



**S.B.S. LIEN SERVICES**  
SIMPLY BETTER SERVICE

### **DELINQUENT ASSESSMENT COLLECTION POLICY**

- Information in *Italics* needs to be changed for EACH Association and must be in accordance with the CC&R'S of EACH Association
- Information **in BOLD and underline** is an addition for the year 2006.
- Once changed, remove the italics, bold and underline
- FONT NEEDS TO BE 12pt OR GREATER
- We recommend having all delinquency policies reviewed by your counsel.
- Pages 3, 4 & 5 (in our experience and according to counsel) are not required to be in the "Collection Policy" but are often added.
- Page 3 is required for the "Pre-Lien letter" and sent 30 days prior to recording the Lien.
- Pages 4 & 5 are sent annually as required by 1365.1

*THE HOMEOWNERS ASSOCIATION DELINQUENCY  
& COLLECTION POLICY*

*Adopted January 2006*

We, the Board of Directors for *The Homeowners Association*, hereby resolve to accept the following policy for the collection of assessments. The authority for this procedure is provided in the Covenants, Conditions and Restrictions of this Association and California Civil Code and shall be consistently implemented by the managing agent.

Prompt payment of Assessments by all owners is critical to the financial health of the Association and to the enhancement of the property values of our homes. Your Board of Directors takes very seriously its obligation under the Declaration of Covenants, Conditions and Restrictions (CC&R's) and the California Civil Code to enforce the members' obligation to pay assessments. The policies and practices outlined shall remain in effect until such time as they may be changed, modified, or amended by a duly adopted resolution of the Board of Directors. Therefore, pursuant to the CC&R's and Civil Code, the following are the Association's assessment practices and policies:

1. Assessments, late charges, interest and collection costs, including any attorneys' fees, are the personal obligation of the owner of the property at the time the assessment or other sums are levied.
2. Regular monthly assessments are due and payable on the first day of each month. A courtesy billing statement is sent each month to the billing address on record with the Association. However, it is the owner of record's responsibility to pay each assessment in full each month regardless of whether a statement is received. All other assessments, including special assessments, are due and payable on the date specified by the Board on the Notice of Assessment, which date will not be less than thirty (30) days after the date of notice of the special assessment.
3. Any payments made shall be first applied to assessments owed, and only after the assessments owed are paid in full, shall such payments be applied to late charges, interest, and collection expenses, including attorneys' fees, unless the owner and the Association enter into an agreement providing for payments to be applied in a different manner.
4. Assessments not received within *fifteen (15) days* of the stated due date are delinquent and shall be subject to a late charge of *ten dollars (\$10.00)* for each delinquent assessment per unit.
5. An interest charge at the rate of *12%* per annum will be assessed against any outstanding balance, including delinquent assessments, late charges, and cost of collection, which may include attorneys' fees. Such interest charges shall accrue *thirty (30) days* after the assessment becomes due and shall continue to be assessed each month until the account is brought current.

6. If a special assessment is payable in installments and an installment payment of that special assessment is delinquent for more than *thirty (30) days*, all installments will be accelerated and the entire unpaid balance of the special assessment shall become immediately due and payable. The remaining balance shall be subject to a late charge and interest as provided above.
7. If an assessment is not received within *thirty (30) days* after the assessment becomes delinquent, the Association or its designee, in the event the account is turned over to a collection agent, will send a pre-lien letter to the owner as required by Civil Code, by certified and first class mail, to the owner's mailing address of record advising of the delinquent status of the account and impending collection action. The owner will be charged a fee for the pre-lien letter.
8. If an owner fails to pay the amounts set forth in the pre-lien letter within thirty (30) days of the date of that letter, the Association will authorize the service for collection to record a lien for the amount of any delinquent assessments, late charges, interest and/or costs of collection, including attorneys' fees against the owner's property. The owner will be charged for the fees and costs of preparing and recording the lien. Thirty (30) days following recordation of the lien, the lien may be enforced in any manner permitted by law, including, without limitation, judicial or non-judicial foreclosure.
9. Prior to the release of any lien, or dismissal of any legal action, all assessments, late charges, interest, and costs of collection, including attorneys' fees, must be paid in full to the Association.
10. The mailing address for payments of assessments by overnight delivery is: *ABC Management, 123 Collection Avenue, IOU. CA 12345.* Please note that should an account be referred to a (collection service, the collection service will provide the new address for overnight payments.

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

1. An owner is entitled to inspect the Association's accounting books and records to verify the amounts owed pursuant to Corporations Code Section 8333.
2. In the event it is determined that the owner has paid the assessments on time, the owner will not be liable to pay the charges, interest and costs of collection associated with collection of those assessments.
3. Any owner who is unable to pay assessments will be entitled to make a written request for a payment plan to be considered by the Board of Directors. An owner may also make a written request to meet with the Board in executive session to discuss a payment plan. If the owner requests to meet with the Board to discuss a payment plan within fifteen (15) days of receiving the pre-lien letter, then the Board **shall** meet with the owner within forty-five days of the postmark on the owner's 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**. The Board will consider payment plan requests on a case-by-case basis and is under no obligation to grant payment plan requests.
4. **An owner is entitled 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 required in Article 5 (commencing with Section 1363.810) of Chapter 4.**
5. **Prior to initiating foreclosure against the owner's separate interest, the owner is entitled to submit a written request for alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.**
6. Statements will be mailed from Management as a courtesy AND MAY NOT REFLECT the collection costs, attorneys' fees or other charges, or payments received by the collection service.
7. Nothing herein limits or otherwise affects the Association's right to proceed in any lawful manner to collect any delinquent sums owed to the Association.
8. All charges listed herein are subject to change upon thirty (30) days' prior written notice.
9. The mailing address for payments of assessments by overnight delivery is: *ABC Management, 123 Collection Avenue, IOU. CA 12345*. Please note that should an account be referred to a (collection service, the collection service will provide the new address for overnight payments.

## EXHIBIT "A"

### NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

### ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

## PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

## MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform to the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)\*

\*Citations to Code Sections are verbatim from Civil Code effective as of 1/1/2006.