

# EADS MURRAY & PUGH, P.C.

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Letter of Agreement: Assessment Collection Procedures, Costs and Fees

This describes the terms by which your community association agrees to employ us for the collection of delinquent assessments. All sixteen (16) of our attorneys and staff devote substantial time to this work. This agreement shall be effective as of the date shown below on the signature page and shall be in effect until terminated by either party. If you wish, we will provide your association with a monthly collection report by email, free of charge, showing the status of each open collection file. Or, you can access our collection program after we issue you a username and password.

## OUR NORMAL COLLECTION PROCEDURES AND POLICIES

**\$75 Set-Up Fee Payable in Advance:** We charge an up-front, non-refundable set-up fee of \$75 for each delinquent owner's account that is turned over to us for collection. That fee covers part of the time and expenses we incur in opening a new matter, which include the following:

- Reviewing the account from the Association;
- Verifying ownership through the Assessor's Office;
- Obtaining a copy of the deed from the County Recorder's Office;
- Verifying the current address of an owner by conducting search on a database;
- Checking for bankruptcy filings;
- Searching a U.S. government database to verify the owner isn't in active military service;
- Opening a new file/matter on our collection system;
- Setting up a physical file.

This non-refundable \$75 file set-up fee must be paid to us at the time a new account is forwarded to our office for collection. We will not begin any of the work described above until we receive it.

**Attorneys Fees:** For routine demand letters and small claims court suits, other than the \$75 set-up fee described above, we will not bill our attorney fees to the Association; rather, we collect attorney fees from the delinquent homeowner. Thus, for demand letters and small claims suits, your Association pays no attorney fees to us if no money is collected. However, if there is a contested trial, the Association is responsible for paying our hourly charges for fees, regardless of what the Judge awards for attorneys fees. There are other instances described below when we will bill your Association for our attorneys fees. A lien filed with the County Recorder is one example.

**Demand Letter.** Before we do anything for a particular owner, we need copies of the late notices you have sent to that owner along with a copy of their account. Prior to us sending anything to the owner, we do several things. We will obtain a copy of the latest deed to the property. We will also see if the County Assessor shows an alternate address for the owner. Finally, we will check to see if the owner

has filed Bankruptcy. If we find any information that you didn't already know, we will contact you right away before doing anything else. Only after those steps do we send a demand letter to the owner.

Filing Suit. If the owner fails to respond to our demand letter with either payment in full or a mutually agreeable payment plan, our next normal step is for us to file suit in Small Claims Court to seek a personal money judgment. Court filing fees must be paid to us by the Association at the time an owner's file is ready for filing in court. We usually can schedule a hearing date with the court in about six (6) weeks after we receive the owner's account from you. **We have a flat fee (see our schedule on the last page) per case for preparing and filing a Notice of Claim (a Complaint) with the Small Claims Court.** When we file suit, we send a letter to the owner explaining why they are being sued, breaking down all the amounts that they owe (including our attorney fees & court costs), and what they need to pay to stop further action. If we have taken action against an owner and the Association later advises us that it made a mistake in sending us the account, or if the Board decides for some reason to stop collections against an owner, we reserve the right to bill the Association for our fees.

Attending Hearing. The next step (if necessary) would be our appearance before the court for the hearing. See Section A in the Appendix for more details. **To go to court for the Small Claims Court hearing, we have another fee (see our schedule) which is in addition to our fee for filing suit.** When we ask the Court for a judgment, we ask for an award of all delinquent assessments, late fees, etc. owed to your Association at the time of the hearing, PLUS attorneys fees.

Proceedings Supplemental. If the owner does not pay after we obtain a judgment, the next step would be Proceedings Supplemental. See Section B in the Appendix for more details. Normally, we do not charge any additional attorneys fees for appearing at a Proceeding Supplemental hearing or preparing the necessary pleadings. However, if there are court costs incurred, we will bill your Association for those costs.

Settlement of Claim; Payment Plans. Often, either after filing suit or at the hearing, the owner will contact us and agree to pay the full amount owed, including our legal fees and court costs, either in a lump sum or in installments. Unless you instruct us otherwise, we assume that we have the authority to agree to payment plans with the owner paying the total amount within six (6) months.

Payments Made to Our Office. Regardless of what stage in the collection process an owner is, we instruct the owner to remit all payments to our office so we can track the progress. As soon as we receive a payment, we immediately process it through our office and forward to you the amount owed to your association. However, for owners paying in installments, we reserve the right to apply some payments to our attorney fees incurred. (See further discussion below.)

#### ADDITIONAL DISCUSSION OF COSTS AND ATTORNEY FEES

Court Costs – See Our Attached Schedule. Before we file suit in Court, we will require your Association to first send us the Court filing fees/court costs. When you send us one or more owners' accounts with instructions to file suit, we will email or fax you our invoice for those amounts. We will clarify how much the filing fees will be when you turn over delinquent accounts to us. As soon as we receive payment from the Association for the Court costs, we will file suit in Small Claims Court.

Once we have a judgment, and if Proceedings Supplemental are necessary, there might be additional court costs. We will bill your Association at the end of the month for these additional costs.

Contested Case. The above described flat fees for Small Claims Court actions contemplate that the owner has asserted no defenses to your claim for past due assessments, that no attorney has entered an appearance on behalf of the owner, and that the Association representatives fully cooperate with us and provide us with correct information. If an owner contests the action, asserts a counterclaim against the Association, retains an attorney, appeals the Small Claims Court's judgment or if the Association does not assist or cooperate with us, we will bill your Association for our fees for the additional time incurred on an hourly basis at the end of each month, for which the Association is responsible to pay. Alternatively, we may wait for the outcome of the contested trial to see how the Judge rules. However, before we incur any such additional time, we will first consult with you. Fortunately, the vast majority of Small Claims Court suits are uncontested.

Partial Collection of Claim. In some cases, after judgment is obtained or a settlement is reached for installment payments, we are successful in collecting a part of the total amount owed including our attorney fees. If that occurs, we and your Association will share pro rata in the amount that has been collected. For example, if the total claim and court costs are \$1,000 plus \$500 attorney fees for a total amount of \$1,500 and we collect \$750 (50% of total), your Association would get \$500 (50% of court costs and claim) and we would get \$250 (50% of attorney fees).

Reimbursement by the Homeowner for Legal Fees. Ideally, the delinquent owner will pay all attorneys fees and court costs, including our \$75 file set-up fee. If our efforts proceed on a normal course, when the process is completed your Association will be reimbursed for all legal fees and expenses. For example, if (through whatever means) the Association received full payment from the owner, that full payment should include the attorney fees and expenses which have been charged. However, there is a risk that your Association will not be so reimbursed. For example, if the owner has abandoned the property, has no assets, files bankruptcy, or fails to pay for any reason, your Association might not receive full reimbursement.

#### OTHER COLLECTION MATTERS

Filing of Liens. The Small Claims Court procedure outlined above works in the great majority of cases. However, sometimes the circumstances warrant a lien to be recorded. See Section C in the Appendix for examples. **Our current fee for preparing, filing and releasing a lien is shown in the attached schedule.** This includes all recording fees charged by the County Recorder. We bill this to your Association at the end of the month after the lien is prepared.

Lien Foreclosure. The most drastic action your Association can take is to foreclose its lien. A lien foreclosure suit is similar to a mortgage foreclosure action and must be filed in a Circuit or Superior Court rather than in small claims court. Our time is billed monthly on an hourly basis. Foreclosure may be necessary if all other alternatives are, or appear to be, useless. Normally, this remedy is not cost effective unless there is a large amount of money owed, the association has assessments unpaid for a year or more, there is precedent-setting, or similar issues involved. If you would like more information, we will send you a detailed letter describing that legal procedure.

Before we ever file a lien foreclosure suit, we may first send the owner a letter, giving them a final chance to make payment arrangements. Often, that gets the owner's attention!

Mortgage Foreclosures. If an owner is delinquent on mortgage payments, your Association may be named as a defendant in a foreclosure suit brought by the mortgage company. The first mortgage holder's lien is always superior to the Association's lien for delinquent assessments. In almost all

cases, the only practical alternative for the Association is to simply monitor the foreclosure and wait for the Sheriff to sell the property. In such actions, we file with the Court our Appearance for the Association and monitor the proceedings. Our time in such cases is billed on an hourly basis.

Bankruptcy. One more common way in which Associations face delinquent assessments is when an owner files for bankruptcy protection. For bankruptcies, we bill your Association monthly for our time on an hourly basis. In a Chapter 13 wage earner's bankruptcy, we file a Proof of Claim with the Bankruptcy Court listing the delinquent amount owed by the owner, plus our attorneys fees. The Association should then receive small monthly payments from the Bankruptcy Court over a 3 ½ year period. In a Chapter 7 Bankruptcy, the owner usually will surrender the home to the mortgage company, in which case the Association will likely receive nothing.

Owner's Contacts or Payments After Turnover. Once your Association has referred a file to our office for collection, your Board and the property manager (if any) should refuse to discuss the case with the owner without talking with us first. Instead, your Board and/or property manager should refer the owner to our office. Otherwise, we will not know what has been said or agreed upon which will inevitably lead to confusion or, worse yet, the preclusion of our office from getting the full amount of assessments, attorneys fees, and expenses from the owner. Likewise, if you receive any payment directly from the owner after the file has been turned over to us, do not deposit it into the Association's bank account; instead, let us know immediately so we can advise you what to do with the payment. If your Association accepts partial payments after we file a suit, that will harm the Association's rights to collect the full amount owed. We reserve the right to bill out our attorneys fees to the Association when it accepts partial payments, regardless of whether those fees are awarded by the Court.

Termination of Services. You may terminate our services at any time. In that event, we reserve the right to bill our attorneys fees on all collection accounts that we have not previously billed.

Reports. We take pride in our ability to track our collection files. We maintain an up-to-date summary for each account, the actions we have taken, and the results to date. In this way, we prevent files from "falling between the cracks" with no follow up. We can also provide you with our status report via the internet whenever you want at no charge to get information 24/7.

Sincerely,

EADS MURRAY & PUGH, P.C.

If acceptable, please sign below and return one copy to our office.

Date: July 5, 2018

  
\_\_\_\_\_  
Signature of authorized representative

Highland's Subdivision Homeowners Association  
Name of the Association

Adam Blazak, Vice President  
Printed Name and Title of authorized rep.

## APPENDIX

**Section A** It is usually unnecessary for someone from the Association to testify as to the balance owed by the owner. Instead, the Court will often accept an Affidavit of Debt that we prepare in advance and have someone from the Association complete about 2-3 days before the hearing and return to us. At the hearing, we either move for a Default Judgment (if the owner did not appear) or ask for Judgment in our favor based upon the past due assessments, late charges, etc., and our attorney's fees. Sometimes, an owner will appear at court for the hearing and agree that he/she owes the money. If so, we ask the owner to sign an Agreed Judgment for the full amount, including attorney fees and court costs. The Agreed Judgment will also include the terms of a payment plan.

**Section B** The purpose of Proceedings Supplemental is to collect on the judgment. If you have a copy of a check previously submitted by the owner, that will give us information on the owner's bank account. If so, our office can submit (through the Court) garnishment interrogatories to the bank. If funds are on hand, the bank will "freeze" those funds until receiving further instructions from the Court. We then request the Court to order that the money be released to us to satisfy (in whole or in part) the Judgment amount. An alternative procedure in Proceedings Supplemental is to garnish the wages of the owner. This is especially effective if you have knowledge of the employer of the owner.

**Section C** For instance, if the home is vacant and the owner's whereabouts are unknown, a lien may be the most effective way of protecting your Association. A lien may also be appropriate when, for some reason, the board does not want to sue a particular owner due to extenuating circumstances. Examples of this could include a newly widowed mother of small children or a person recently fired from his or her job. Other circumstances which may prompt a lien would be if the Association is aware that the owner is in the process of selling the property or if the owner is ill or deceased. A lien can protect your Association in several ways. First and foremost, the Association's past due assessments and any attorney fees should be paid if the owner sells the home. Second, the Association should be notified if a mortgage company later forecloses on the home. Third, a lien should result in your Association receiving notice if the owner files Bankruptcy and secure the Association's claim for any unpaid amounts. Fourth, if the owner refinances his or her home or take out a second mortgage, this could force him to pay. Finally, the simple fact that a lien has been filed on an owner's home creates a sense of importance in the minds of some owners, prompting them to pay.

Our attorneys fees for a lien include verifying ownership of the property with the assessor's office, obtaining a copy of the owner's deed from the recorder's office to prepare the legal description, preparing the lien, forwarding the lien to your board of directors or property manager for execution, filing the lien with the Recorder's Office, mailing a copy of the lien to the owner together with an explanatory cover letter, and subsequent correspondence and conversations with the owner and representatives of the Association.

## Schedule of Attorneys Fees, Court Costs & Other Expenses

Eads Murray & Pugh, P.C., Attorneys at Law

### ATTORNEYS FEES

Demand Letter	Attorneys fees of \$100 to \$275*
Prepare & File Suit-Small Claims Court	Attorneys fees of \$50 to \$275*
Go to Small Claims Court hearing/Obtain Judgment	Attorneys fees of \$-0- to \$100*
Contested Cases in Small Claims Court	Attorneys fees charged hourly
Attend Proceeding Supp. Hearing-Small Claims Court	Normally, no additional attorneys fees
Employment verification through State of Indiana	\$40 for one person; \$50 for two
Prepare & Record Lien, including filing fees	Attorneys fees of \$280 billed in advance
Processing Owner Payments	No charge
Association Lien Foreclosure	Atty fees charged hourly & billed monthly
Monitor Mortgage Foreclosure	Atty fees charged hourly & billed monthly
Monitor Owner Bankruptcies	Atty fees charged hourly & billed monthly
File Proof of Claim in Chapter 13 Bankruptcy	Atty fees of \$350 billed in advance

\* The attorneys fees that we charge will vary according to how much is owed in past due assessments by the homeowner. The reason for the variation is that in most instances when an owner owes a lot of money, they cannot pay in full in one payment, but instead will pay in monthly installments. When we monitor payment plans that can take months to complete, it takes more time on our part, especially when an owner defaults on a payment plan. However, regardless of how much our attorneys fees are, we get paid through what the owner pays to our office other than the \$75 file set-up fee. Thus, we will not bill these attorneys fees directly to your Association for an uncontested Small Claims Court file.

The \$75 file set-up fee that we charge will not affect the attorney's fees amount that we seek to collect from the delinquent owner. In other words, if the attorney's fee is \$125 for preparation of a demand letter, the fee charged to the delinquent owner will still be \$125. However, when an account is turned over to us for collection, the first \$75 of the attorney's fee will be paid up front by the Association to our law firm. The Association will be reimbursed for the \$75 file set-up fee when and if the owner pays. However, if the owner does not pay, the Association will not be reimbursed for that fee.

### COURT COSTS\*\* for a Community Association in Marion County

Court Costs (filing fees) for small claims court	\$102 if one owner; \$13 for each additional
Court Costs for proceedings supplemental	\$31 or more, depending on what is done

### COURT COSTS\*\* for a Community Association in Any OTHER County

Court Costs (filing fees) for small claims court	\$115
Court Costs for proceedings supplemental	Typically \$28

\*\*Normally, court costs in Indiana increase every year.