

The "Prepayment" Proposal – Why 26 of our neighbors are getting left behind

Dear Fellow Members,

The Board recently released a proposal to pay off our Pre-2019 debt and move everyone to a **\$550 monthly permanent assessment**. While paying off debt is a good goal, there is a serious issue of fairness in how the "PrePAYERS" are being treated.

Right now, 53 of our homes are "Prepaid." When this loan is paid off, the Board plans to refund approximately \$13,000 to the 27 "original" owners who wrote the checks. However, the other 26 owners—who bought their homes with the "prepaid status" included—will receive **nothing**.

Why this matters to everyone:

- **It's Not Equitable:** All 53 homes are in the same category. Treating them differently based on whose name is on the deed creates two "classes" of members.
- **The "Money Grab":** The Club is using our collective Initiation Fees to pay these refunds. By refusing to pay the 26 subsequent owners, the Club is essentially "pocketing" \$13,000 from each **homeowner/neighbor** that belongs to those properties. Isn't Delaire where "neighbors become friends"?
- **Uniformity:** Our bylaws require assessments and benefits to be uniform. This plan is the opposite of uniform.

Whether you are an original owner, a subsequent buyer, or a member who didn't prepay, we should all be concerned when the Board uses technical "fine print" to deny 26 families their fair share of a community distribution, especially when it runs with their parcel. If you want a more technical analysis, see below.

"The Board's proposal tries to save 'the Club' about \$338,000 by excluding 26 of our families. But since we ARE 'the Club,' that means we are being asked to vote to take \$13,000 each away from our own neighbors to save ourselves a few dollars. At a time when we are bringing in millions in initiation fees, **this is a petty and unfair way to treat fellow members who bought into this community in good faith.**"

VOTE NO ON THE PERMANENT ASSESSMENT

The Deep-Dive Analysis (Legal/Technical)

Memorandum: Analysis of Assessment Uniformity and Prepayment Contract Rights

1. The Primacy of Section 2 ("Inures to the Benefit")

Section 2 of the Prepayment Agreement explicitly states that the "paid in full" status of the assessment "**shall inure to the benefit of all subsequent Resident members... with respect to said Home.**" In property law, this

means the benefit is an "appurtenance"—a right that is attached to the land, not a personal contract right that expires. When a subsequent member purchased their home, they paid for that "prepaid" status as part of the home's value.

2. The "Uniformity" Requirement

The Association's Declaration requires that assessments be **uniform**. This requirement extends to the *resolution* of assessments. By creating a scheme where 27 parcels receive a \$13,000 credit/refund and 26 identical parcels receive \$0, the Board is **violating the principle of uniform treatment**. The "Prepaid Status" is a characteristic of the **parcel**, and the Board cannot legally "bifurcate" that status based on the identity of the owner.

3. The Conflict Between Clause 2 and Clause 3

The Board relies on Section 3 to claim that subsequent owners are "entitled to nothing." However:

- **Specific vs. General:** While Section 3 attempts to limit refunds to original payors, it cannot override the General Purpose of the contract (Section 2) or the Master Covenants (Uniformity).
- **The Windfall Argument:** If the Association uses the "Restricted Fund" (communal money) to pay off the debt, it is essentially "buying back" the prepaid credits. If it refuses to pay the 26 owners, the Association is realizing a **\$338,000 windfall** (26 x \$13k) by keeping money that was intended to cover a debt that no longer exists.

4. Breach of Fiduciary Duty

The Board has a duty to manage the "Restricted Fund for Capital Projects" for the benefit of the **entire** membership. Using those funds to selectively satisfy debt for only a portion of a specific class of members—while "forfeiting" the rights of others in that same class—is a selective distribution of assets that may constitute a breach of fiduciary duty.

Propriety of Linking Issues

From a governance standpoint, this practice can be seen as a **breach of the spirit of fair voting**. While not always illegal under Florida's HOA statutes, it is often considered a "take-it-or-leave-it" maneuver that undermines true member choice.

- **The Conflict of Interest:** The Board is using the "**Restricted Fund**" (which is already your money) as a bargaining chip to extract a permanent \$550 commitment.
- **The "Hostage" Element:** They are essentially saying, "*We won't stop wasting money on bank interest unless you give us a permanent pay raise.*" This ignores their fiduciary duty to manage existing funds efficiently regardless of whether a new assessment is passed.

The "Double Recovery" Issue

The Club's current stance creates a situation where they are essentially **paid twice** for the same 26 parcels:

1. **First Payment:** The original owner paid the assessment in full (roughly \$50k originally, now valued at \$13k in your scenario).
2. **Second Payment:** The Club uses the Restricted Fund (new members' initiation fees) to pay the bank for that same portion of the loan.
3. **The Result:** By refusing to refund the current owner, the Club "pockets" the \$13k that was already paid by the original owner.

Conclusion

The proposed "buy-back" of the prepayments **should be applied to all 53 parcels**

currently holding the prepaid status. To do otherwise invites a challenge based on the lack of uniformity and the inequitable forfeiture of property rights inherited by the subsequent owners.

VOTE NO ON THE PERMANENT ASSESSMENT