

Diablo View Homeowners Association

ASSESSMENT COLLECTION POLICY

Notice to Members:

This document sets forth the Association's policy regarding the collection of assessments pursuant to the Association's Declaration of Covenants, Conditions & Restrictions, its Bylaws, and California Civil Code sections 1363.05, 1365.1, 1366, 1366.3, 1367 and 1367.1.

1.0 Assessments in General. The Association has a duty to levy regular and special assessments sufficient to perform its obligations under the governing documents and California law. Regular assessments are determined at least once annually and are payable during the year in **Monthly** installments or at such other intervals as the Board of Directors shall designate. The association shall distribute the written notice described in Civil Code section 1365.1 (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year.

2.0 Obligation to Pay Assessments. A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Each assessment or charge is also a lien on the owner's property from and after the time the Association causes a Notice of Delinquent Assessment (Lien) to be recorded with the County Recorder's Office of the County in which the property is located.

3.0 Monetary Charge for Reimbursement to Association for Damage to Common Areas and Facilities. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents.

4.0 Monetary Penalty Imposed by the Association as a Disciplinary Measure. A monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

5.0 Notice of Assessments. Not less than 30 days nor more than 60 days before any increase in the regular assessment or any special assessment becomes due, the Association will give the owners notice of the assessment. Notice will be sent by first-class mail to addresses on the membership register as of the date of notice. The Board of Directors may elect from time to time to provide additional periodic statements of assessments and charges, but lack of such statements does not relieve the owners of the obligation to pay assessments.

6.0 Designation of Agent. The Board of Directors may designate an agent or agents to collect assessment payments and administer this Assessment Collection Policy. Such designated agent may be an officer of the Association, manager, collection service, banking institution, law firm or other appropriate agent. A.S.A.P. Collection Services at 7077 Via Del Rio, San Jose, CA 95139 (408) 363-9600 is one of the designated agents authorized to administer this policy.

7.0 Association Cannot Voluntarily Assign or Pledge the Association's Right to Collect. An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien per the Covenants, Conditions and Restrictions (CC&R's), 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 pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

8.0 Due Date/ Delinquency Date of Assessments. Unless otherwise specified by the Board, an assessment is due on the first of each **month**. An assessment, or any portion thereof, is delinquent if it has not been received as directed by the Board or its designated agent **30** days after it is due.

9.0 Late Charges on Delinquent Amounts. Delinquent accounts become subject to the following additional charges as contained in Civil Code section 1366 and the governing documents: costs of collection including reasonable attorney's fees; a late charge of **\$5 per month** and interest on all sums (including the delinquent assessment, collection fees and costs, and reasonable attorney's fees) at an annual interest rate not to exceed **12%** commencing 30 days after the assessment becomes due. If it is determined the assessment was paid on time to the association the owner will not be liable to pay the charges, interest, and costs of collection.

10.0 Collection Charges. Any costs and fees incurred in processing and collecting delinquent amounts, including, without limitation, late charges, charges for preparation of delinquency notices or referral for collection, administration of an owners dispute or request for a payment plan as well as the recordation of a lien or initiation of foreclosure proceedings, postage and copies, and attorney's fees and costs, shall become an additional charge against the owner and the owner's property and shall be subject to collection action pursuant to this Policy.

11.0 Application of Payments. Neither the Association nor its designated agent has any obligation to accept partial payments on an assessment account. Unless stated otherwise in writing, partial payments accepted will be applied first to the oldest 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. Owners may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. Designated agent may require payments be made in certified funds.

12.0 Initial Delinquency Notice. Once an assessment, or any portion thereof, has become delinquent, the owner shall receive an initial delinquency notice stating all amounts past due and any known collection charges imposed as of the date of the notice, which may be in the form of a letter, monthly statement, past due notice, or any other form of writing or notice from the Association or its designated agent.

13.0 Notice of Intent to Record a Lien. If an assessment account remains unpaid for **45** days after it is due, the Association or its designated agent shall, at least 30 days prior to recording a lien upon the separate interest of the owner, notify the owner 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 owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, 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, including items on the statement which indicate the amount of any delinquent assessments, 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 was paid on time to the association. 4.) The right to request a meeting with the board as provided by Civil Code Section 1367.1 (c).

14.0 Recording of Lien. At the expiration of 30 days following the Notice of Intent to Record a Lien, the Association or its designated agent will without further notice to the owner, record a lien against the owner's property. The notice of delinquent assessment shall be mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation.

15.0 Association Lien Subordination. A lien created pursuant to *14.0 Recording of Lien* shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

16.0 Recording of Release of Lien. A release of lien will not be recorded until the entire balance of the owner's account is paid in full. All charges incurred in recording a Release of Lien, including reasonable attorney or agent fees and costs, will be charged to the account. 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.

17.0 Lien Recorded In Error. If it is determined that a lien previously recorded against a separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, 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 with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the association fails to comply with the procedures set forth in this section it shall, prior to recording a lien,

recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest. This section only applies to liens recorded on or after January 1, 2003.

18.0 Foreclosure. Foreclosure proceedings may commence 31 days after recording the lien on the property if either the entire balance of the account has not been paid or a payment agreement has not been entered into with the Association or its designated agent.

19.0 Deed in Lieu of Foreclosure. Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created or prohibits an association from taking a deed in lieu of foreclosure.

20.0 Payment Agreement. An owner of a separate interest may petition the Board of Directors in writing for a payment agreement to allow the owner to make periodic partial payments on the entire balance of the assessment account, in addition to the ongoing assessment payments, in amounts and on a payment schedule agreed to by the Board of Directors. The Association has no obligation to enter into such a payment agreement. Any agreement entered into with the owner shall be reasonable, as determined by the Board in its sole discretion, and a lien will be recorded against the property for the sole purpose of assuring that the best interests of the Association are served. The payment agreement shall be in writing and a provision shall be included that failure to meet any term of the agreement shall give the Board the right to immediately continue the collection process without further notice to the owner. The owner will be charged for the additional collection fees and costs to administer the payment plan.

21.0 Dispute of Charges. An owner may dispute the debt noticed pursuant to *13.0 Notice of Intent to Record a Lien* by submitting to the board a written explanation of the reasons for his or her dispute and, if the owner wants to meet with the Board in executive session, that needs to be stated in the written dispute. Upon receipt of a written dispute notice the designated agent will add to the owners account a Dispute Claim Processing Fee for the additional collection fees and costs to investigate, research and/or process the dispute claim. The board or its designated agent shall respond in writing to the owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. ***A telephone call will not reserve any rights.*** The disputed amount may remain unpaid during the investigation, but undisputed portions of the account must be paid in full or a payment plan must be established. No additional collection activities will be taken to collect the disputed amounts until completion of the investigation and the Board of Directors makes a decision. The owner must provide the following information in writing regarding any dispute:

- a. The owner's name, mailing address, and account number.
- b. The exact dollar amount in dispute or in error.
- c. For each charge or payment in dispute, an explanation of the reasons the owner believes there is an error, with sufficient detail such as dates, names and check numbers, so that the dispute may be investigated efficiently and effectively. If the owner does not know how the error was made, that statement may be made, but the dates and check numbers, etc., must be given.
- d. Copies of (front and back) of cancelled checks; letters or other documents referred to or claimed must accompany the written objection.

If the investigation of an owners claim concludes that the dispute warrants an adjustment or credit on the account, the adjustment may also include an adjustment or credit on the collection fees and costs that may have been added to the account while the account was under review; including the Dispute Claim Processing Fee. If the investigation of the claim concludes that the disputed portion should not be adjusted or credited, all collection fees and costs that may have been added to the account while the account was under review will remain on the account without adjustment. The designated agent will then pursue its collection activities, which will incur additional collection fees and costs and interest costs charged to the account until the account is paid in full.

22.0 Owner has Right to Request Meeting with Board. Owner has the right to request a meeting with the board. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice *13.0 Notice of Intent to Record a Lien* , 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.

23.0 Owner has Right to Inspect Association Records. Owner has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code. Owner should contact the association's managing agent for the policies and procedures set forth to inspect the records.

24.0 Resolution Of Assessment Dispute By Alternative Dispute Resolution. Assessment collection issues are generally exempt from Civil code Section 1354, which provides a process for resolving matters through alternative dispute resolution (ADR). However, a homeowner may lift the exception for the association assessments through the following steps:

- a. Homeowner pays in full all of the assessments in dispute, late charges, interest and all fees and costs associated with preparation and filing of a lien (including mailing costs, and attorneys fees not to exceed \$425);
- b. This payment must be made along with a written statement of protest from the homeowner which is sent to the Association via certified mail, not more than 30 days after the lien is recorded;
- c. Upon receipt of such a written protest, the Association must inform the owner of the right to resolve the matter through ADR as set forth in civil code Section 1354, a civil action or any other procedure that the Board might establish to resolve this matter. The Association is under no obligation to agree to ADR, even if an owner properly requests ADR;
- d. A homeowner may use this exception for ADR for delinquent disputes not more than 2 times in any single year and not more than 3 times in any five calendar years;
- e. If through ADR it is determined that some of the assessments are levied in error, the homeowner is entitled to recovery of interest in a reasonable amount.

25.0 Other Remedies. The Association reserves the right to avail itself of any other remedy permitted by law and the Association's governing documents to collect assessments and related costs and charges, including but not limited to bringing an action in Small Claims, Municipal or Superior Court. Such remedies may be taken in addition to, or in lieu of, any action already taken, and commencement of one remedy shall not prevent the Association from electing at a later date to pursue another remedy.

26.0 Address of the Association and the Board of Directors. Owners should respond in writing or make payments to the address as directed by the designated agent. **Overnight Payments** should be mailed to: **First Bank -Lock Box Dept. A 3400 W. Warner St. #H Santa Ana, CA 92704.** **Correspondence** should be mailed to: **1460 Washington Blvd., Suite A203 Concord, CA 94521**

27.0 Returned Payments. Payments returned for insufficient funds, closed account, stop payment or for any other reason will be charged back to the owners account in addition to any administrative fee, bank fee or collection fees and costs incurred to handle the returned payment. If any two payments to the account in a 24-month period are "Returned" to the bank, personal checks will no longer be accepted.

28.0 Sufficiency of Notice. Except for notice that under California law must be sent by certified mail, notice is sufficient if either hand delivered or mailed first class, postage prepaid, to the owner at the address on the membership register at the time of notice.

29.0 Void Provisions. If any provision of this Policy is determined to be null and void, all other provisions of the Policy shall remain in full force and effect.