**LATE PAYMENT AND RETURNED CHECK FEES**

**DRAFT PROPOSAL**

**8/20/2108**

I have been reviewing the 1986 Offering Plan, By-Laws and Amendments for details on remedies and actions when the HOA receives either a late monthly assessment payment, defined as more than 30 days past due from the original due date, or a check for the monthly assessment and that check is returned by a bank for insufficient funds in a member’s bank account. The HOA is being assessed a returned check fee of $15.00 for each check and every occurrence.

From my review of the Offering Plan document Section 7: Effect of Nonpayment of Assessments and Remedies of the Association, page A-11, provides the most detail. The section states:

“Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum prevailing legal rate per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same,…..” This same section does not cover handling of returned checks.

The maximum interest rate under New York State law is 16% per annum is civil usury. Thus charging interest for a late payment would amount to $4.33 on a $325 monthly assessment. Since this is covered, I am not suggesting any changes at this time to late fees.

Our HOA documents allow for collection of costs associated with late payments. I recommend for consideration the following motion:

When the Drumlins’ HOA incurs a bank charge for a member’s check and/or ACH assessment payment returned due to insufficient funds at the member’s bank, the HOA shall collect an amount equal to or greater than the bank’s charge for the returned check. The member will be notified of the additional charge and the charges will accrue until paid. Fees levied shall be separate from the monthly assessment and fees not promptly paid will be listed on the monthly past due report until paid. If a member sells their unit, an invoice for all outstanding assessments and fees shall be provided to the member for settlement.