 1** – After verifying ownership of the property, the law firm sends a demand letter to the homeowner, as required by state and federal law.

The letter gives the homeowner thirty days to dispute the validity of the debt. The board has the option to allow the homeowner the entire thirty-day dis-



pute period to expire before proceeding with a lawsuit, or suing immediately. This is the least offensive step of the process, though a letter from a law office prompts a significant number of homeowners to pay.

**Step 2** – The firm makes phone calls to homeowners to prompt payment. If a current phone number can be located, the calls can be effective at prompting the homeowner to set up payment arrangements when the homeowner cannot afford to pay the full amount due.

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sharing various real life situations that **have** ended in successful resolution by HOA Boards outside of the courtroom to highlight various solutions available to communities.

Most Associations have dispute resolution policies that promote alternative resolutions. These forms of mediation or meetings can take place with or without legal counsel. If the parties are aware of the drawbacks of litigation, time, cost, and uncertainty they are a certainly more likely to be willing to negotiate. An attorney's role is not simply to generate a large bill

for the Association, or to present compelling arguments in court. An attorney must be able to present viable methods of solution to the client. Our first story demonstrates the use of reasonableness by a Board in reaching a mutually satisfactory resolution without an attorney and is based on actual events experienced by someone at HTS who is a resident in a community with an HOA. It involves a conflict between nature and residents.

### SQUIRRELS- VICIOUS TREE KILLERS OR CUTE FURRY FRIENDS.

Nothing can divide a community faster than wildlife. Many people think of squirrels as cute cuddly creatures that munch on acorns. The problem is that squirrels fed by people can lose their fear of people and become overly aggressive. Squirrels can be friendly additions to the neighborhood, but they can also wreck havoc with wiring on buildings, damage new growth on mature trees, present a risk of spread of disease, and even terrorize squirrel fearing residents.

In this story, an Association has an issue with squirrels slowly killing trees. When there is a large squirrel population, they see the new growth on trees as a delectable food source. There are many residents who are deeply concerned about the health and long-term survival of the large evergreen trees throughout the community whose new growth is constantly being chewed off leaving areas of dead and dying needles throughout the trees. If this large squirrel population continues their unabated eating of



the new growth on the trees, the trees will eventually die. These residents want the squirrels gone. On the other hand, the Association has residents that enjoy watching the squirrels scamper among the trees and actually leave food out for squirrels. The Association is now faced with the dilemma of finding a satisfactory balance between its tree loving residents and its squirrel loving residents. There are squirrel lovers and tree lovers.

**What is the Association to do to resolve this dispute?** The Association

must strive to protect the value of the community property as a whole, but must also avoid alienating either of the resident factions in this dispute. Creative problem solving

leads to a solution that reduces the sizeable squirrel population in the community and affords some measure of protection for the trees to regenerate and thrive. Instead of trapping and killing the squirrels, the Association hired a vendor to humanely trap the squirrels and relocate them to an uninhabited wildlife area many miles away. While this not a perfect solution and does not make everyone



joyously happy, the squirrel lovers can take heart in the fact that the squirrels are now able to live in an area that is hospitable to their life style. The tree lovers can rejoice in the fact that the trees now have the opportunity to regenerate and provide a pleasurable environment for all of the residents. And the

squirrels can celebrate because they were not captured and terminated. This is definitely a reasonable compromise and resolution of this particular conflict on the part of the Association Board. Trees live, some squirrels remain and the community thrives.

Could there really have been a lawsuit about squirrels? Sure, just ask any developer in Colorado about the Preble's Meadow Jumping Mouse. Animals and the environment can be hot topics for litigation, so creative solutions and communication can effectively avoid litigation over the smallest of items.



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## Collecting Smarter, Not Harder

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While phone calls are more invasive, this step is still very subdued. The goal of contact with the homeowner is early resolution. This is an extra step used by Hopkins Tschetter Sulzer to get payments started and resolve the balances in full. The goal is to educate the homeowner about the debt. Proper communication motivates those homeowners that are reached. Ironically, this is in harmony with promoting community. Working with a homeowner to resolve his or her debt before suit, or before other legal action, such as garnishment, foreclosure, etc., brings resolution and puts the matter to rest. Money goes to the community's operating account for community development and the homeowner is out of conflict.



**Step 3A – Lawsuit** - Only if communication and early resolution cannot be achieved is litigation initiated. If necessary, the firm generates the lawsuit paperwork and sends it with a process server to be delivered to the homeowner. The court date is set for a month or two in the future to allow time for delivery. At the court date, the firm requests judgment against the homeowner if they do not dispute the amounts due by filing an answer. This step is a little more aggressive. Many homeowners do not wish to have a judgment enter against them because it affects their credit, therefore a significant percentage of homeowners figure out a way to pay in full before the court date or agree to a court ordered payment arrangement to avoid judgment. Thus, once again, communication in the form of educating the homeowner is essential. Step 3 involves more attempted contact. If the homeowner disputes the lawsuit, a trial is set, often 90-120 days in the future. At the trial, witnesses testify and the judge rules regarding all claims by the parties. Ideally, judgment enters against the homeowner at the end of the trial. Prior to trial, guess what takes place? You guessed it: communication. This is yet another opportunity to educate the homeowner, if possible, about the consequences of trial (judgment, greatly increases attorneys' fees that he or she is liable for under the covenants and CIOA, etc.).



**Step 4** – If judgment enters against the homeowner, and they have a known bank account or employer, the firm generates a garnishment to capture funds in the bank account or withhold a portion of the homeowner's paycheck as allowed by law. If no attachable assets can be located immediately, it may mean that the homeowner does not currently have a job or bank account or it may mean that their assets are not easily found. There are two options at this point: wait and check for assets periodically or serve interrogatories, described in steps 5-7. Once again, communication is key. If the homeowner can be reached, educating the homeowner about what rights the Association has to collect the judgment can be motivating. If communication with the homeowner cannot be achieved, then communication begins with garnishees (employers and banks that have to respond to the seizure of assets). In this process, communication is also critical. Garnishees do not always know how to, delay, or default in answering. There are Court-imposed remedies for this but they take time. Educating the garnishee gets the money in a lot faster.



**Step 5 (optional)** – Interrogatories is a court ordered questionnaire that requires the homeowner to provide asset information, such as bank account and employer. Some homeowners opt to pay the judgment in full instead of having to disclose personal asset information, but many ignore the paperwork. Our firm uses the interrogatories as a tool in very difficult cases, but we prefer to locate bank accounts and employers using other methods if possible. We do not even have to say it. Of course, communication is once again paramount. If the homeowner answers the questionnaire, then he or she can be reached and, once again, educated about resolving the debt. If they do not answer, there is more opportunity to reach the homeowner.

**Step 6 (optional)** – When the homeowner fails to answer the interrogatories in the allotted time after service, the firm motions the court for a Contempt Citation. The Contempt Citation is served on the homeowner with a court date. Homeowners ignore this court date at their own peril. Consequences get serious at this point.

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**Step 7 (optional)** – If the homeowner appears at the court date, they must provide their asset information by completing the interrogatories, as they were requested to do when the paperwork was originally served to them. If the homeowner fails to appear at



the court date, a bench warrant is issued for the homeowner's arrest. When the homeowner meets a law enforcement official anywhere in the state, they may be arrested and must post bond to be released. The court schedules a bond return hearing, where the law firm may request the bond money

be applied to the judgment and the court requires the homeowner to complete the asset information on the interrogatories. Once the firm has the asset information, garnishments may be issued to collect. This process often flushes the homeowner out of the woodwork and into communication with the firm. When that happens, the communication is quite persuasive. If the don't comply with the Court order, they face serious consequences as discussed above.

**Step 3B – Receivership** – In lieu of a traditional lawsuit where the HOA obtains judgment against the homeowner, the HOA can initiate a court action requesting the court give a receiver control over the administration of homeowner's property. This is appropriate if the home is occupied by a renter, the homeowner is collecting rents from that renter, and the homeowner is failing to pay dues. Once the court appoints the receiver, the receiver has the power to force the renter to pay rent payments to them instead of the landlord, and the receiver can forward the tenant's rent to the HOA to pay past due amounts.

Choosing to proceed with the interrogatory process that may end with the homeowner arrested on a bench warrant is pretty harsh, but by the time this occurs, the homeowner had many chances to cooperate. The HOA has the choice of how many steps in this process to take to collect against the homeowners in their community to balance community and collection efforts.

## THE AGGRESSIVE APPROACH

Upon receipt of a new referral, some firms advocate immediately initiating an assessment line foreclosure proceeding. While it sounds simple and expedient, foreclosure is an extreme measure to collect past due assessments and really should be used as a last resort for several reasons. First, foreclosure is an expensive process. The fees and costs incurred to initiate a foreclosure action will make it much more difficult for a homeowner to pay their past due balance. Second, for the normal homeowner occupying the property with a large mortgage or two, there is little equity in the home. The HOA must be prepared and have the resources to pay the mortgage payments on the foreclosed property if the process is completed. Many firms hope that initiating a foreclosure will prompt the first mortgage holder to pay the dues and foreclosure fees. But if a homeowner is not paying his dues, it is possible, if not quite likely, that he is not paying his mortgage payment either. If the first mortgage goes into foreclosure, the HOA has wasted its money on the fees and costs that will not be recovered from the first mortgage holder, and the superlien is normally not enough to cover foreclosure costs and fees.

There are times when foreclosure is appropriate, but the property needs to have a significant amount of equity for foreclosure to be a viable option. When considering foreclosure, the HOA must also consider the overall effect on the community.



When comparing and contrasting the three approaches discussed above, it is important to understand efficient collection that The Stepped Approach fosters. Every stage of the process is an opportunity for communication and total resolution of the debt, including all attorneys' fees and costs. The Aggressive Approach entails incurring more legal fees right out of the gate. In this economy, Associations have to hedge their bets. Effective communication is key. Ironically, effective communication in the collection process enhances community. It involves one simple, tried-and-true principal: be hard on the issues and not the person; push to resolve the issue now. Homeowners that resolve their debt do not have

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to worry about it further (unless they get behind again of course). Aggressive measures, by contrast, are means of last resort that forever sever the bond between the community and its individual member.

Boards should be conscientious in carrying out their fiduciary duties, and collecting delinquent dues is important part of board duties. By using The Stepped Approach in your collection efforts, you can collect delinquent dues without expending large amounts of money or creating ill will within your community. You can never go wrong with constant communication. So, collect smarter, not harder.

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REMEMBER THOSE WHO SERVED



ALL GAVE SOME, SOME GAVE ALL

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