

## EXPLANATION OF PROPOSED HICA BY-LAW CHANGES

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### A message from the Governance Committee and the Board of Trustees.

We hope that you all continue to be well and safe. This Ballot contains two proposed By-Law changes that we believe are needed. The Governance Committee met and looked at recommended changes to the By-Laws, and ultimately determined the two most important to bring before the community for a vote. We hope that you have familiarized yourselves with the proposed changes and have been able to ask any questions you have had. Our goals are to: (1) reduce the time for taking action against delinquent assessments; and (2) give the Association and Owners an alternative to resolution of disputes that is less costly and time-consuming than lawsuits.

Darla Younce  
President,  
Hat Island Community Association

Karen Conner  
Community Chair,  
Governance Committee

Aimee Chambers  
Board Chair,  
Governance Committee

### Proposed By Law Changes (two proposals voted on separately)

#### **1.Reduce the time HICA must wait to foreclose for failure to pay assessments**

- Reduce the time from one year to 120 days (~4 months) after notice has been sent
- No requirement for foreclosure, HICA “**may foreclose**” not must foreclose
- After the 120 days (~4 months) has elapsed, it takes an additional minimum of 2-5 months to complete the foreclosure process, during which the owner can pay the assessments plus costs incurred to stop the foreclosure at any time
- With any delinquency, the preferred option will always be to establish a payment plan with the owner

If approved, **ARTICLE VIII ASSESSMENTS, CHARGES AND PAYMENTS, Section 3, paragraph 1** would be revised as noted:

From:	To:
<p>SECTION 3. If any assessment, is not paid after it was first due and payable, the assessment shall bear interest from the date on which it was originally due, at a rate to be determined by the Board of Trustees, not to exceed the maximum allowed by law. No lawsuit for the collection of delinquent assessments, fines or fees may be commenced except upon the expiration of 60 days from and after the date of mailing said notice of <del>delinquency assessment</del> as described above. No action <del>for collection of a debt or</del> to foreclose a lien may be commenced until the <del>account has been delinquent 120 days delinquency is one (1) year old</del>. No owner or contract purchaser shall be relieved of liability for the assessments provided for herein by non-use of the areas maintained by the Association or abandonment of the Member's lot.</p>	<p>SECTION 3. If any assessment, is not paid after it was first due and payable, the assessment shall bear interest from the date on which it was originally due, at a rate to be determined by the Board of Trustees, not to exceed the maximum allowed by law. No lawsuit for the collection of delinquent assessments, fines or fees may be commenced except upon the expiration of 60 days from and after the date of mailing said notice of delinquency as described above. No action for collection of a debt or to foreclose a lien may be commenced until the account has been delinquent 120 days. No owner or contract purchaser shall be relieved of liability for the assessments provided for herein by non-use of the areas maintained by the Association or abandonment of the Member's lot.</p>

## **2. Establish an Alternative Dispute Resolution Process as Substitute for Lawsuits**

- A process to resolve disputes between the HICA and Owners, not including foreclosures
- A prompt and clear resolution for HICA and Owners regardless of which party initiates the process
- Alternative to lengthy and expensive lawsuits in the courts
  - Step 1 - Closed Board meeting with Owner, if not resolved proceed to
  - Step 2 - Mediation with mutually agreed upon mediator, if not resolved proceed to
  - Step 3 - Binding arbitration with mutually agreed upon arbitrator
- Both parties are entitled to have an attorney during any step in the process
- With the exception of either party's attorney fees, the cost of mediation/arbitration is equally shared between HICA and Owner(s)
- Resolution is final/binding

If approved, a new **ARTICLE XI ALTERNATIVE DISPUTE RESOLUTION** would be incorporated as noted below. Note: the existing ARTICLE XI CORPORATE SEAL would remain unchanged but become XII CORPORATE SEAL. Article XII DATE OF ADOPTION would become ARTICLE XIII DATE OF ADOPTION and be updated to reflect the new date of adoption.

### **ARTICLE XI**

#### **ALTERNATIVE DISPUTE RESOLUTION**

SECTION 1. This Section shall govern any and all complaints, controversies, claims, demands, and disputes between a Member(s) and HICA, including but not limited to those arising from or related to (i) the governing documents, (ii) the rights and obligations of community members, or (iii) the management or operation of HICA and/or the community, including but not limited to breach of contract, negligence, breach of any duty under the Washington Homeowner Association Act (RCW 64.38); Nonprofit Corporations Act (RCW 24.03); and any other statute imposing a duty on

HICA or its directors, breach of any alleged duty of good faith or fair dealings (“Claims”), if not by agreement in a Special closed Board meeting, shall be resolved exclusively by mediation or binding, non-appealable, arbitration as set forth herein; Notwithstanding the foregoing, the following matters shall not be “Claims” subject to this Article: (i) actions to collect unpaid assessments including foreclosure, (ii) the appointment of a receiver or (iii) actions to collect or enforce any order, decision, or award rendered by arbitration. This Section is subject to Article I, Section 4 wherein if it conflicts with the Revised Code of Washington, the Code prevails.

SECTION 2. For the purposes of this Article, “Members” shall include all owners and all others as defined as Members in Article II “MEMBERSHIP” of the By-Laws. For purposes of this Article “HICA” shall include the Hat Island Community Association, and any persons acting on behalf of HICA including but not limited to its Board of Trustees, Officers, HICA committees and committee members, HICA employees or any other persons acting on behalf of HICA.

SECTION 3. All Claims shall be determined and resolved as follows:

First, the “Claimant(s)” shall provide notice to those against whom they are alleging a Claim (“Respondent(s)”). (Claimants and Respondents aka “parties”.) If a claim is against HICA notice of the dispute shall be presented to the Board of Trustees. If a Claim is against a Member by HICA notice shall be sent to the Member’s address on file with the HICA office. A Special closed Board meeting shall be scheduled by the Board of Trustees to discuss the Claim within 30 days of the notice and all Claimants and Respondents shall be invited to attend said meeting.

Second, if the Board meeting does not resolve the dispute, the matter shall be submitted to Mediation with a Mediator agreed to among the parties. The cost of the mediation shall be split equally between the parties. If the parties cannot agree on a Mediator, the Snohomish County Superior Court shall select the Mediator.

Third, if the dispute is not resolved by a Mediation, the matter shall be determined and resolved through Binding Arbitration, by an Arbitrator agreed to by the parties. The cost of the Arbitration shall be split equally between the parties. If the parties cannot agree on an Arbitrator, the Snohomish County Superior Court will select the Arbitrator.

SECTION 4. The Arbitrator shall determine the scope of arbitrable issues, determine the scope of discovery and the appropriate procedures and rules to be followed and render decisions on all Claims and any defenses thereto. The Arbitrator shall apply the substantive law of the State of Washington and have the authority to award damages and injunctions or other equitable relief including awards deemed necessary to enforce the award but shall not have authority to award punitive or exemplary damages.

SECTION 5. The parties in the ADR process shall have the right to have an attorney at law present the matter, and argue on their behalf at all three stages of the process, provided that notice of attorney representation shall be given to the Board and/or Members at least 5 days before the Special closed Board meeting.

SECTION 6. This ADR process is binding on all Members and HICA, and will be enforceable against and will replace any lawsuits brought in any court of law. The decision and award of the arbitrator shall be final and binding and may not be appealed to an arbitration panel or a court. The arbitrator's decision and award may be entered as a judgment in any state or federal court of competent jurisdiction, and a party may institute judicial proceedings to enforce the arbitration award.

**ARTICLE ~~XI~~ XII**  
**CORPORATE SEAL**

The seal of the Association shall be in a circular form and shall contain the words "HAT ISLAND COMMUNITY" and the words "Corporate Seal Washington 1967" in the form and style as affixed in these By-Laws by the impression of said corporate seal.

**ARTICLE ~~XII~~ XIII**  
**DATE OF ADOPTION**

These By-Laws are duly adopted by 2/3 vote of the Association on the \_\_\_ day of \_\_\_\_\_ 2020. These By-Laws replace all previous by-laws of the Association.