

DRAFT 1

**ESCENA COMMUNITY ASSOCIATION
ASSESSMENT COLLECTION POLICY**

The effective and prompt collection of assessments is vital to the existence, maintenance and operation of our Association. In compliance with the law, this Collection Policy (“Policy”) is distributed to the Members of the Association to inform you of our policies and practices in enforcing our legal right to collect assessments from Members.

1. Assessments. Regular assessments are due on the first day of each month. Special assessments are due according to the terms of the special assessment imposed under the Association’s CC&Rs. Special Benefit Assessments shall be due thirty (30) days after the date it is levied. Compliance Assessments shall be due thirty (30) days after such assessment is imposed. Damage Reimbursement Assessments shall be due within the time period established by the Board.

2. Delinquent Assessments. Assessments are delinquent fifteen (15) days after they are due. A late charge of not to exceed 10% of the delinquent assessment, or \$10.00, whichever is greater, will be charged for each delinquent assessment. In addition, assessments delinquent for over thirty (30) days are subject to interest at twelve percent (12%) per annum. Interest on all sums, including assessments, late charges, fees and costs of collection, and attorneys’ fees will accrue from the time the delinquent assessment is thirty (30) days past due, and will continue to accrue on the unpaid balances until the account is paid in full.

3. Assessment Billing Statements. Billing statements for assessments will be sent electronically to Members’ email addresses. Members requesting to receive assessment billing statements by first-class mail will be charged the actual costs of copying and mailing the statements and administrative expenses incurred by the Association for such mailing.

4. Member’s Obligation to Pay Assessments and Charges. Regular and special assessments, with late charges, fees and costs of collection, attorneys’ fees, and interest, as determined under Civil Code §5650(b), are a debt of the owner of the separate interest (Member) when the assessment or other sums are levied. (Civil Code §5650(a).) 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. If the Member is delinquent in the payment of assessment obligations and a lien is recorded against the Member’s property, the Association may seek recovery of the delinquent assessment from the sale of the unit by foreclosure.

- a. *Address for Overnight Payment*. The Association’s address for overnight payment of assessments is as disclosed annually in the Association’s Annual Policy Statement.
- b. *Receipt of Payment*. When a Member makes a payment, the Association will provide a receipt upon a Member’s request.

- c. *Returned Checks.* Returned checks are subject to a service fee in the same amount incurred by the Association.

5. Application of Payments. Any payments made by the owner of a separate interest (Member) toward a debt for a regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees and interest will first be applied to the assessments owed, and, only after the assessments owed are paid in full will the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. (Civil Code §5655.)

6. Partial Payments. If a delinquent Member makes partial payments, the collection process will continue until the delinquent Member pays all delinquent amounts in full, including any assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. Once all delinquencies in the account are paid in full, the Association will release the assessment lien.

7. Timely Payments. It is the Member's responsibility to allow sufficient time to drop off, mail, or transfer electronically, all monies due before the delinquency date. As a courtesy only, invoices or statements for regular assessments may be provided to a Member by first-class mail addressed to the Member at their address as shown on the books and records of the Association or via email. However, it is the Member's responsibility to be aware of the assessment payment due dates and to pay any and all assessments when due, in the correct amounts, whether or not an invoice or statement has been provided. Members should promptly advise the Association of any changes in the Member's mailing and email address.

8. Overnight Payments. Members may make payments by overnight delivery to the address contained in the Association's most recent annual policy statement.

9. Notice of Assessment Lien. Prior to recording a lien for delinquent assessments, the Association or its agent shall send a warning letter (pre-lien letter), via certified mail, to the Member when the account is delinquent. If the delinquent account is not paid current within the deadline set forth in the letter, the Association or its agent may cause to be recorded in the County Recorder's Office a Notice of Delinquent Assessment (assessment lien) regarding all sums that are delinquent, including the delinquent assessment, late charges, costs, and reasonable attorneys' fees. Recording this notice creates a lien, which is subject to foreclosure, against the delinquent Member's separate interest.

- a. *Cost to Prepare and Send.* The Member will be charged the cost incurred by the Association for preparing and sending the pre- lien letter. The amount will be specified in the pre-lien letter and/or the itemization sent with the letter.
- b. *Service of Notice.* Pre-lien letters will be sent by certified mail to the Member's separate interest address unless the Member provides the Association with a different mailing address. Notices must also be sent to a secondary address if requested by the Member in writing.

- c. *Contents of Notice.* The pre-lien letter will include this information and any other information required by law:
- i. A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount claimed to be owed;
 - ii. A statement that the notified Member may inspect the Association's records under Civil Code §5205;
 - iii. A statement in 14-point boldface type (or 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."
 - iv. An itemized statement of the charges owed by the Member, including items on the statement which indicate any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any;
 - v. A statement that the Member will not be liable to pay the charges, interest and costs of collection, if it is determined that the assessment was paid on time to the Association;
 - vi. A statement that the notified Member has a right to meet with the Board as provided in Civil Code §5665 and as described in paragraph 10, below;
 - vii. A statement that the Member may dispute the assessment debt by submitting a written request for dispute resolution to the Association under the Association's "meet and confer" program required by Civil Code §5900 et seq.; and
 - viii. A statement that the Member may request alternative dispute resolution with a neutral third party under Civil Code §5925 et. seq. before the Association may initiate foreclosure against the Member's separate interest, except that binding arbitration will not be available if the Association intends to initiate a judicial foreclosure.

10. Member's Rights. On receipt of the pre-lien letter described in paragraph 9, the noticed Member has the following rights:

- a. *Payment Plan.* The noticed Member may submit a written request to meet with the Board to discuss a payment plan for the debt noticed. (Civil Code §5665.)
 - i. The Board will meet with the Member in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the postmark of the notice, unless there is no regularly scheduled board meeting

within that period, in which case the Board may designate a committee of one or more directors to meet with the Member.

- ii. Payment plan requests will be considered on a case-by-case basis. The Board reserves the right to decline a Member's request.
 - iii. Payment plans may incorporate any assessments that accrue during the payment plan period. Additional late fees will not accrue during the payment plan period if the Member complies with the payment plan.
 - iv. If a default on any payment plan occurs, the association may resume its efforts to collect the delinquent assessments from the time prior to entering the payment plan.
 - v. Payment plans will not impede an association's ability to record a lien on the Member's separate interest to secure payment of delinquent assessments.
- b. *Meet and Confer Program also known as Internal Dispute Resolution (IDR).* The noticed Member may dispute the assessment debt by submitting a written request for dispute resolution to the Association under the Association's "meet and confer" program. If no policy has been adopted, then the following will apply under Civil Code §5915:
- i. The party may request the other party to meet and confer to resolve the dispute. The request will be in writing.
 - ii. A Member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
 - iii. The Board must designate one director to meet and confer.
 - iv. The parties will meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith to resolve the dispute.
 - v. The parties may be assisted by an attorney or another person at their own cost when conferring. A Member intending to bring an attorney or another person to an IDR must inform the Association at least ten (10) days prior to the meeting. If a Member brings an attorney or other person without the Association's prior knowledge, the IDR will be rescheduled to a later date to allow the Association to have its legal counsel present.
 - vi. A resolution of the dispute agreed to by the parties will be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

- vii. An agreement reached by the parties in the meet and confer process will bind the parties and is judicially enforceable if signed by both parties and both these conditions are satisfied:
 - 1. The agreement is not in conflict with law or the governing documents of the common interest development or Association
 - 2. The agreement is consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board.
- viii. A member of the Association may not be charged a fee to participate in IDR.
- c. *Alternative Dispute Resolution.* The noticed Member may request alternative dispute resolution with a neutral third party under Civil Code §5925 et seq.
- 11. Association's Collection Rights. The Association's debt collection procedures are:
 - a. *Delinquent Less Than \$1,800 and Fewer Than 12 Months.* If the unpaid regular or special assessments are less than \$1,800 (not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest) and fewer than twelve (12) months delinquent, the Association may attempt to collect or secure that debt in one or more of these ways:
 - i. If the delinquent assessments, late charges, interest, and all costs of collection, including attorney's fees, are not paid in full by the deadline set forth in the pre-lien notice, by recording a lien on the Member's separate interest.
 - ii. Collect the delinquent assessments, late fees, interest, and all costs of collection, by filing a civil action in small claims court or superior court. An abstract of any judgment for the Association may be recorded and may affect the Member's credit.
 - iii. By any other manner provided by law, except for judicial or nonjudicial foreclosure.
 - b. *Delinquent at Least \$1,800 or More Than 12 Months.* If the unpaid regular or special assessments are delinquent at least \$1,800 (not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest) and/or more than 12 months delinquent, the Association may attempt to collect or secure that debt in any of the following ways:
 - i. If the delinquent assessments, late charges, interest, and all costs of collection, including attorney's fees are not paid by the deadline set forth in the pre-lien notice, by recording a lien on the Member's separate interest

and, if desired, initiating either judicial or nonjudicial foreclosure of the lien.

- ii. Collect the delinquent assessments, late fees, interest, and all costs of collection, by filing a civil action in small claims court or superior court. An abstract of any judgment for the Association may be recorded and may affect the Member's credit.
 - iii. By any other manner provided by law.
- c. *Board Decision to Record Lien.* The decision to record a lien for delinquent assessments will be made only by the Board. The Board will approve the decision by a majority vote of the directors in an open meeting. The Board will record the vote in the minutes of that meeting. (Civil Code §5673)
- d. *Fee Incurred to Prepare and Record Lien.* The Member will be charged the actual cost the Association incurs for the preparation and recording of the lien. This amount includes the cost of releasing the lien upon verification of payment in full.
- e. *Lien Contents.* The recorded copy of the lien (notice of delinquent assessment) must include the following information:
- i. The amount of the assessment and other sums imposed under Civil Code §5650(b);
 - ii. A legal description of the Member's separate interest in the common interest development against which the assessment and other sums are levied;
 - iii. The name of the record owner of that separate interest in the common interest development against which the lien is imposed;
 - iv. If the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale.

The itemized statement of the charges owed by the Member, as described in Civil Code §5660(b) will be recorded with the notice of delinquent assessment.

The notice of delinquent assessment will be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association.

A copy of the recorded notice of delinquent assessment will be mailed by certified mail to the owner(s) of the separate interest (Member(s)). The notice will be mailed within 10 calendar days after recordation.

12. Release of Lien upon Payment. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association will 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 (Member) a copy of the lien release or notice that the delinquent assessment has been satisfied.

13. Pursuit of Nonjudicial Foreclosure to Collect Assessments. After the expiration of 30 days following recording a lien created under Civil Code §5675, the lien may be enforced in any manner 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 under Civil Code §2934a. (Civil Code §5700(a).) Any sale by a trustee in a nonjudicial foreclosure must be conducted in accordance with Civil Code §§5710, 2924, 2924b, and 2924c, applicable to the exercise of powers of sale in mortgages or deed of trusts.

14. Alternative of Pursuing Collection in a Small Claims Court Proceeding. Instead of pursuing foreclosure, the Association may sue delinquent Members personally, or take a deed in lieu of foreclosure. (Civil Code §§ 5700(b) and 5720(b)(1) and (3).)

15. Notice Required by Civil Code §5730

“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 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, inclusive)

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 area 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 result from satisfying the requirements are the responsibility of the association. (Section 5675 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 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 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, the owner 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 5655 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 so doing, 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 paid 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 interest 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 exists. (Section 5665 of the Civil Code)

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. These payment plans must conform to the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)

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