

December 29, 2015

To Whom it May Concern

Re: Woods Manor, Interval Estates
Special Assessment

Dear Interval Owner,

The Board of Directors of the Association has received a number of questions regarding the special assessment and other aspects of the Interval Estates. The Board has asked me to respond to these questions.

One question is how the Board has determined and levied the amount of the special assessment to each of the Interval Owners for the planned exterior repairs. In addition there are questions about how the regular assessments and budget are being handled by the Board. The Board has asked me to review these questions and give my interpretation. In order to answer the questions raised, it is necessary to review the Declaration and to describe the basis for regular assessments and the "formula" the Board has used to establish the special assessment amount for each Interval Owner.

The Declaration provides that each Owner must pay its share to the Common Expenses. The Common Expenses are defined as all of the costs or expenses referred to in the Declaration. [Section 4.5]. Section 25 of the Declaration describes, in general terms, what the regular assessment for Common Expenses should include. The regular assessments should include the amount needed to pay for the maintenance and operation of the Project. However, "Common Expenses shall not include any costs or expenses which are only related to Interval Units and not to other Units." [Section 25.1]

The regular assessment for the Interval Owners is defined as a Maintenance Fee and includes the items outlined in Section 20 of the Declaration. The list of expenses in Section 20 are those expenses that are specific to an Interval Unit, such as utilities and furniture. The list does not specifically include collection costs, but it does say: "Any other expenses incurred in the normal operations . . . of the [Interval] Unit which cannot be attributed to a particular Unit Week Owner." [Section 20.1.7]

Since the Maintenance Fee includes expenses in addition to the Common Expenses, the Board has included the additional expenses associated with the Interval Units separately from all the general Common Expenses. The Board has used this information to create a separate budget for the Interval Units, pursuant to the terms of the Declaration.

1. The first question is whether the Board has the authority to charge the Interval Owners the collection costs associated with the Interval Units directly or whether those charges should be paid by all of the Owners. As discussed above, the Common Expenses (the expenses paid by all of the Owners) does not include expenses related only to Interval Units. Based upon the language in Sections 25.1 and 20.1.7, the Board has determined that the collection expenses incurred from the delinquent Interval Owners should be part of the Interval Unit Maintenance Fee. Based upon my reading of the Declaration, I believe this decision is supported by the Declaration and is in compliance with the Declaration.

2. The second question is whether the Association should be paying the Maintenance Fee for those Interval Estates owned by the Association. The Association owns 11 Interval Estates. Pursuant to the Declaration, the Association should pay the Maintenance Fee for the Interval Estates owned by it. The only income received by the Association is the Maintenance Fee paid by the Interval Owners and the Assessments paid by the whole Unit Owners. In order to pay its Maintenance Fees, the Association must collect the money from some or all of the Owners. Because the Interval Estates owned by the Association are an expense of the Interval Units (see Sections 25.1 and 20.1.7), the Board has determined the Interval Unit Owners should be assessed for these monies since they are related to Interval Units only. This is the same as increasing the dues of the paying Interval Owners to over the non-paying Interval Owners. I believe this is a reasonable way to handle this deficiency and is in compliance with the Declaration.

3. The third question is what the Association should do with the Interval Estates owned by it. This question is not governed by nor directed by the Declaration. This is a judgment decision on the part of the Board.

It is my understanding the Association has put the Interval Estates owned by it into a rental pool. The rental income received is added to the Interval Unit budget. The issue of whether the Association should sell its Interval Estates is a more difficult judgment call. There is not a strong market for these Interval Estates, so if sold, they are not likely to generate much income. If they are sold, the Board wants to make sure they are sold to owners who will pay the Maintenance Fee and not just become delinquent again. Putting the Interval Estates into a rental pool is a better source of revenue at this time. This seems to be a reasonable position for the Board to take.

The Board is looking at other alternatives. One alternative is to reconfigure and combine its Interval Estates with those of other Interval Owners into one Unit, so the resulting Unit could be sold as a whole unit. When sold the net sale proceeds would be disbursed to those Interval Owners who participated; the share of the Association's Interval Estates would go to into the Interval Units budget. Selling an Interval Unit as a whole unit requires the cooperation of the Interval Owners of that Unit.

4. The last question raised is whether the formula the Board has used to determine the special assessment is in compliance with the Declaration. To answer this question, I must first describe the formula used by the Board. Up until this Special Assessment, the Board has been able to fund these projects out of the reserves of the Interval Owners.

The Declaration says each Interval Unit will be responsible for a percent of the total assessment as set forth on Exhibit B. Unit B101 – 3.38%; Unit B102 – 4.30%; Units B203 and B303 – 3.85%; and Units B204 and B304 – 4.81% (a total of 25%). Each Interval Owner pays 1/50 of the respective regular assessment for that Interval Unit. So for example an Interval Owner in Unit B101 would pay .0676% (3.38%/50) while an Interval Owner in Unit B304 would pay .0962% (4.81%/50)

For the special assessment to Interval Owners, the Board has followed a slightly different formula. The formula used by the Board is based on an attempt to simplify and make “fair” the allocation of the special assessment among all of the Interval Owners in light of the number of non-paying Interval Owners. The special assessment is for exterior repairs and improvements. The work will be done on the entire project and must be paid in full when completed. Therefore, the Board needs to collect the special assessment up front. There are a total of 300 Interval Estates; there were 65 Interval Estates that are non-paying, delinquent or owned by the Association and 235 Interval Estates that are in a current paying status at the time the Special Assessment was calculated. The Association owns 11 Interval Estates; there are 31 Interval Estates in foreclosure; and there are 23 Interval Estates with a collection agency, for a total of 65 Interval Estates. The Declaration does not specify how the Board is to collect or allocate this deficiency (the Declaration assumes all Owners will pay their share.)

The total special assessment is budgeted at \$840,000; the share of the Interval Units is 25% or \$210,000. Since there are 65 non-paying Interval Estates, the Board must collect, up front, the share of the cost allocated to these non-paying Estates. If it does not, the Association will not collect sufficient funds to pay for the entire assessment (it will be approximately \$45,500.00 short). In order to account for this deficiency and avoid the problem of not having enough money, the Board decided to allocate the special assessment equally over all of the paying Interval Owners. In order to do this, the Board divided \$210,000 by 235 (the number of paying Interval Owners) meaning that each Interval Owner’s special assessment amount would be \$894.00. In this unique situation, the Board selected a method that was fair to all of the Interval Owners.

If the Special Assessment is calculated as suggested by some Interval Owner, some Interval Owners might pay more, some might pay less than this amount, depending on the number of non-paying Interval Estates in each Interval Unit. Looking at some examples will illustrate this point.

For example: assume Unit B101 has 15 delinquent weeks. Unit B101’s total share would be \$28,392; each Interval Estate’s share would be \$567.84. But in order to make up for the 15 delinquent Interval Estates, the actual assessment would be \$811.20. A difference of \$243.36.

For example: assume Unit B203 has 5 delinquent weeks. Unit B203’s total share would be \$32,004; each Interval Estate’s share would be \$640.00. But in order to make up for the 5 delinquent Interval Estates, the actual assessment would be \$711.20. A difference of \$71.20.

For example: assume Unit 304 has 20 delinquent weeks. Unit 304’s total share would be \$40,404; each Interval Estate’s share would be \$808.00. But in order to make up for the delinquent Interval Estates the actual assessment would be \$1,346.80. A difference of \$538.72

In order to avoid these somewhat random and harsh results, the Board decided it would be fair to all of the Interval Owners to levy the special assessment equally to all of the paying Interval Owners. This formula appears to be fair and reasonable for the Interval Owners and is in the best interest of all of the Interval Owners. What is clear is that the whole Unit Owners cannot be required to share in the deficiency caused by non-paying Interval Owners.

What is of more concern is what happens if more Interval Owners become delinquent after the first of 2016 when the regular assessment become due. In the event more Interval Owners are delinquent, the Association will need to collect the balance from the remaining Interval Owners.

Yours Truly,

A handwritten signature in cursive script, appearing to read "Kent B. Willis".

Kent B. Willis