

## COLLECTION POLICY

### PALMA SOLA HOMEOWNERS' ASSOCIATION

(Adopted 2/8, 2018)

Each year PALMA SOLA HOMEOWNERS' ASSOCIATION (hereafter, the "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 Collection Policy (hereafter, the "Policy") is being sent to the Association members in compliance with the law.

#### 1.) Summary of Association's Assessment Authority Generally.

a. Associations have a legal obligation to levy assessments.

Civil Code §§5600(a), 5605(a), and 5605(c) impose 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 (hereafter, the "Act").

b. Limits on Board of Director's authority to levy regular and special assessments.

This authority to increase the regular assessment by any amount that is less than twenty (20) percent more than the prior year's assessment can be exercised by the Board without the necessity of obtaining member approval for the increase. Board imposed special assessments cannot exceed (in the aggregate during any fiscal year) five (5) percent of the Association's budgeted gross expense for the year in which the special assessment(s) are imposed.

c. Member approval requirement for certain assessments.

Regular assessments increases and special assessments in excess of these percentage caps must be approved by the members. The required affirmative vote is a majority of the members who cast ballots, when ballots are received from at least fifty (50) percent of all members.

d. Exception for emergency assessments.

An exception to these member approval requirements is carved out by Civil Code §§5605(b)-(c) and 5610(a)-(c) for any assessment that would otherwise be a special assessment that the Board must levy to respond to an emergency situation.

## **2) When Do Levied Assessments Become Delinquent?**

The current Declaration for this development states that regular assessments are delinquent fifteen (15) days after the due date. The due dates for other assessments that may be levied pursuant to the Declaration (such as special or emergency assessments) shall be stated in the notice of the assessment sent to all members.

## **3) What Expenses and Fees Can Be Recovered From a Delinquent Member During the Assessment Collection Process?**

Once an assessment becomes delinquent, the Association is entitled, by both the Act and the Association's governing documents, to recover the following sums from a member [Civil Code §§5650(b), 5675, 5685(a) and 5725(a)]:

- a) The amount of the delinquent assessment;
- b) Reasonable costs incurred to collect the assessment (including reasonable attorneys' fees);
- c) A late charge not exceeding ten (10) percent of the amount of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater; and
- d) Interest on all sums (assessments, costs, late charges, and legal fees) at a rate not to exceed twelve (12) percent per annum. Interest begins to accrue from and after the time the delinquent assessment is thirty (30) days past due.

## **4) Regardless of Whether the Association Records a Lien on a Member's Property during the Collection of Past Due Assessments, All Members Have a Personal Obligation to Pay Assessments and Charges.**

Because these assessments and related charges constitute a personal obligation of each member, the Association has a right to look to the member, personally, to pay the debt and may pursue collection of that debt in a court action (typically a small claims court proceeding).

## **5) Prerequisites for Recording a Notice of Delinquent Assessment; Thirty (30) Day Pre-Lien Notice to the Delinquent Member.**

Before a Notice of Delinquent Assessment can be recorded in the chain of title to the unit of the delinquent member, the Association must send the member a certified notice providing information regarding the sums claimed as being delinquent (Pre-Lien Notice) [Civil Code §5650]. No lien can be recorded until thirty (30) days after this Pre-Lien Notice has been given. This certified Pre-Lien Notice from the Association shall include all of the information set forth in Civil Code §§5650 and 5660.

## **6) Member's Right to Dispute Delinquency Amount or to Request a Meeting with the Board.**

On receipt of the Civil Code §§- certified Pre-Lien Notice, described in paragraph 5, the noticed member has three possible courses of action that can be taken at this point in the collection process, namely;

- a) First, the noticed member may submit a written request to meet with the Board to discuss a payment plan for the debt noticed under Civil Code §§5650-5660;
- b) Second, the noticed member may dispute the assessment debt by submitting a **writ** request for dispute resolution to the Association, pursuant to the Association's "meet and confer" program which is required by Civil Code §§5900-5920; or
- c) Third, the noticed member may exercise his or her right to participate in alternative dispute with a neutral third party, under Civil Code §§5925-5965, before the Association may initiate foreclosure against the member's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

#### **7) Association's Right to Record a Notice of Delinquent Assessment.**

Once the Association has complied with these procedural prerequisites for filing a Notice of Delinquent Assessment, the Association is authorized to record a lien against the member's separate interest.

Even though an assessment lien has been created, the Association is precluded from initiating further action to foreclose on that lien, either judicially or nonjudicially, until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney fees, or interest, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800.00), or until the assessments are more than twelve (12) months delinquent.

The decision to record a lien for delinquent assessments shall be made only by the Association's Board 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. [See Civil Code §5705(c)].

#### **8) No Enforcement Action for Thirty (30) Days Following Recordation of Notice of Delinquent Assessment.**

For a period of thirty (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 §§5700(a), 5710(a), 5735, and 5710(c)(1)-(2)].

#### **9) Pursuit of Nonjudicial Foreclosure to Collect Assessments.**

Once all of these preforeclosure notice and hearing procedures have been satisfied and a period of thirty (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 a trustee substituted pursuant to Civil Code §2934a [Civil Code §§5700(a), 5710(a), 5735 and 5710(c)(1)-(2)].

Once the Notice is recorded, a period of three (3) months must elapse before a Notice of Sale can be recorded and served. During that period, the delinquent member has a right to stop the process by paying the amounts in default in full [Civil Code §2924c (a)]. Once the three (3) months has passed, the trustee can give a Notice of Sale for a date that is at least twenty (20) days later in accordance with very specific publication, posting, and recording requirements imposed by Civil Code §2924f(b).

Any sale of a separate interest in a common interest development through a foreclosure sale by the development's association of members, under Civil Code §§5700(b) and 5715(b) is subject to a right of redemption for a period of ninety (90) days following the sale in the foreclosure action.

**10) Alternative of Pursuing Collection in a Small Claims Court Proceeding.**

Under Civil Code §§5700(b) and 5720(b)-(c) the Association may sue delinquent members personally (rather than pursuing lien and foreclosure remedies), or take a deed in lieu of foreclosure on account of delinquent assessments.

**11) Annual Notice to Members of Assessment and Assessment Collection Rules.**

The Association shall distribute to each member, during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statutory notice printed in 12-point type that reads, as set forth in Exhibit A, of this Policy.

(End Collection Policy)

**EXHIBIT "A" TO COLLECTION POLICY**  
**STATUTORY NOTICE OF ASSESSMENTS AND FORECLOSURE**  
**(Civil Code §5730(a))**

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 fifteen 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 or 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 cost of collection, is less than One Thousand Eight Dollars (\$1,800.00). For delinquent assessments or dues in excess of One Thousand Eight Hundred Dollars (\$1,800.00) or more than twelve (12) months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 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 5700 through 5720 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 (Section 5725 of the Civil Code).

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 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 may result from satisfying the requirements are the responsibility of the association (Section 5675 of the Code).

At least thirty (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 the right to review the association/s records to verify the debt (Section 5660 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 twenty-one (21) days and to provide an owner certain documents in this regard. (Section 5685 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 5685 of the Civil Code).

An owner may, but is not obligated to, pay under protest, any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by doing so, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 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 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 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 properly on time (Section 5685 of the Civil Code).

### **Meetings and Payment Plans**

An owner of a separate interest that is not a time-share 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 5685 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 5665 of the Civil Code).

(End Exhibit A to Collection Policy)