

## ENFORCEMENT PROCEDURE FOR DELINQUENT ASSESSMENTS

### **Step One - Pre-Lien Notice Prior to Recording Lien**

At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect the assessment that is past due, the Association will notify the homeowner of record in writing by certified mail of the following:

- (1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the homeowner has the right to inspect the association records, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."
- (2) An itemized statement of the charges owed by the homeowner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, and late charges, and interest, if any.
- (3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.
- (4) The right to request a meeting with the board to discuss a payment plan provided the request is mailed within 15 days of the postmark of the Notice to Homeowner.
- (5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program provided the request is mailed within 15 days of the postmark of the Notice to Homeowner
- (6) The right to request alternative dispute resolution with a neutral third party before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure. The request must be mailed within 30 days of the postmark of the Notice to Homeowner.

### **Step Two - Owner's Options Upon Receiving Pre-Lien Notice**

Upon receiving the Pre-Lien Notice, which notice is described in Step One above, the owner has three courses of action:

(1) First, the noticed owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in the Pre-Lien Notice. The association shall provide the owner with the standards for payment plans, if any exist. If the request is mailed within 15 days of the date of the postmark of the Pre-Lien notice, the board shall meet with the owner in executive session within 45 days after the postmark of the request, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's property in Bay Village to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in

compliance with the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time before entering into the payment plan.

(2) Second, the noticed owner may dispute the assessment debt by mailing a written request to the Bay Village Architectural Committee at the Association's address, no later than 15 days from the date of the Pre-Lien Notice, providing three dates and times between 9:00 a.m. and 7:00 p.m. that the noticed owner would be available to meet with the Architectural Committee. In the written request, the noticed owner should also indicate if the noticed owner would like a neutral third party from one of the local low-cost mediation programs to mediate at the meeting with the Architectural Committee.

(3) Third, the noticed owner may exercise his or her right to participate in alternative dispute resolution with a neutral third party by mailing a written request no later than 30 days from the postmark of the Pre-Lien Notice.

At the conclusion of one of the above chosen options, or on the noticed owner's failure or rejection of the association's offer to participate in a nonadversarial dispute resolution process (any of the options above), the association is authorized to record a lien against the owner's separate interest.

### **Step Three - Recording Notice of Delinquent Assessment (Lien)**

For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

After at least thirty days after giving the **Notice to Homeowner Prior to Recording Lien** (Step One above), the Association shall be entitled to record with the Santa Cruz County Recorder's Office a notice of delinquent assessment for the amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code Section 5650, which shall constitute a lien on the homeowner's property. The notice of delinquent assessment shall include:

1. The amount of assessment and the other sums that have been charged in accordance with Civil Code Section 5650(b);
2. A legal description of the owner's interest in the common interest development against which the assessment and other sums are levied;
3. The name of the record owner of the owner's interest in the common interest development against which the lien is imposed;
4. An itemized statement of the charges owed by the homeowner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, and late charges, and interest, if any;
5. In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale; and
6. The notice of delinquent assessment shall be signed by two (2) members of the Architectural Committee.

A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

**When the Amount Specified in the Notice of Delinquent Assessment is Paid**

Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

**When Notice of Delinquent Assessment is Recorded in Error – Releasing Lien**

If it is determined that the Association's lien previously recorded against an owner's property was recorded in error, the party who recorded the lien must, within 21 calendar days: (1) record or cause to be recorded in the office of the County Recorder a lien release or notice of rescission and (2) 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.

**When Notice of Delinquent Assessment is Recorded in Error – Financial Adjustment**

If it is determined that an association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney fees, costs of collection, costs imposed for the notice prescribed in Civil Code Section 5660 and costs of recordation and release of lien and pay all costs related to the dispute resolution or alternate dispute resolution.