

## SEASONS COURT ASSOCIATION ASSESSMENT COLLECTION POLICY

Each year our Association is obligated to distribute to its members a statement of the Association's policies and practices in enforcing its legal right to collect assessments from members who do not pay those assessments in a timely fashion. This policy is being sent to you in compliance with that law.

### 1. Summary of Association Assessment Authority Generally.

a. *Associations have a legal obligation to levy assessments.* Civil Code §1366(a) imposes an obligation on community associations to levy regular and special assessments on their members in amounts that are sufficient to perform the association's obligations under the governing documents and the Davis-Stirling Common Interest Development Act. Regular assessment increases typically occur on an annual basis as part of the routine budgeting process of our Association. Civil Code §1365 requires that community associations distribute an operating budget (or a summary of the budget) to all members not less than 30 or more than 90 days before the beginning of the fiscal year. Although regular assessments are an annual obligation, our Association collects the assessment in four equal quarterly installments which are due on the first day of the calendar quarter.

b. *Limits on Board authority to levy regular assessments.* As long as the Board of Directors makes a timely distribution of the annual budget, the Board, in any fiscal year, has the discretion to increase the regular assessment by as much as 20 percent over the amount of the regular assessment imposed during the immediately prior year. This authority to increase the regular assessment by any amount that is less than 20 percent more than the prior year's assessment can be exercised by the Board without necessity of obtaining member approval for the increase.

c. *Exceptions for "emergency assessments."* Civil Code §1366(b) specifies that the Board of Directors may levy an assessment to respond to a "emergency situation." The Code then identifies the following three types of emergency situations: (i) an extraordinary expense ordered by a court; (ii) an extraordinary expense that is needed to repair or maintain any portions of the development for which the association is responsible when a threat to personal safety is discovered; or (iii) and extraordinary expense needed to repair or maintain any portion of the development for which the association is responsible that could not have been reasonably foreseen by the Board when it prepared and distributed the annual budget to the members. If the Board relies on this last type of "emergency situation" as a justification for imposing an emergency assessment, the Board must adopt a resolution containing findings on the necessity of the extraordinary expense and why the expense could not have been reasonably foreseen at the time the budget was prepared and distributed. All members must receive a copy of that resolution at the time they receive their notice of the emergency assessment.

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2. Obligation to Notify Members of Regular Assessment Increases. Before our Board of Directors can increase the amount of the annual regular assessment, the Association must first give all members a notice of the increase in the regular assessment. That notice must be given by first class mail not less than 30 or more than 60 days before the due date of the assessment (Civil Code §1366(d)). In the case of a regular assessment increases, that notice would typically come as part of the annual budget (or budget summary) distributed to all owners not less than 30 or more than 90 days before the beginning of the fiscal year (Civil Code §1365; see paragraph 1a, above). Because Civil Code §1365 does not mandate that the annual budget (or budget summary) be sent by first class mail, a separate mailing will be required to comply with the pre-assessment notice requirement if the budget or budget summary is, for example, delivered to each member personally.

3. Annual Obligation to Notify Members of the Association's Lien and Assessment Collection Procedures. Civil Code §1365(e) requires the Association to provide its members with a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies in response to an owner's default in the payment of Association assessments. This statement s in addition to the Civil Code §1365.1 notice described in paragraph 16 of this Policy and, like that statutory notice, this statement of collection policies and practices must be delivered to the members of our Association not less than 30 days nor more than 90 days before the beginning of the Association's fiscal year. In addition, the statutory notice required by Civil Code §1365.1 must be delivered during the 60 day period immediately before the beginning of the Association's fiscal year. Please refer to Exhibit A for a copy of the required statutory notice.

4. When Do Levied Assessments Become Delinquent? The earliest permissible due date for a regular assessment is 15 days after the notice of assessment is given, unless the Declaration of Covenants, Conditions and Restrictions (Declaration) provides a longer time period for payment, in which case the longer time period shall apply (Civil Code §1366(e)). The Declaration for this development states that regular assessments are delinquent one day after the due date. The due dates for other assessments that may be levied by the Association pursuant to the Declaration (such as emergency assessments) shall be stated in the notice of the assessment sent to all owners.

5. What Expenses and Fees Can Be Recovered From a Delinquent Owner During the Assessment Collection Process? Once an assessment becomes delinquent, our Association is entitled, by both the Davis-Stirling Act and our governing documents, to recover the following sums from you (Civil Code §§1366(e) and 1367.1(d)):

- a. The amount of the delinquent assessment;
- b. Reasonable costs incurred to collect the assessment (including reasonable attorney fees);

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c. A late charge not exceeding 10 percent of the amount of the delinquent assessment or \$10.00, whichever is greater;

d. Interest on all sums (assessments, costs, late charges, and legal fees) at a rate not to exceed 10 percent per annum. Interest begins to accrue from and after the time the delinquent assessment is 30 days past due.

6. Regardless of Whether the Association Records a Lien on Your Property During the Collection of Past-Due Assessments, All Owners Have a Personal Obligation to Pay Assessments and Charges. In accordance with Civil Code §1367.1, regular assessments, together with late charges, reasonable fees and costs of collection, reasonable attorney fees, if any, and interest, if any, determined in accordance with Civil Code §1366, are a debt of the owner of the separate interest at the time that the assessment or other sums are levied. Once delinquent, the assessment and other permitted costs of collection only become a lien on the owner's separate interest when a Notice of Assessment Lien is recorded in the Office of the County Recorder against the owner's separate interest. Because these assessments and related charges constitute a personal obligation of each owner, the Association has a right to look to the owner, personally, to pay the debt and may pursue collection of that debt in a court action (typically a small claims court proceeding). If an owner becomes delinquent in the payment of his or her assessment obligations and a lien is recorded against the owner's property, the Association is not limited to seeking recovery of the delinquent assessment from the sale of the owner's separate interest in foreclosure. The Association also has the option to pursue other remedies available at law, including the filing of any action against the owner in small claims court. Furthermore, if an owner loses his or her property in a foreclosure proceeding initiated by another lien holder, the Association continues to have the right to maintain an action against the owner personally.

7. Prerequisites for Recording a Notice of Delinquent Assessment; 30 Day Pre-Lien Notice to the Delinquent Owner. In accordance with Civil Code §1367.1, before a Notice of Delinquent Assessment can be recorded in the chain of title to the separate interest of a delinquent owner, the Association must send the owner a certified notice (the Pre-Lien Notice) providing information regarding the sums claimed as being delinquent. No lien can be recorded until 30 days after this Pre-Lien Notice has been given. the Pre-Lien Notice from the Association must include the following information:

a. A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount that is claimed to be owed (this summary of assessment collection procedures is intended to satisfy that disclosure requirement);

b. A statement that the notified owner has the right to inspect the Association's records pursuant to Corporations Code §8333.

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**c. "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."**

d. An itemized statement of the charges owed by the owner, including items on the statement that indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney fees, and late charges, and interest, if any, that have been incurred by the owner as a result of the delinquency;

e. A statement that the owner shall not be liable to pay the charges, interests and costs of collection if it is determined that the assessment was paid on time to the Association;

f. A statement that the notified owner has a right to meet with the board (see paragraph 9, below);

g. A statement that the owner has the right to dispute the assessment debt by submitting a written request to the Association to participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code §§1363.810 – 1363.850.

h. A statement that the owner also has the right to request that the matter be resolved by the use of alternative dispute resolution with a neutral third party pursuant to Civil Code §§1369.510 – 1369.590. If this request is made, the Association cannot initiate foreclosure against the owner's separate interest until the alternative dispute resolution process is completed. Furthermore, binding arbitration cannot be used in this alternative dispute resolution proceeding if the Association intends to initiate a judicial, rather than a non-judicial, foreclosure.

8. Application of Payments Made on Account of Delinquent Assessments. In accordance with Civil Code §1367.1(b), when a delinquent owner makes any payments on account of delinquent assessments and other amounts that are claimed as due and owing, the Association must first apply the payment in reduction of the amount of delinquent assessments, and only after the assessment delinquency is paid in full can payments be applied to the fees, collection costs, interest, and other costs. With each payment, the owner can request, and the Association must provide, a receipt indicating the date of the payment and the person to whom the payment was made. The Association must also provide its members with a mailing address for overnight payment of assessments. In the case of our Association, that overnight mailing address is as follows: 1 Seasons Court, Madera, CA 93637

9. Owner's Right to Dispute Delinquency Amount or to Request a Meeting With the Board. On receipt of the Civil Code §1367.1(a) certified Pre-Lien Notice described in Paragraph 7, above, the noticed owner has four possible courses of action that he or she can elect to pursue at this point in the collection process, namely:

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a. The owner can simply pay the past due assessments and other amounts that are shown as being due and owing in the itemized statement that accompanies the Pre-Lien Notice, in which case the collection process shall be ended.

b. The owner has the right to dispute the debt stated in the Pre-Lien Notice by submitting to the Board a written request for dispute resolution pursuant to the Association's meet and confer program required by Civil Code §§1363.810-1363.850; or

c. In the alternative, the owner can choose to have the dispute resolved by the alternative dispute resolution before a neutral third party pursuant to Civil Code §§1369.510-1369.590. The choice of the type of dispute resolution process is up to the requesting owner, except that binding arbitration cannot be used if the Association intends to pursue collection by use of a judicial foreclosure.

d. Under Civil Code §1367.1 (c)(3), the owner has a right to request a meeting with the Board to discuss a payment plan for the delinquent assessment as long as the request for a meeting is made within 15 days following the postmark on the Association's Pre-Lien Notice to the owner. That meeting must take place 45 days (calculated from the postmark on the owner's request) and must be conducted in executive session (see discussion below). When an owner has made a timely request for a meeting to discuss a payment plan, the Association must provide the requesting owner with the Association's standards for payment plans, if any standards have been adopted. There is not statutory authorization for the Board to delegate this meeting obligation to a property manager, but the Board can designate a committee of one or more members to meet with the owner if there is no regularly scheduled Board meeting that is scheduled to occur within 45 days of the owner's request. Payment plans may incorporate any assessments that accrue during the agreed upon payment plan period. The plan does not impede any Association's ability to record a lien on the owner's separate interest to secure payment of the delinquent assessments. However, as long as an owner remains current with the terms of an agreed on payment plan, the Association cannot impose additional late fees.

10. Association's Right to Record a Notice of Delinquent Assessment. In accordance with Civil Code §1367.1(a) and (d), 30 days following the mailing by the Association to the defaulting owner of the certified Pre-Lien Notice required by Civil Code §1367.1(a) (see paragraph 7, above), the Association is entitled to record, in the Official Records of Madera County, a Notice of Delinquent Assessment. This is the document that creates a lien against the separate interest that is owned by a delinquent owner. Certain penalty assessments may not be collected by the use of lien and foreclosure remedies (see Paragraph 15, below). As noted above, the Association's agreement to enter into a payment plan for retiring delinquent assessments does not preclude the Association from recording a Notice of Delinquent Assessment while the plan is in progress. For all assessments and other sums that can be collected through the use of lien and foreclosure remedies, the recorded Notice of Delinquent Assessment which begins the lien process must include all of the following information:

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- a. The amount of the assessment and the other sums that have been charged in accordance with Civil Code §1366(e) with respect of the separate interest that is being liened.
- b. The legal description of the owner's separate interest;
- c. The name of the record owner(s) of that separate interest; and
- d. The name and address of the trustee authorized by the Association to enforce the lien by sale (this allows the lien to be enforced by non-judicial foreclosure as provided in Civil Code §1367.1(g)).

Also included with the recorded Notice of Delinquent Assessment must be a copy of the itemized statement of the charges owed by the owner that was included in the Pre-Lien Notice.

The Notice of Delinquent Assessment must be signed by the person designated in the Declaration as having that authority, by the president of the Association, or by a person who is designated by the Association as having authority to sign and record the Notice of Delinquent Assessment on behalf of the Association.

The Notice of Delinquent Assessment must be mailed to all record owners of the liened separate interest within 10 days after its recordation. That mailing must be by certified mail.

In accordance with Civil Code §1367.4(c)(2), the decision to record a lien for delinquent assessments must be made by the Board of Directors of the Association and may not be delegated to some other agent of the Association. The decision to record a lien must be approved by a majority vote of the directors in an open meeting and the Board is obligated to record the vote in the minutes of that meeting. In order to protect the confidentiality of the owner in question, the minutes shall only identify the matter by the Lot/Unit number, rather than by the name of the owner.

11. No Enforcement Action for 30 Days Following Recordation of Notice of Delinquent Assessment. For a period of 30 days following the recording date of the Notice of Delinquent Assessment, no further action can be taken by the Association to enforce the lien. See Civil Code §1367.1(g).

12. Limitations on the Authority of the Board to Commence Foreclosure of an Assessment Lien. In accordance with Civil Code §1367.4, an association is prohibited from using either judicial or non-judicial foreclosure remedies as a means of collecting delinquent assessments until such time as the amount of the delinquency, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney fees, or interest is at least \$1,800.00 or the assessment secured by the lien is more than 12

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months delinquent. Until such time as either of those thresholds is met, the Association is limited to the use of the following remedies:

- a. The Association can seek to recover the delinquent sums in a small claims court action (assuming the amount claimed is \$5,000.00 or less);
- b. The Association can record a lien on the owner's separate interest and then hold any further foreclosure action in abeyance until either of the thresholds described above is met. As noted above, if recording a notice of lien is the chosen alternative, the Association must offer the owner, and if so requested by the owner, participate in, dispute resolution as set forth in Civil Code §§1363.810-1363.850; or
- c. The Association may pursue collection in any other manner provided by law other than the use of judicial or non-judicial foreclosure.

13. Pursuit of Non-judicial Foreclosure to Collect Assessments. In accordance with Civil Code §1367.1(g), once all of these pre-foreclosure notice and hearing procedures have been satisfied (Paragraphs 7 through 12, above) and a period of 30 days has elapsed since the Notice of Delinquent Assessment was recorded, the Association is authorized to enforce the lien through any means permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by trustee substituted pursuant to Civil Code §2934a. Any sale by the trustee in a non-judicial foreclosure must be conducted in accordance with Civil Code §§2924, 2924b, and 2924c, applicable to the exercise of powers of sale in a mortgage or deed of trust, and the fees of the trustee may not exceed the amounts prescribed in Civil Code §§2924c and 2924d, together with the notice of default service costs.

In accordance with Civil Code §1367.1(j) the Board is obligated to provide notice by personal service on the delinquent owner or such owner's legal representative if the Board votes to foreclose on the owner's separate interest.

Non-judicial foreclosure is a very detailed process that permits the trustee identified in the Association's Notice of Delinquent Assessment to sell the separate interest subject to the lien without the necessity of filing a judicial foreclosure action in Superior Court. The process begins with the recording of the notice of default in accordance with the Civil Code §2924c(b) (Notice of Default). That recorded Notice of Default is then served on the owners of record of the subject separate interest and other persons who have recorded a request for a copy of any Notice of Default.

Once the Notice of Default is recorded, a period of 3 months must elapse before a Notice of Sale can be recorded and served (Civil Code §2924(a)(2)-(3)). In accordance with Civil Code §2924c(a), during that period, the delinquent owner has a right to stop the process by paying the amounts in default in full. Once the 3 months have passed, the trustee can give Notice of Sale for a date that is at least 20 days later in accordance with very specific publication, posting, and recording requirements

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imposed by Civil Code §2924f(b). the foreclosure statutes also provide for postponements of the process. Ultimately, if the trustee's sale proceeds, it is conducted as a public auction in Madera County, during normal business hours on any business day. ANY CONDOMINIUM UNIT OWNER WHOSE SEPARATE INTEREST IS IN FORECLOSURE IS URGED TO CONSULT WITH A COMPETENT LEGAL COUNSEL OF SUCH OWNER'S SELECTION IN ORDER TO BE PROPERLY ADVISED OF SUCH OWNER'S RIGHTS AND OPTIONS AND THE TECHNICAL REQUIREMENTS OF THE FORECLOSURE PROCESS.

14. Statutory Right of Redemption of Owners Who Lose Their Separate Interest in an Association Foreclosure. A non-judicial foreclosure by the Association to collect on a debt for delinquent assessments is subject to a right of redemption that ends 90 days following the foreclosure sale. In addition to the requirements for the content of the Notice of Sale in a non-judicial foreclosure that are set forth in Civil Code §2924f, a Notice of Sale in connection with the Association's foreclosure of a separate interest must include a statement that the property being sold is subject to this right of redemption. This statutory right of redemption following a non-judicial foreclosure is unique to the non-judicial foreclosure of association assessment liens.

15. Limitations on the Use of Non-judicial Foreclosure to Collect Certain Monetary Charges or Penalty Assessments.

Civil Code §1367.1(d) prohibits monetary charges imposed by the Association as a means of reimbursing the Association and as a disciplinary measure for failure of an owner to comply with the governing documents of the Association (other than late payments that may be imposed for delinquent assessments) from being characterized or treated in the governing documents as an assessment that may become a lien against the owner's separate interest enforceable by non-judicial foreclosure pursuant to Civil Code §§2924, 2924b, 2924c. However, Civil Code §1367.1(d) permits the use of lien and non-judicial foreclosure remedies to collect monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred by it to repair damage to common areas and common facilities for which the owner or the owner's guests or tenants were responsible, as long as the governing documents specifically state that such lien and foreclosure remedies can be used. Our governing documents include such an authorization.

16. Alternative of Pursuing Collection of Delinquent Assessments in a Court Proceeding. Civil Code §1367.1(h) permits the Association to sue delinquent owners (rather than pursuing lien and foreclosure remedies), or to take a deed-in-lieu of foreclosure on account of delinquent assessments.

17. Consequences of Failing to Follow Statutorily Mandated Notice and Other Procedures That Are a Pre-requisite to Lien Recordation. In accordance with Civil Code §1367.1(i), if it is determined that the Association's lien previously recorded against a separate interest was recorded in error, the Association must, within 21 calendar days, (a) record or cause to be recorded in the office of the County Recorder a



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lien release or notice of rescission, and (b) provide the owner of the separate interest with a declaration that the lien filing and recording was in error and a copy of the lien release or notice of rescission.

18. Obligation to Record Releases of Assessment Liens. Within 21 days following payment of the sums specified in the Association's Notice of Delinquent Assessment, the Association is obligated by Civil Code §1367.1(d) to record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission of the Association's lien and to provide the owner with a copy of that lien release or notice of rescission of the lien.

19. Annual Notice to Members of Assessment and Assessment Collection Rules. In addition to the Association's obligation to adopt and distribute this Assessment Collection Policy, Civil Code §1365.1 requires community associations to distribute to each member, during the 60 day period immediately preceding the beginning of the Association's fiscal year, a notice, printed in 12 point type, that reads as set forth in Exhibit A of this Collection Policy.