

**HILLER HIGHLANDS FOUR ASSOCIATION**

**30 Schooner Hill**

**Oakland, CA 94618-2335**

**Delinquent Assessment Collection Policy Statement**

By resolution of the Board of Directors dated October 7, 2007, the Hiller Highlands Four Association hereby adopts the following revised Delinquent Assessment Collection Policy:

**PAYMENT DUE DATES FOR REGULAR ASSESSMENTS, SPECIAL ASSESSMENTS, AND SPECIAL INDIVIDUAL ASSESSMENTS; WHEN ASSESSMENTS BECOME "DELINQUENT"**

Regular assessments are due, in advance, on the first (1<sup>st</sup>) day of each quarter. A Regular Assessment is deemed delinquent if not received at the Association's address within thirty (30) calendar days after the due date thereof ("Delinquent Assessment"). Special and Special Individual Assessments are due on the date(s) specified upon imposition and each installment thereof shall be deemed delinquent if not received at the Association's address within thirty (30) calendar days after it is due. A late charge of Ten Dollars and No/100 or ten percent (10 %) of the amount due, whichever is greater, or the maximum amount allowed by California Civil Code Section 1366, or any superseding statute, shall be due on any such Delinquent Assessment.

Interest shall be charged on all unpaid balances, including Assessments, late fees, costs of collection and attorney's fees, that are unpaid thirty (30) days after they are due at the rate of twelve percent (12%) per year.

The Association shall charge a "returned check charge" of Twenty-Five Dollars (\$25.00) for all checks returned as "non-negotiable", "insufficient funds" or any other reason.

**OWNER MAY DISPUTE ASSESSMENT; OWNER MAY REQUEST PAYMENT PLAN**

An Owner may dispute an Assessment by submitting a written request for dispute resolution to the Association as set forth in California Civil Code Section 1368.810 et seq. In addition, an Association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in California Civil Code Section 1369.510, if so requested by the Owner. Binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

Pursuant to California Civil Code Section 1367.1, an Owner is not liable for charges, interest, and costs of collection, if it is established that the Assessment was paid properly on time.

An Owner may request the Association to consider a payment plan to satisfy a Delinquent Assessment. Pursuant to California Civil Code Section 1367.1, the Association must inform Owners of the standards for payment plans, if any exist. The Board 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.

**PRE-LIEN NOTICE: FOR ALL ASSESSMENTS UNPAID 45 DAYS AFTER DUE DATE**

If any portion of Regular Assessment, Special Assessment, or Special Individual Assessment, including applicable late charge(s) and interest, remains unpaid forty-five (45) calendar days after the original due date thereof, a Pre-Lien Notice shall be prepared and sent, by certified mail, to the delinquent record owner(s) at the owner's last mailing address provided to the Association. It is the responsibility of the Owner(s) to ensure that the Association has the most up-to-date address, telephone number, and email address (if any) for that Owner.

The Pre-Lien Notice shall include the mailing address for overnight payment of the Delinquent Assessment(s) and/or late charges, interest, costs of collection, or attorney's fees.

Pursuant to California Civil Code Section 1367(a), the Pre-Lien Notice shall: (a) notify the delinquent Owner(s) of the fee and penalty procedures of the Association, and (b) provide an itemized statement of the charges owed by the Owner(s), with line items indicating Assessment(s) owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including notification of the Association's right to recover the reasonable costs of collection from the Owner(s).

Unless the Association and the delinquent Owner(s) have entered into a payment plan, the Delinquent Assessment(s) and all related charges thereafter falling due, until all such amounts are paid, must be paid in full by the delinquent Owner and the Association shall not be required to accept any partial or installment payments from the date of the institution of an action to enforce the payment of delinquent amounts to the time that all such amounts are paid in full. If the Association and the delinquent Owner(s) enter into a payment plan, any payments toward that Owner's debt shall first be applied to the Delinquent Assessment(s) owed, and only after the principal owed is paid in full shall the payments be applied to interest or collection expenses.

## **RECORDING OF LIEN AND LIEN PROCEDURES TO BE FOLLOWED BY THE ASSOCIATION**

If the Delinquent Assessment(s) and related charges have not been paid sixty (60) days after the original due date thereof, the Board may, in its discretion, record the "Notice of Delinquent Assessment" ("Lien"), signed by the Board President, in the Official Records of the County, **so long as the Association provided the following information and opportunities to the Owner(s) at least thirty (30) days before recording the Lien.** Pursuant to California Civil Code Section 1367.1(c)(2), the Board shall vote on this decision to record a Lien in an open Board meeting and record the results in the Board 's minutes.

1. A general description of the collection and lien enforcement procedures of the Association (*i.e.*, this Delinquent Assessment Collection Policy Statement) and the method of calculation of the amount, a statement that the Owner of the separate interest has the right to inspect the Association records, pursuant to California Corporations Code Section 8333 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 Owner(s), including items on the statement which indicate the amount of any Delinquent Assessment(s), the fees and reasonable costs of collection, reasonable attorney's fees, any 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(s) was paid on time to the Association;
4. The right to submit a written request for a meeting with the Board to discuss a payment plan;
5. The right to dispute the debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program, as mandated by California Civil Code Section 1363.810;
6. The right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 1369.510.

The Lien shall state the amount of the Delinquent Assessment(s) and other sums imposed against the Owner(s), a legal description of the Owner's interest in the common interest development against which the Assessment(s) and other sums are levied, the name of the record Owner, and, in order for the Lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. No later than ten (10) calendar days after the Lien is recorded a copy of the Lien shall be mailed to the record Owner(s).

Upon payment of the sums specified in the Lien by the Owner(s), the Association shall cause to be recorded a subsequent notice stating the satisfaction and release of the lien thereof.

## **ASSOCIATION REMEDIES AND PROCEDURES FOR DELINQUENT ASSESSMENTS LESS THAN \$1,800 OR LESS THAN 12 MONTHS DELINQUENT**

Delinquent Assessments of an amount less than One Thousand Eight Hundred and No/100 (\$1,800.00) OR less than twelve (12) months delinquent, not including any accelerated Assessments, late charges, fees and costs of collection,

attorney's fees, or interest, **may not be collected through judicial or nonjudicial foreclosure**. The Association may attempt to collect or secure that debt in any of the following ways:

1. By civil action in small claims court against the Owner(s); OR
2. By recording a Lien against the Owner(s), but not acting on the Lien to foreclose it until and unless the amount owing is greater than One Thousand Eight Hundred and No/100 Dollars (\$1,800.00) or more than twelve (12) months delinquent.

## **ASSOCIATION REMEDIES AND PROCEDURES FOR DELINQUENT ASSESSMENTS MORE THAN \$1,800 OR MORE THAN 12 MONTHS DELINQUENT**

For Delinquent Assessments of an amount of One Thousand Eight Hundred and No/100 Dollars (\$1,800.00) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any Delinquent Assessments more than twelve (12) months delinquent, the Association may use judicial or nonjudicial foreclosure, so long as the Association provides the opportunity for a "meet and confer" session to the delinquent Owner(s), and may also pursue a civil action in small claims court or Superior Court, depending upon the amount owing, to recover the Delinquent Assessments and related costs.

The decision to initiate foreclosure of a Lien for Delinquent Assessments that has been validly recorded shall be made only by the 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 Member s in an executive session; however, the Board shall record the vote in the minutes of the next meeting of the Board open to all Member s.

In addition to this Delinquent Assessment Collection Policy Statement, consistent with California Civil Code Section 1365.1, the Association shall distribute the following notice to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. This notice must be in at least 12-point type. The text of this annual notice shall read as follows:

### **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 with the payment plan standards of the association, if they exist. (Section [1367.1](#) of the Civil Code)