

## Proposed By-Law Changes for Foreclosure Wait Period & ADR: Frequently Asked Questions

**Q: Where are the current By-Laws?**

A: The By-Laws are in the “Document Library” under “Community Info” on the Hat Island website. The direct link to the By-Laws is:

[https://www.hatisland.org/wp-content/uploads/library/community/2010\\_by\\_laws.pdf](https://www.hatisland.org/wp-content/uploads/library/community/2010_by_laws.pdf)

**Q: Can the Board change the By-Laws?**

A: **NO.** The Board does not have the ability to change the By-Laws. The Board can only vote to approve that changes be submitted to the Community for **Community vote**.

**Q: When and how will I be able to vote?**

A: The proposed By-Law changes as well as the 2021 HICA Budget will be on the ballot mailed to the Community following the November Board Meeting. The ballot will outline options for voting by mail, fax, or by proxy. The voting results for both the proposed By-Law changes and the 2021 Budget will be announced at the Community Meeting in December, details to be announced by HICA Office.

**Q: What if I like one of the changes but not the other?**

A: The Community will vote on each change separately, so you can vote yes on one and no on the other. The Community vote could approve both of the changes, only one of the changes, or none of the changes.

**Q: Have the By-Laws ever been changed before?**

A: Yes, the By-Laws were last changed by Community vote in September of 2010 (noted in the header or title of the first page of the By-Laws).

**Q: Did HICA’s legal counsel review the proposed By-Law changes?**

A: Yes, the By-Laws were drafted by HICA’s legal counsel.

**Q: How many favorable votes are required to pass one of these proposed changes?**

A: The number of Community votes needed to pass a By-Law change is higher than for an assessment change or budget approval. A budget or assessment approval requires a favorable vote by a simple majority of the members in good standing who are voting. A By-Law change requires (1) a quorum and (2) a favorable vote by **2/3** of the members in good standing who are casting a vote (Reference Article IX of the By-Laws). A quorum is met with 15% of the members in good standing (Reference Article V Section 3 of the By-Laws). A member in good standing is an owner who does not have any past due or delinquent assessments. Example of the favorable votes needed to pass a By-Law change in a given election:

- Total number of votes to constitute a quorum: 58 (15% of 383 members in good standing)
- Total number of votes cast: 200
- Number of votes from members in good standing: 198 (quorum met)
- Number of votes required to “pass” By-Law change: 132 votes in favor (2/3 of 198 votes)

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**Q: Why is it proposed to shorten the time from 1 year to 120 days after notice of delinquency before a foreclosure process can be started?**

A: With a one year wait period, it takes between 14 - 17 months to complete the foreclosure process, which means that the Community is forced to operate without those funds, or the collateral for those funds during that time.

**Q: Would the foreclosure process start automatically after 120 days?**

A: **NO.** Neither the proposed By-Law change, nor the current By-Laws, require that a foreclosure process be started at the conclusion of the minimum wait period or at any time after that. The operative word in the By-Laws is “**may foreclose**”, not must foreclose. The proposed By-Law change, and the current By-Laws, give HICA the option of proceeding to foreclosure after the minimum wait period IF other attempts at payment arrangements have been unsuccessful. It is recognized that a payment can be overlooked with busy daily schedules, vacations, unforeseen family issues, and other demands. 120 days (~4 months) allows adequate time for the HICA Office to send notice of the overdue assessments to the owner and for payment arrangements to be made.

**Q: Is foreclosure the best option?**

A: **NO.** Foreclosure is the least desirable option. The preferred option is to establish a payment plan to bring the account into good standing. The proposed By-Law change gives HICA the option of initiating the foreclosure process after ~4 months, rather than a waiting a year and further compounding the assessment delinquency and impact to budgeted funds. Again, the preferred option is to establish a payment plan but if this is not successful – the merit of foreclosure is considered on a case by case basis. However, in some cases, foreclosure would provide no payment to HICA. If there is an outstanding mortgage and/or tax obligation that exceeds the funds generated by the foreclosure – HICA would receive nothing since the lender and tax authority would have priority to the funds over HICA.

**Q: How long does the foreclosure process take and what if the owner starts to pay?**

A: The foreclosure process is a costly and time-consuming process. During this time, the owner can pay the assessment obligation to stop the foreclosure process. The overall process takes a minimum of 2-5 months *once initiated* following the minimum wait period defined by the By-Laws. The only foreclosure available to the Association is a judicial foreclosure, with the following minimum requirements:

1. Contact legal counsel to obtain litigation title report;
2. Attorney prepares, files and serves, foreclosure lawsuit;
3. Debtor Member appears and files answer to lawsuit;
4. Summary Judgment from the court;
5. Sheriff's sale of foreclosed lot;

Total: Minimum 2-5 months once started

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**Q: How many lots are currently delinquent on assessments and what's happening with those lots?**

A: Below is a summary:

- Major property owner has been delinquent on 273 lots far in excess of one year
- 13 lots are being pursued for a payment plan
- 9 lots are on payment plans
- 18 lots are in collection
- 3 lots are being foreclosed on by the county
- THE OFFICE HAS COLLECTED \$29,908 IN PAST DUE ASSESSMENTS SINCE BEGINNING OF OCTOBER

Bottom line: This is a relentless issue with a significant number of lots & payments involved!

**Q: Do the By-Laws allow a lot be foreclosed for any overdue bill – like moorage or water?**

A: **NO.** The By-Laws only allow foreclosure as a means to secure delinquent assessments but not user fees like water, moorage, etc. The proposed By-Law change would not alter this.

**Q. What is Alternative Dispute Resolution (ADR)?**

A. ADR is a process for resolving disputes, which is more efficient, less costly, and can be less adversarial than lawsuits in courts.

**Q. Is this ADR some new invention by lawyers to make money? What is its track record?**

A. ADR has existed for decades in Washington State, is widely practiced and is growing in use. For example, there are Dispute Resolution Centers in most Counties to help resolve family, school, and landlord/tenant disputes. A growing number of Superior Courts require Mediation before a trial and experienced Mediators settle up to 90% of disputes. Finally, attorney fees and costs for lawyers, if they are involved, are less in mediated and arbitrated cases than in trials.

**Q. Why would ADR be more desirable than a lawsuit?**

A. First, disputes are resolved by talking and listening, and consensus building in a discussion between the Board and a Member, as opposed to a formal adversarial trial in a court.  
Second, disputes are resolved in a Mediation where the parties have confidential discussions with the Mediator, that are non-binding, and the parties have a measure of control to make a cost/benefit analysis of a settlement; as opposed to a court trial, which is open to risk with a binding result.  
Third, a Binding Arbitration is handled by a professional Arbitrator in an expeditious manner, that involves much less time and expense than a court trial.

**Q. There are lawyers, including mediators and arbitrators, who are or have been on the Board. Will they serve as mediators and/or arbitrators?**

A. **NO.** Any such person would not be involved because of a potential conflict of interest. Mediators and Arbitrators have to be agreed upon by both parties, and, if no agreement can be reached, one or both will be appointed by a Snohomish County Superior Court Judge.

**Q. What happens if I get a mediated settlement, or an arbitration award against the Association? Do I have to go back through this ADR to get my money?**

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- A. **NO.** A mediated settlement is enforceable in any Court of law. And, in Section 6 of this proposed By-Law, an Arbitrator’s decision and award can be entered as a judgment in any court of law and appropriately enforced.
- Q. I’m not a lawyer and the Board has lawyer members and an association attorney. How is that fair?**
- A. You have an absolute right under the proposed By-Law to have a lawyer represent you and present your case in all three steps of the process: at the closed Board meeting, in the Mediation, and before the Arbitrator.
- Q. What about my Constitutional right to a jury trial? How can you take that away from me?**
- A. We can’t, and the proposed ADR By-Law cannot. In Section 1 it states that it is subject to Article I, Section 4 of our By-Laws, where if it conflicts with state law, the state law prevails. Article I, Section 21 of the Washington State Constitution, and Civil Rule 38 of the Superior Court Rules both provide that the “right of trial by jury shall remain inviolate.” **But, please note:** In lawsuits against HICA where we prevail, courts usually award all of our attorney fees and costs to be paid by the other party, under the WA State Homeowner’s Association Act (RCW 64.38).