



VIALFOTHERINGHAM LLP

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*Admitted to practice in:*

Oregon

Washington

Idaho

Utah

November 15, 2019

W14382-001

**Lake Forest Home Association**

Attn: Beckie Weatherford

PO Box 3368

Lacey, WA 98509-3368

[beckie.weatherford@gmail.com](mailto:beckie.weatherford@gmail.com)

*Re:* Cash Flow Enhancement (“CFE”) Changes

Dear Board of Directors:

The purpose of this letter is to explain some changes we are making to our Cash Flow Enhancement (“CFE”) collections program. Accompanying this letter is an updated CFE Representation Agreement that will need to be signed in order for us to continue with our representation of the Association on current and future collections matters.

As our firm continues to grow, it is necessary to modify our services from time to time based on the trends with debtors’ responses to our collection efforts as well as decisions made by the courts. For instance, we are seeing an increase in debtors who prefer to litigate rather than reach a negotiated resolution. This is particularly true for cases where the balance includes fines. This issue is being compounded by the fact that we are seeing accounts turned over to us that do not contain strong supporting documentation justifying the fines included in the balance.

VF has always maintained the right to choose which cases we will take under our CFE program. However, we want to briefly explain the changes that you will find in the new CFE Representation Agreement.

First, VF will only handle cases involving fines on an hourly basis. We will make every effort to recover all assessments, fines, and attorney fees as we have done in the past, but the cases will be billed hourly. The lone exception to this rule, is where a VF attorney was involved prior to the first violation letter being sent.

Second, for any case accepted into the CFE program, the Association must pay all costs as they accrue. Such costs include filing fees, service of process fees, foreclosure guarantees, etc. The Association has always been obligated to pay costs, even if the file was deemed uncollectible. Now, the costs will be billed on a monthly basis, rather than as a lump sum once the file is closed. In most cases, the costs can be immediately added to the ledger and VF will make every attempt to collect the full balanced owed. This change is necessary as we believe it is important for the

Board to be aware of the status of the case, as well as how much has been incurred in costs. It has the further advantage of eliminating any “sticker shock” that we have seen in the past when an association receives a closing bill on an uncollectible file.

Third, accounts where the debtor files for bankruptcy or the lender initiates foreclosure will automatically be switched to hourly billing from the date of the bankruptcy filing or the initiation of foreclosure proceedings. This will ensure that the Association gets the full payment from the bankruptcy trustee in Chapter 13 cases. Further, when a lender initiates foreclosure, we will also be switching the account to hourly billing. The prior billing will remain as a forwarded balance, but as work continues, it will be billed hourly.

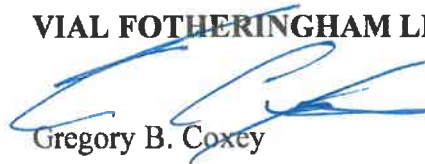
Moreover, VF strongly believes that successful collection requires a collaborative effort between the firm and the Association. These changes will enhance this collaborative effort, while allowing VF to be more efficient in its collection efforts, the result of which will be more money being returned to the Association in a shorter time frame.

We would also like to take this moment to remind our Associations that VF is a full-service law firm. Assessment recovery is just one aspect of our Community Association practice. VF attorneys have the experience needed to handle all of your Association’s legal needs from opinion letters, CC&R interpretation, enforcement and governing document amendments and re-writes to full scale complex litigation matters including injunctions, Fair Housing issues and construction defects. We look forward to continuing to work with you and to continue collecting past due assessments.

Please feel free to reach out to me if you have any questions.

Sincerely,

**VIAL FOTHERINGHAM LLP**



Gregory B. Coxey

GBC/sval  
Enclosure



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Re: Representation Agreement - Cash Flow Enhancement ("CFE")

Dear Board of Directors:

We are pleased that you have chosen Vial Fotheringham LLP ("VF") to serve as Lake Forest Home Association's ("Association") legal counsel for collection of past due assessments and would like to take this opportunity to confirm the terms of our representation.

Our collection program was designed with your needs in mind. Under the CFE representation agreement, VF advances the attorney fees for the Association by assessing individual debtors for the attorney fees and costs incurred. On all accounts turned over after May 1st, VF will bill the Association on a monthly basis for costs incurred.

Due to the fact that legal fees are advanced under the CFE, VF may decline to accept a collection account under the CFE method for any reason, and specifically under the following circumstances:

- The total amount owed to the Association is too small. Total assessments must be greater than \$300, or delinquent for more than a year;
- The debtor may have a valid dispute regarding the amount owed to the Association;
- The account includes questionable fines that may not have been levied in accordance with the Association's governing documents;
- The debt appears uncollectible, including, but not limited to, any of the following reasons:
  - A bankruptcy of the debtor or a co-debtor;
  - Foreclosure by a senior mortgagee or lien holder that extinguishes the Association's lien;
  - The debtor is out of state;
  - The debtor appears to lack assets or employment sufficient to pay amounts owed;
  - The likelihood of recovery is low;
  - The debtor is a defunct company;
  - The cost to collect will be excessive in relation to the balance;
  - An unresponsive Board; or
  - Any reason determined by VF's attorney at any point in the case.

VF has the sole right to determine if a matter is closed as uncollectible. If VF deems a matter uncollectible, VF will notify the Association promptly. VF will bill the Association for attorney fees incurred, up to but not exceeding \$400 plus costs. Further, if a matter is erroneously turned over to VF, the Association shall notify VF in writing that the account was turned over in error within 30 days of turnover. VF shall bill the Association a flat fee of \$150 plus costs, regardless of how much in attorney fees has been billed. If the mistake is discovered more than 30 days after turnover, the Association will be billed for all attorney fees and costs incurred.

Upon turnover, each collection account will be evaluated to determine whether the account will be accepted under the CFE agreement. Unless specifically agreed to by VF, collection accounts will be turned over with the following documentation:

- VF turnover sheet (debtor information);
- A ledger showing details of all charges going back to a zero balance;
  - The Association may levy only one late charge per late assessment unless otherwise specifically provided for in the Declaration of the Association.
  - Excepting late charges, fines, interest, attorney fees and attorney incurred costs and disbursements, all delinquency charges assessed to an owner must only be charges for out-of-pocket expenses actually billed to and paid by the Association.
- Fine verification, if applicable;
- A copy of notices sent to the debtor by the Association;
- Any bankruptcy or foreclosure notices that the Association has received regarding the debtor or debtor's Association property.

Under this agreement, the Association understands and agrees that if it turns over accounts with unlawful charges, fails to notify VF of any increases in or changes in periods of regular assessments, of any special or limited assessments or other lawful charges, or of any bankruptcy or foreclosure notices relating to the debtor or debtor's Association property, that this inaccurate or omitted information will materially impair VF's ability to collect on the matter and may subject VF to liability. If VF determines that it is materially impaired in its ability to collect on the matter, VF has the right to determine it will no longer collect the account under the CFE, to transfer the file to hourly billing and require immediate payment by the Association of all outstanding attorney fees and costs. Further, the Association agrees to hold VF harmless from any resulting penalties or damages incurred by VF.

Please note that VF will not take accounts with violation fines under the CFE method unless a VF attorney has been actively engaged by the Association from the beginning of the fining process, before the initial violation notice was sent. Accounts that are turned over to VF with violation fines will be billed to the Association hourly. Further, the Association agrees that it will not levy fines against an owner while the collection file is placed with VF. The Association must inform immediately if any violation fines are assessed against an owner in collections with VF, and the file may be converted to hourly billing from that point forward. Further, if an owner files bankruptcy, or is in active bankruptcy when a file is turned over to VF, the file will be converted from CFE and billed hourly to the Association.

In addition, VF will no longer take new collection accounts under the CFE Agreement if the owners are in active bankruptcy. If a petition for bankruptcy is filed by a debtor after turnover, VF will cease all collection activity and review the collection account to determine how best to proceed. As noted above, the file will be converted at that point from CFE to hourly billing. If the Association authorizes VF to continue representation for the file on an hourly basis, VF will file a proof of claim which includes all lawful charges, including all attorney fees and costs.

Going forward, VF will not take new collection accounts for former property owners under the CFE Agreement. If a judicial or non-judicial foreclosure occurs after turnover, the file will be converted at that point from CFE to hourly billing. Any fees billed up to the point of lender foreclosure would remain in deferred status. Fees incurred subsequent to the foreclosure date will be billed hourly.

We will notify you in writing if we decline to accept any collection file under the CFE Agreement. At any subsequent point, VF retains sole discretion to deem an account uncollectible under the CFE. VF retains the right to decline continued collections under the CFE on a particular matter if circumstances change. Under any of these circumstances, you may choose to have us proceed with collection on an hourly basis at the usual hourly rate of the attorney or staff performing the work. We bill on a monthly basis for our professional services and for disbursements made by us on your behalf. You will be charged for all services necessary to provide the requested representation.

Remember, after a collection account is turned over to VF, all payments from the debtor must be forwarded to VF. The Association shall notify VF of any payments received and forward all payments and associated correspondence to VF, unless otherwise directed in writing by VF. The Association hereby grants VF a limited power of attorney to endorse and deposit checks made payable to the Association.

In addition, because VF is advancing legal fees, payments received from owners shall be allocated equally (50/50) between the Association's outstanding balances and VF's accrued legal fees unless a different allocation is required by law (i.e. judgment or bankruptcy proof of claim). This process will continue until both assessments and attorney fees are paid in full. VF may apply funds to attorney fees in any order it chooses. Once the account is current, meaning the association and attorney fees and costs are paid in full, a closing letter will direct the owner to make all future payments directly to the Association.

Also, once a collection account has been submitted to VF, the Association agrees it will not communicate directly with the debtor or anyone else regarding the matter. This includes communications related to any offers of full or partial settlement, or accepting or processing any payments. The Association will direct its agents; including the Board, any officers, employees, managers and their staff; to comply with this policy. The Association understands and agrees that if the Association enters into a settlement agreement with a debtor in violation of this Agreement, the Association shall immediately pay any outstanding attorney fees and costs owed to VF.

The Association authorizes VF to accept any offer of settlement that provides for the Association to be paid in full. The Association also authorizes VF to enter into an installment plan without Board approval if the duration of the payment agreement does not extend beyond eighteen months. Further, the Association authorizes VF to waive up to 10% of the Association's balance in settlement negotiations, without prior approval from the Association.

For each collection account accepted under the CFE Agreement, the Association specifically authorizes VF to file claims and complaints, including liens, lawsuits, claims in bankruptcy, or otherwise, in order to attempt to collect the balance owed. The Association will cooperate with VF and provide any documentation, affidavits, or other information needed in our efforts to collect. The Association grants VF an attorney fee lien as provided by state statute. Association understands that it does not have the right to satisfy the lien or any judgment, order or award entered in the action, suit or proceeding until the lien, and claim of the attorney for fees based thereon, is satisfied in full.

VF has discretion to determine whether there is sufficient equity in the property to collect the outstanding balance through foreclosure of the Association's lien. The Association maintains the right to ask for additional information regarding the foreclosure process. VF has the right to foreclose the Association lien either under the CFE agreement or on an hourly basis. If VF forecloses on an hourly basis, the Association agrees to pay billed attorney fees and costs to VF within 30 days of the submission of an invoice to the Association by VF. If VF recommends foreclosure or other strategic collection methods and the Association declines to foreclose, VF may close the account and bill all attorney fees and costs to the Association.

As with any successful relationship, effective legal representation requires absolute trust and candor between attorney and client. Accordingly, we will make every effort to keep you informed of the progress of our work on matters. Please ask us about options to review real-time online information about your accounts. Likewise, we ask that you respond promptly and completely to our requests for pertinent documents and other information that we believe might be relevant to the collection of a debt. Please note that all communications between us pertaining to the subject of our representation are confidential attorney-client communications, and will be used by us solely for the purpose of pursuing your interests.


Finally, the Association or VF may terminate this Agreement at any time by giving the other party written notice. Upon termination of this Agreement in whole or in part, all outstanding attorney fees and costs are due and payable to VF. Upon termination, and subject to local rules of professional conduct, the Association is entitled to copies of any files kept by VF with respect to each Collection Account. Such copies may be shared electronically.

Please review the Agreement carefully. If the Agreement accurately states your understanding of our attorney-client relationship and fee agreement for collection matters, sign the attached copy where indicated, and return it to this office in the enclosed self-addressed envelope, along with a signed and adopted copy of the Resolution.

We sincerely thank you for coming to us for legal services; we look forward to working with Lake Forest Home Association in the future. Please call with any questions.

Sincerely,

VIAL FOTHERINGHAM LLP



Gregory B. Coxey

GBC/sval  
Enclosures

**READ, UNDERSTOOD AND AGREED:**

By:



Association Authorized Representative

12-4-19  
Date

Bectie Weatherford  
Printed name and position  
Treasurer

