

*Lake Almanor Country Club*  
*Policy Manual*  
**Assessment Collection Policy**  
**(Civil Code section 5310(a)(7))**

Policy Manual Section: Financial  
Policy Number: FA-2

WHEREAS, The Lake Almanor Country Club (LACC) is a California nonprofit mutual benefit corporation duly organized and existing under the laws of the State of California; and

WHEREAS, LACC is authorized and empowered to enforce payment of all Assessments as outlined in the governing documents; and

WHEREAS, LACC desires to create a policy governing Assessment collections that conforms to the Davis-Stirling Common Interest Development Act.

NOW, THEREFORE, the Board of Directors of LACC does hereby adopt the following:

**General**

Each year Lake Almanor Country Club (“LACC”) is obligated to distribute to Members a statement of the policies and practices that are utilized by LACC in enforcing its legal right to collect Assessments from Members who do not pay those Assessments in a timely fashion. This Policy is being sent in compliance with that law. In the paragraphs that follow there are many references to “associations” and those references are to nonprofit owner associations that are regulated by California’s Davis-Stirling Common Interest Development Act. LACC is an association of property owners, as the term “association” is defined in Civil Code section 4080.

**Summary of Association Assessment Authority Generally**

- ***Associations have an Obligation to Levy Assessments.*** Associations that are subject to the Davis-Stirling Act have a legal obligation to levy assessments on their Members in amounts sufficient to support the Association’s operations and obligations under the Act and the Governing Documents of the Lake Almanor Country Club (California Civil Code section 5600(a)). Regular Assessment increases typically occur on an annual basis as part of the routine budgeting process of the Association. Civil Code §5300 requires that community associations distribute --- as part of the Association’s Annual Budget Report --- an operating budget (or a summary of the budget) to all Members not less than 30 or more than 90 days before the end of the Association’s fiscal year. Regular Assessments are an annual obligation. In accordance with the LACC Declaration of CC&Rs and Civil Code §5650(b) Assessments are delinquent if not paid within fifteen (15) days after the due date.

Civil Code §5600(b) states that common interest owner associations may not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which the assessment or fee is imposed. However, that statutory restriction must be read in the context of the Board's fiduciary obligation to exercise responsible judgment in estimating the Association's annual revenues and expenses and establishing the Association's annual budget in accordance with Civil Code §5300 or preparing a reserve funding plan in accordance with Civil Code §5560.

- ***Limitations on the Board's authority to levy Regular and Special Assessments without Member Approval:*** Special Assessments, by their nature, can either be imposed during the annual budget cycle to fund a nonrecurring or extraordinary expenses, or such assessments can be levied at other times during the year when unanticipated expenses arise. As long as the Board of Directors makes a timely distribution of the annual budget, the Board, in any fiscal year, has the discretion to increase the Regular Assessment by as much as twenty percent (20%) over the amount of the Regular Assessment imposed during the immediately prior year (Civil Code §5600). This authority to increase the Regular Assessment by any amount that is less than twenty percent (20%) more than the prior year's Assessment can be exercised by the Board without necessity of obtaining Member approval for the increase. In accordance with Civil Code §5605(b)), Board-imposed Special Assessments cannot exceed (in the aggregate during any fiscal year) five percent (5%) of the Association's budgeted gross expenses for the year in which the Special Assessment(s) is/are imposed.
- ***Member approval requirements for certain increases in the Regular Assessment and for certain large Special Assessments:*** Regular Assessment increases and Special Assessments in excess of the percentage caps stated in the preceding subparagraph 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 50 percent of all Members. In addition, the Board of Directors may not increase the amount of the Regular Assessment levied against its Members without first obtaining Member approval if the Board fails to distribute a budget (or a summary of the budget) to all Members within the 30 to 90 day window prior to the beginning of the fiscal year that is prescribed for the distribution of the Annual Budget Report information pursuant to Civil Code §5300. When Member approval is required for a Special Assessment or for an increase in the Regular Assessment the vote must be conducted by secret ballot in accordance with Civil Code §5100 et seq.
- ***Exception for "Emergency Assessments."*** An exception to these Member approval requirements that are summarized in subparagraph above, is carved out by Civil Code §5610 for any Assessment that would otherwise be a Special Assessment that the Board of Directors must levy to respond to an "emergency situation." The Code then identifies the following three types of possible emergency situations:
  - (i) an extraordinary expense ordered by a court;
  - (ii) an extraordinary expense that is needed to repair or maintain any portions of the development for which the association is responsible when a threat to personal safety is discovered; or
  - (iii) an extraordinary expense needed to repair or maintain any portion of the development for which the association is responsible that could not have been

reasonably foreseen by the Board when it prepared and distributed the annual budget to the Members.

If the Board relies on this last type of “emergency situation” as a justification for imposing an Emergency Assessment without Member approval, the Board must adopt a resolution containing findings on the necessity of the extraordinary expense and why the expense could not have been reasonably foreseen at the time the budget was prepared and distributed. All Members must receive a copy of that resolution at the time they receive their notice of the Emergency Assessment.

### **Obligation to Notify Members of Regular Assessment Increases and Special Assessments**

Before the Board of Directors can increase the amount of the Regular Assessment or levy and collect a Special Assessment from the Members, the Association must first give all Members a notice of the increase in the Regular Assessment or of the levy the Special Assessment. That notice must be given by “individual notice” (first-class, postage prepaid, registered or certified mail or by e-mail or facsimile transmission if consented to by the receiving Owner) not less than 30 or more than 60 days before the due date of the Assessment (Civil Code §5615).

In the case of Regular Assessment increases, that notice would typically come as part of the annual budget (or budget summary) distributed to all owners not less than 30 or more than 90 days before the beginning of the fiscal year (Civil Code §5300; see Paragraph 1a, above). Civil Code §5320 instructs that the financial information that is required to be provided to the Members each year pursuant to Civil Code section 5300 shall be provided by “individual delivery” which is defined in Civil Code section 4040 to mean by one of the following methods: (i) first-class mail, registered or certified mail; or (ii) e-mail, facsimile, or other electronic means so long as the recipient Member has consented to that method of delivery.

### **Annual Obligation to Notify Members of the Association’s Lien and Assessment Collection Procedures**

Civil Code §5310(a)(7) requires LACC to provide to its Members --- as part of LACC’s Annual Policy Statement --- a statement describing the Association’s policies and practices in enforcing lien rights or other legal remedies in response to an Owner’s default in the payment of Association Assessments. This statement is in addition to the Civil Code §5730 notice described in Annual Notice to Members Paragraph of this Policy and, like that statutory notice, this statement of collection policies and practices must be delivered to the Members of the Association not less than 30 days nor more than 90 days before the end of the Association’s fiscal year. In addition, the statutory notice required by Civil Code §5730 must also be delivered to all Members as part of the Annual Policy Statement. Please refer to Exhibit “A” for a copy of the required statutory notice.

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

The earliest permissible due date for a Regular or Special Assessment is 15 days after the date that the Notice of Assessment is given by LACC to its Members pursuant to Civil Code §5615, unless the Declaration of Covenants Conditions & Restrictions for Lake Almanor Country Club (the “Declaration”) provides a longer time period for payment, in which case the longer time period controls (Civil Code §5650(b)). The Declaration for Lake Almanor Country Club states that Regular Assessments are delinquent 30 days after the due date. The due dates for other Assessments that may be levied by the Association pursuant to the Declaration (such as Special Assessments) shall be stated in the notice of the Assessment that is sent to all owners. Like an increase in the Regular Assessment, notice of a Special Assessment must be sent by individual notice to all Members not less than 30 or more than 60 days prior to the due date of the Special Assessment.

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

Once an Assessment becomes delinquent, the Association is entitled, by both the Davis-Stirling Act and LACC governing documents, to recover the following sums from delinquent Members (Civil Code §§5650(b) and 5675(a)).

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

### **Regardless of Whether the Association Records a Lien on Your Property During the Collection of Past-Due Assessments, All Owners Have a Personal Obligation to Pay Assessments and Charges**

In accordance with Civil Code §5650(a), regular and Special Assessments, together with late charges, reasonable fees and costs of collection, reasonable attorney fees, if any, and interest, if any, determined in accordance with Civil Code §5600, are a debt of the Owner of the separate interest at the time that the Assessment or other sums are levied (Civil Code §5650(a)). Once delinquent, the Assessment and other permitted costs of collection only become a lien on the Owner's separate interest when a Notice of Assessment Lien is recorded in the Office of the County Recorder against the Owner's separate interest in the development (i.e., the Owner's lot or unit). Because these Assessments and related charges constitute a personal obligation of each Owner, the Association has a right to look to the Owner, personally, to pay the debt and may pursue collection of that debt in a court action (typically a small claims court proceeding). If an Owner becomes delinquent in the payment of his or her Assessment obligations to LACC and a lien is recorded against the Owner's property, the Association is not limited to seeking recovery of the delinquent Assessment from the sale of the Owner's separate interest in foreclosure. Instead LACC also has the option to pursue other remedies available at law, including the filing of an action against the Owner in small claims court. Furthermore, if an Owner loses his or her property in a foreclosure proceeding initiated by another lien holder; the Association continues to have the right to maintain an action against the Owner personally.

### **Prerequisites for Recording a Notice of Delinquent Assessment; 30-Day Pre-Lien Notice to the Delinquent Owner**

In accordance with Civil Code §5660, before a Notice of Delinquent Assessment can be recorded in the chain of title to the separate interest of a delinquent Owner, the Association must send the Owner a certified notice (the "***Pre-Lien Notice***") providing information regarding the sums claimed as being delinquent. No lien can be recorded until 30 days after this Pre-Lien Notice has been given. The Pre-Lien Notice from the Association must include the following information:

- a. ***A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount that is claimed to be owed***

*(this summary of Assessment Collection Procedures is intended to satisfy that disclosure requirement);*

- b. ***A statement that the notified Owner has the right to inspect the Association's records pursuant to Civil Code §5205;***
- c. ***A statement in 14-point capital letters (or boldface type): "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."***
- d. ***An itemized statement of the charges owed by the Owner, including items on the statement that indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys fees, and late charges, and interest, if any that have been incurred by the Owner as a result of the delinquency;***
- e. ***A statement that the Owner shall not be liable to pay the charges, interests and costs of collection if it is determined that the Assessment was paid on time to the Association;***
- f. ***A statement that the notified Owner has a right to request to meet with the Board as provided in Civil Code §5665 (see Paragraph below).***
- g. ***A statement that the Owner has the right to dispute the Assessment debt by submitting a written request to the Association to participate in dispute resolution pursuant to the association's "meet and confer" program required in Civil Code §§5900 et seq.***
- h. ***A statement that the Owner also has the right to request that the matter be resolved by the use of alternative dispute resolution with a neutral third party pursuant to Civil Code §§5925 et seq.*** If this request is made, the Association cannot initiate foreclosure against the Owner's separate interest until the alternative dispute resolution process is completed. Furthermore, binding arbitration cannot be used in this alternative dispute resolution proceeding if the Association intends to initiate a judicial, rather than a non-judicial, foreclosure.

#### **Application of Payments Made on Account of Delinquent Assessments**

In accordance with Civil Code §5655(a) when a delinquent Owner makes any payments on account of delinquent Assessments and other amounts that are claimed as due and owing, the Association must first apply the payment in reduction of the amount of delinquent Assessments, and only after the Assessment delinquency is paid in full can payments be applied to the fees, collection costs, interest, and other costs. With each payment, the Owner can request, and the association must provide, a receipt indicating the date of the payment and the person to whom the payment was made. The association must also provide its Members with a mailing address for overnight payment of Assessments. In the case of Lake Almanor Country Club, that overnight mailing address is as follows: Lake Almanor Country Club, 501 Peninsula Drive, Lake Almanor, CA 96137.

#### **Owner's Right to Dispute Delinquency Amount or to Request a Meeting With the Board**

On receipt of the Civil Code §5660 certified Pre-Lien Notice described in the above, the noticed Owner has five possible courses of action that he or she can elect to pursue at this point in the collection process, namely:

- a. ***The Owner can simply pay the past-due Assessments and other amounts that are shown as being due and owing in the itemized statement that accompanies the Pre-Lien Notice, in which case the collection process shall be ended.***
  
- b. ***The Owner can submit a written request to meet with the Board of Directors to discuss a payment plan for retiring the delinquent Assessments.*** If this option is pursued, the association must provide the requesting Owner with a copy of the association's payment plan standards (if any standards have been adopted) and meet with the Owner in executive session within 15 days of the date (postmark) of the Owner's request for a meeting. If there is not regularly scheduled meeting within that time frame, the Board may designate a committee of one or more Members to meet with the Owner. If a payment plan is negotiated, it may include Assessment payments that become due during the payment plan period and by entering into a payment plan agreement the association is not waiving its right to record a lien against the Owner's separate interest to secure the delinquent payments. So long as the Owner complies with the terms of the payment plan, no further late fees may be imposed.
  
- c. ***The Owner has the right to dispute the debt stated in the Pre-Lien Notice by submitting to the Board a written request for dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code §§5900 through 5920; or***
  
- d. ***In the alternative, the Owner can choose to have the dispute resolved by alternative dispute resolution before a neutral third party pursuant to Civil Code §§5925 et seq.*** The choice of the type of dispute resolution process is up to the requesting Owner, except that binding arbitration cannot be used if the Association intends to pursue collection by use of judicial foreclosure; or
  
- e. ***The Owner has a right to request a meeting with the LACC Board to discuss a payment plan for the delinquent Assessment so long as the request for a meeting is made within 15 days following the postmark on the Association's Pre-Lien Notice to the Owner pursuant to Civil Code §5660.*** That meeting must take place within 45 days (calculated from the postmark on the Owner's request) and must be conducted in executive session (see discussion below). When an Owner has made a timely request for a meeting to discuss a payment plan, the Association must provide the requesting Owner with the Association's standards for payment plans, if any standards have been adopted. There is no statutory authorization for the Board to delegate this meeting obligation to a property manager, but the Board can designate a committee of one or more members to meet with the Owner if there is no regularly scheduled Board meeting that is scheduled to occur within 45 days of the Owner's request. Payment plans may incorporate any Assessments that accrue during the agreed upon payment plan period and the plan does not impede an Association's ability to record a lien on the Owner's separate interest to secure payment of the delinquent Assessments. However, so long as an Owner remains current with the terms of an agreed upon payment plan, the Association cannot impose additional late fees.

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

In accordance with Civil Code §5675, 30 days following the mailing by the Association to the defaulting Owner of the certified Pre-Lien Notice required by Civil Code §5660 (see Paragraph above), the Association is entitled to record, in the Official Records of Plumas County, a **Notice**

**of Delinquent Assessment.** This is the document that creates a lien against the separate interest that is owned by a delinquent Owner. Certain penalty Assessments may not be collected by the use of lien and foreclosure remedies (see Paragraph below). As noted above, the Association's agreement to enter into a payment plan for retiring delinquent Assessments does not preclude the Association from recording a Notice of Delinquent Assessment while the plan is in progress. For all Assessments and other sums that can be collected through the use of lien and foreclosure remedies, the recorded Notice of Delinquent Assessment which begins the lien process must include all of the following information:

- a. ***the amount of the Assessment and the other sums that have been charged in accordance with Civil Code §5650(b) with respect to the separate interest that is being liened;***
- b. ***the legal description of the Owner's separate interest;***
- c. ***the name of the record Owner(s) of that separate interest; and***
- d. ***in order for the lien to be enforced by non-judicial foreclosure as provided in Civil Code §5700 to 5710, the name and address of the trustee authorized by the Association to enforce the lien by sale (Civil Code §5675(c)).***
- e. ***Included with the recorded Notice of Delinquent Assessment must be a copy of the itemized statement of the charges owed by the Owner that was included in the Pre-Lien Notice.***
- f. ***The Notice of Delinquent Assessment must be signed by the person designated in the LACC Declaration of Covenants, Conditions and Restriction as having that authority, by the president of the Association, or by a person who is designated by the Association as having authority to sign and record the Notice of Delinquent Assessment on behalf of the Association.***
- g. ***The Notice of Delinquent Assessment must be mailed to all record owners of the liened separate interest within 10 days after its recordation.*** That mailing must be by certified mail.

In accordance with Civil Code §5673 and 5705((c), the decision to record a lien for delinquent Assessments must be made by the LACC Board of Directors and may not be delegated to some other agent of the Association. The decision to record a lien must be approved by a majority vote of the directors in an open meeting and the Board is obligated to record the vote in the minutes of that meeting. In order to protect the confidentiality of the Owner in question, the minutes shall only identify the matter by the Lot/Unit number, rather than by the name of the Owner.

In accordance with Civil Code §5685(a), if the Notice of Delinquent Assessment that creates the Assessment lien is recorded and the Owner then pays the amount claimed as being delinquent, the Association has twenty-one (21) days following receipt of payment of all sums specified in the Notice of Delinquent Assessment to record in the Office of the Plumas County Recorder a lien release or notice of rescission and to provide the Owner with a copy of that lien release or notice.

### **No Enforcement Action for 30 Days Following Recordation of Notice of Delinquent Assessment; Notice of Decision to Pursue Foreclosure**

For a period of 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 (Civil Code §5700(a)). If the Board of Directors votes to foreclose on the delinquent Owner's separate interest, the Board must provide notice by personal service in accordance with the manner for the service of a summons (CCP §§415.10 et seq.) to the Owner of a separate interests who occupies the separate interests or to the Owner's legal representative. If the Owner does not occupy the separate interest, then this notice must be served at the address shown on the books of the Association (Civil Code §5705(d)).

#### **Limitations on the Authority of the Board to Commence Foreclosure of an Assessment Lien**

In accordance with Civil Code §5720(a), an association is prohibited from using either judicial or non-judicial foreclosure remedies as a means of collecting delinquent Assessments until such time as the amount of the delinquency, *exclusive* of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest is at least \$1,800.00 or the Assessment secured by the lien is more than 12 months delinquent. Until such time as either of those thresholds is met, the Association is limited to use of the following remedies (Civil Code §5720(b)(2) and (b)(3)):

- a. ***The Association can seek to recover the delinquent sums in a small claims court action (assuming the amount claimed is \$5,000.00 or less);***
- b. ***The Association can record a lien on the Owner's separate interest and then hold any further foreclosure action in abeyance until either of the thresholds described above are met. As noted above, if recording a notice of lien is the chosen alternative, the Association must offer the Owner, and if so requested by the Unit Owner, participate in dispute resolution as set forth in Civil code §§5900 et seq.; or***
- c. ***The Association may pursue collection in any other manner provided by law other than the use of judicial or non-judicial foreclosure.***

The above limitations do not apply to any Assessment secured by a lien which are more than 12 months delinquent or any Assessments owed by the developer if the developer still owns separate interests in the development (Civil Code §5720(c)).

#### **Pursuit of Non-Judicial Foreclosure to Collect Assessments**

In accordance with Civil Code §§5700 through 5725 once all of these pre-foreclosure notice and hearing procedures have been satisfied (Paragraphs above) and a period of 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 §2934(a). Any sale by a trustee in a non-judicial foreclosure must be conducted in accordance with Civil Code §§2924, 2924b and 2924c, applicable to the exercise of powers of sale in a mortgage or deed of trust and the fees of the trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d, together with the notice of default service costs.

In accordance with Civil Code §5705(d)), the LACC Board is obligated to provide notice by personal service on the delinquent Owner or such Owner's legal representative if the Board votes to foreclose on the Owner's separate interest (see discussion above).

Non-judicial foreclosure is a very detailed process which permits the trustee identified in the Association's Notice of Delinquent Assessment to sell the separate interest subject to the lien without the necessity of filing a judicial foreclosure action in the Superior Court. The process



begins with the recording of a notice of default in accordance with Civil Code §2924c(b) ("**Notice of Default**"). That recorded Notice of Default is then served on the owners of record of the subject separate interest and other persons who have recorded a request for a copy of any Notice of Default. Once the Notice of Default is recorded, a period of three months must elapse before a Notice of Sale can be recorded and served ((CC §2924(a)(2)(3)). In accordance with Civil Code §2924c(a), during that period, the delinquent Owner has a right to stop the process by paying the amounts in default in full. Once the three months have passed, the trustee can give Notice of Sale for a date that is at least 20 days later in accordance with very specific publication, posting and recording requirements imposed by Civil Code §2924f(b). The foreclosure statutes also provide for postponements of the process. Ultimately, if the trustee's sale proceeds it is conducted as a public auction in Plumas County, during normal business hours on any business day. ANY OWNER WHOSE SEPARATE INTEREST IS IN FORECLOSURE IS URGED TO CONSULT WITH A COMPETENT LEGAL COUNSEL OF SUCH OWNER'S SELECTION IN ORDER TO BE PROPERLY ADVISED OF SUCH OWNER'S RIGHTS AND OPTIONS AND THE TECHNICAL REQUIREMENTS OF THE FORECLOSURE PROCESS.

### **Owners Who Lose Their Separate Interest in an Association Foreclosure Have a Statutory Right of Redemption**

A non-judicial foreclosure by the Association to collect upon a debt for delinquent Assessments is subject to a right of redemption that ends ninety (90) days following the foreclosure sale. In addition to the requirements for the content of a Notice of Sale in a non-judicial foreclosure that are set forth in Civil Code §2924f, a Notice of Sale in connection with the Association's foreclosure of a separate interest must include a statement that the property being sold is subject to this right of redemption. This statutory right of redemption following a non-judicial foreclosure is unique to the non-judicial foreclosure of association Assessment liens.

### **Limitations on the Use of Non-Judicial Foreclosure to Collect Certain Monetary Charges or Penalty Assessments**

Civil Code §5725 prohibits monetary charges imposed by the Association as a means of reimbursing the Association as a disciplinary measure for failure of an Owner to comply with the governing documents of the Association (other than late payments that may be imposed for delinquent Assessments) from being characterized or treated in the governing documents as an Assessment that may become a lien against the Owner's separate interest enforceable by non-judicial foreclosure pursuant to Civil Code §§ 2924, 2924(b) and 2924(c). However the same Civil Code section permits the use of lien and non-judicial foreclosure remedies to collect monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred by the Association to repair of damage to common areas and common facilities for which the Owner or the Owner's guests or tenants were responsible, so long as the governing documents specifically state that such lien and foreclosure remedies can be used. LACC governing documents include such an authorization.

### **Alternative of Pursuing Collection of Delinquent Assessments in a Court Proceeding**

Civil Code §5700(b) permits the Association to sue owners who are delinquent in the payment of Assessment obligations personally, rather than pursuing lien and foreclosure remedies or to take a deed in lieu of foreclosure on account of delinquent Assessments.

### **Consequences of Failing to Follow the Statutorily Mandated Notice and Other Procedures That Are a Prerequisite to Lien Recordation**

In accordance with Civil Code §5685(b) if it is determined that the Association's lien previously recorded against a separate interest was recorded on error, the Association must, within 21 calendar days, record or cause to be recorded in the office of the County Recorder a lien release

or notice of rescission and provide the Owner of the separate interest with a declaration that the lien filing and recording was in error and a copy of the lien release or notice of rescission.

**Obligation to Record Releases of Assessment Liens**

Within twenty-one (21) days following payment of the sums specified in the Notice of Delinquent Assessment that is sent to a delinquent Owner by LACC, the association is obligated by Civil Code §5685(a) to record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission of the Association's lien and to provide the Owner with a copy of that lien release or notice of rescission of the lien.

**Annual Notice to Members of Assessment and Assessment Collection Rules**

In addition to LACC's obligation to adopt and distribute this Assessment Collection Policy, Civil Code §§5310(a)(6) and 5730 require community associations, such as LACC, to distribute to each Member, as part of the Annual Policy Statement that must be distributed within 30 to 90 days prior to the end of the association's fiscal year a notice, printed in 12-point type, that reads as set forth in Exhibit "A" of this Collection Policy.

**Board of Directors Approval Date: March 19, 2016**

## EXHIBIT "A"

### **CIVIL CODE SECTION 5730 NOTICE REGARDING COMMUNITY ASSOCIATION ASSESSMENT RIGHTS AND FORECLOSURE AND OTHER COLLECTION REMEDIES**

Civil Code §§5310(a)(6) and 5730 require that the following notice be provided to each member of an association operating within a California common interest development (as defined in Civil Code section 4100 during the 60-day period immediately preceding the beginning of the Association's fiscal year. This notice must be printed in at least 12 point type:

#### **NOTICE REGARDING 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 referenced in this disclosure for further information. You may wish to consult a lawyer if you dispute an Assessment.

#### **ASSESSMENTS AND FORECLOSURE**

Assessments become delinquent fifteen (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 non-judicial foreclosure. An association may not use judicial or non-judicial 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 twelve (12) months delinquent, an association may use judicial or non-judicial foreclosure subject to the conditions set forth in Civil Code §§5700 et seq. When using judicial or non-judicial 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 non-judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use non-judicial 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 ( Civil Code §5725).

The association must comply with the requirements of Civil Code §§5650 et seq. 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 (Civil Code §5675).

At least thirty (30) days prior to recording a lien on an Owner's separate interest, the Association must provide the person or persons who are the Owner(s) of record with certain

documents by certified mail, including a description of the Association's collection and lien enforcement procedures and the method of calculating the amount of the claimed delinquency. The Association must also provide an itemized statement of the charges owed by the Owner. Owners who receive such a notice have a right to review the Association's records to verify the debt (Civil Code §5660).

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 (Civil Code §5685).

The collection practices of the Association may be governed by state and federal laws regarding fair debt collection practices. 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 (Civil Code §5665).

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 Civil Code §§5900 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 Civil Code §§5925 et seq., 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 (Civil Code §5685).

### **MEETINGS AND PAYMENT PLANS**

An Owner of a separate interest that is not a timeshare ownership 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 exist (Civil Code §5665).

The Board of Directors of the Association 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 (Civil Code §5665).

A member of an association may provide written notice by facsimile transmission or United States mail to the association of a secondary address. If a secondary address is provided, the association shall send any and all correspondence and legal notices required pursuant to this article to both the primary and the secondary address.