

COLLECTION POLICY

High Sierra Property Owners Association, Inc.

(Adopted November 30, 2009)

Each year your Association is obligated to distribute to its members a statement of the Association's policies and practices in enforcing its legal right to collect assessments from members who do not pay those assessments in a timely fashion. This Policy is being sent to you in compliance with that law.

1) Summary of Association Assessment Authority Generally.

a) Associations have a legal obligation to levy assessments. Civil Code §1366(a) imposes an obligation on community associations to levy regular and special assessments on their members in amounts that are sufficient to perform the association's obligations under the governing documents and the Davis-Stirling Common Interest Development Act. Regular assessment increases typically occur on an annual basis as part of the routine budgeting process of your Association. Civil Code §1365 requires that community associations distribute a budget to all members not less than thirty (30) or more than ninety (90) days before the beginning of the fiscal year.

b) Limits on board authority to levy regular and special assessments. Special assessments, by their nature, can either be imposed during the annual budget cycle to fund a nonrecurring or extraordinary expense, 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 (20) percent over the amount of the regular assessment imposed during the immediately prior year. This authority to increase the regular assessment by any amount that is less than twenty (20) percent more than the prior year's assessment, can be exercised by the Board without necessity of obtaining member approval for the increase. Board-imposed special assessments cannot exceed (in the aggregate during any fiscal year) five (5) percent of the Association's budgeted gross expenses for the year in which the special assessment(s) are imposed.

c) Member approval requirements for certain assessments. Regular assessment increases and special assessments in excess of these percentage caps must be approved by the members. The required affirmative vote is a majority of the members who cast ballots, when ballots are received from at least fifty (50) percent of all members. The board of directors of a community association 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 to all members within the fifteen (15)-day period before the beginning of the fiscal year, as required by Civil Code §1365(a).

d) Exception for "emergency assessments." An exception to these member approval requirements is carved out by Civil Code §1366(b) for any assessment that would otherwise be a special assessment that the Board must levy to respond to an "emergency situation."

The Code then identifies the following three types of 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 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 assessment.

2) Obligation to Notify Members of Regular Assessment Increases and Special Assessments. Before your Board of Directors can increase the amount of the annual 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 of the special assessment. That notice must be given by first-class mail not less than thirty (30) or more than sixty (60) days before the due date (Civil Code §1366(d)). In the case of regular assessment increases, that notice would typically come as part of the annual budget distributed to all owners not less than thirty (30) or more than ninety (90) days before the beginning of the fiscal year (Civil Code §1365). Because Civil Code §1365 does not mandate that the annual budget of community associations be sent by first-class mail, a separate mailing will be required to comply with the pre-assessment notice requirement if the budget is, for example, delivered to each member personally.

3) Annual Obligation to Notify Members of the Association’s Lien and Assessment Collection Procedures. Civil Code §1365(e) requires community associations to provide their members with a statement describing the association’s policies and practices in enforcing lien rights or other legal remedies for default in the payment of association assessments. This statement is in addition to the Civil Code §1365.1 notice described in paragraph 16 of this Policy and, like that statutory notice, this statement of collection policies and practices must be delivered to the members of our Association not less than thirty (30) days nor more than ninety (90) days immediately before the beginning of the Association’s fiscal year. This document is intended to comply with both Civil Code §§1365(e) and 1365.1.

4) When Do Levied Assessments Become Delinquent? The earliest permissible due date for a regular or special assessment is fifteen (15) days after the notice of assessment is given, unless the Declaration of Covenants Conditions & Restrictions (“Declaration”) provides a longer time period for payment, in which case the longer time period shall apply [Civil Code §1366(e)]. The Declaration for this development states that regular assessments are delinquent fifteen (15) days after the due date. The due dates for other assessments that may be levied pursuant to the Declaration (such as special or emergency assessments) shall be stated in the notice of the assessment sent to all owners.

5) What Expenses and Fees Can Be Recovered From a Delinquent Owner During the Assessment Collection Process? Once an assessment becomes delinquent, your Association is

entitled, by both the Davis-Stirling Act and our governing documents, to recover the following sums from you [Civil Code §§1366(e) and 1367.1(d)]:

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

6) 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. Regular and special assessments, together with late charges, reasonable fees and costs of collection, reasonable attorneys' fees, if any, and interest, if any, determined in accordance with Civil Code §1366, are a debt of the owner of the separate interest at the time that the assessment or other sums are levied [Civil Code §1367(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 separate interest. 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 you become delinquent in the payment of your assessment obligations and a lien is recorded against your property, your Association is not limited to seeking recovery of the delinquent assessment from the sale of your unit in foreclosure.

7) Prerequisites for Recording a Notice of Delinquent Assessment; Thirty (30)-Day Pre-Lien Notice to the Delinquent Owner. Before a Notice of Delinquent Assessment can be recorded in the chain of title to the unit of a delinquent owner, the association must send the owner a certified notice providing information regarding the sums claimed as being delinquent [Civil Code §1367.1(a) (Pre-Lien Notice)]. No lien can be recorded until thirty (30) days after this Pre-Lien Notice has been given. This certified Pre-Lien Notice from the Association 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 Corporations Code §8333;

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;

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 meet with the Board (see paragraph 9, below);

g) A statement that the owner has the right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association’s “meet and confer” program required in Civil Code §§1363.810 to 1363.850; and

h) A statement that the owner has the right to request alternative dispute resolution with a neutral third party pursuant to Civil Code §1369.510 before the association may initiate foreclosure against the owner’s separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

8) **Application of Payments Made on Account of Delinquent Assessments.** When an owner makes any payments on account of delinquent assessments and other amounts 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 and other costs [Civil Code §1367.1(b)]. 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 your Association, that overnight mailing address is as follows: High Sierra Property Owners Association, Inc., c/o Mike Compton, 246 Ginger Lane, Paso Robles, California 93446-3256.

9) **Owner’s Right to Dispute Delinquency Amount or to Request a Meeting With the Board.** On receipt of the Civil Code §1367.1(a) certified Pre-Lien Notice, described in paragraph 7, the noticed owner has three possible courses of action that can be taken at this point in the collection process, namely:

a) First, the noticed owner may submit a written request to meet with the board to discuss a payment plan for the debt noticed under Civil Code §1367.1(a). The association shall provide the owner with the standards for payment plans, if any exist. If the request is mailed within fifteen (15) days of the date of the postmark of the notice, the board shall meet with the owner in executive session within forty-five (45) days after the postmark of the request, 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.

Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time before entering into the payment plan;

b) Second, the noticed owner may dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program, which is required by Civil Code §§1363.810 to 1363.850; or

c) Third, the noticed owner may exercise his or her right to participate in alternative dispute resolution with a neutral third party, under Civil Code §§1369.510 to 1369.590, before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

10) Association's Right to Record a Notice of Delinquent Assessment. As a result of amendments to Civil Code §1367.1 that become effective January 1, 2006, associations must make two offers to owners who receive a Pre-Lien Notice before the association has the right to record a Notice of Delinquent Assessment, thereby imposing a lien on the noticed owner's separate interest. These additional pre-lien requirements are companions of the owner's rights, as summarized in Paragraph 9, above, namely:

a) The association must offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" dispute resolution program that is required by Civil Code §§1363.810 to 1363.850; and

b) The association must offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "meet and confer" program required by Civil Code §§1363.810 to 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code §§1369.510 to 1369.590. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

Civil Code §1367.4, which became effective January 1, 2006, authorizes recordation of a Notice of Delinquent Assessment once the association has offered the delinquent owner the dispute resolution process required by Civil Code §§1363.810 to 1363.850 and, if so required by the owner, the association has participated in that process. Once the association has complied with these procedural prerequisites for filing a Notice of Delinquent Assessment, the Davis-Stirling Act does not specify how much time must elapse before the Notice of Delinquent Assessment can be recorded in the chain of title to the delinquent owner's separate interest (thereby creating a lien against that separate interest). However, the minimum time would be the time specified in the association's meet and confer procedures under Civil Code §§1363.810 to 1363.850 and the time periods for pursuing alternative dispute resolution under Civil Code §§1369.510 to

1369.590. The meet and confer rules of the Davis-Stirling Act do not specify minimum time periods for notice or the conduct of the dispute resolution procedures (all that is required is that the procedures be fair, reasonable, and expeditious). At the conclusion of that process, or on the owner's failure or rejection of the association's offer to participate in a nonadversarial dispute resolution process, the association is authorized to record a lien against the owner's separate interest.

Effective January 1, 2006, even though an assessment lien has been created, the association is precluded from initiating further action to foreclose on that lien, either judicially or nonjudicially, until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds One Thousand Eight Hundred Dollars (\$1800), or until the assessments are more than twelve (12) months delinquent. No lien may be recorded until such time as the association has offered the owner and, if so requested by the owner, has participated in dispute resolution under Civil Code §§1363.810 to 1363.850. [See Civil Code §1367.4(b)(2).] This One Thousand Eight Hundred Dollar/twelve (\$1800/12) month threshold for the commencement of foreclosure proceedings does not apply to assessments owed by owners of separate interests in timeshare estates [Business and Professions Code §11112(x)] or to assessments owed by developers of common interest developments. [See Civil Code §1367.4(d).]

For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting. [See Civil Code §1367.4(c)(2).]

The Notice of Delinquent Assessment recorded by an association must include the following information:

- a) The amount of the assessment and the other sums that have been charged in accordance with Civil Code §1366(e);
- b) A legal description of the owner's separate interest that is being liened;
- c) The name of the record owner(s) of that separate interest;
- d) In order for the lien to be enforced by nonjudicial foreclosure, as provided in Civil Code §1367.1(g), the name and address of the trustee authorized by the association to enforce the lien by sale;
- e) The Notice of Delinquent Assessment must be signed by the person designated in the Declaration 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 on behalf of the Association; and
- f) The Notice of Delinquent Assessment must be mailed to all record owners of the liened property within ten (10) days after its recordation. That mailing must be by registered or certified mail.

The recorded copy of the Notice of Delinquent Assessment must be accompanied by the itemized statement of charges owed by the owner of the lien separate interest, which is described in Paragraph 7(d) above. [See Civil Code §1367.1(d).]

11) No Enforcement Action for Thirty (30) Days Following Recordation of Notice of Delinquent Assessment. For a period of thirty (30) days following the recording date of the Notice of Delinquent Assessment, no further action can be taken by the Association to enforce the lien. [See Civil Code §1367.1(g).]

12) Pursuit of Nonjudicial Foreclosure to Collect Assessments. Once all of these preforeclosure notice and hearing procedures have been satisfied (paragraphs 7 through 11, above) and a period of thirty (30) days has elapsed since the Notice of Delinquent Assessment was recorded, the Association is authorized to enforce the lien through any means permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code §2934a [Civil Code §1367.1(g)]. Any sale by a trustee in a nonjudicial 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.

Nonjudicial foreclosure is a very detailed process that permits the trustee identified in the Association's Notice of Delinquent Assessment to sell the lien separate interest without the necessity of filing a judicial foreclosure action in the Superior Court. The process begins with the recording of a Notice of Default [Civil Code §2924c(b)]. That recorded notice is then served on the owners of record of the property and other persons who have recorded a request for a copy of any Notice of Default.

In addition to the requirements of Civil Code §2924, the association shall serve a Notice of Default on the owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure §§415.10 to 415.95. In addition, on receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by Civil Code §1367.1 to the secondary address provided. [See Civil Code §1367(j) (k).]

Associations must notify owners of their right to submit secondary addresses to the association at the time the association issues the pro forma operating budget under Civil Code §1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that if a secondary address is identified or changed during the collection process, the association shall be required to send notices only to the indicated secondary address after the association receives the request.

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

Code §2924f(b). 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 the county in which the separate interest is located, during normal business hours on any business day. ANY OWNER WHOSE SEPARATE INTEREST IS IN FORECLOSURE IS URGED TO CONSULT WITH COMPETENT LEGAL COUNSEL OF THE OWNER'S SELECTION IN ORDER TO BE PROPERLY ADVISED OF THE OWNER'S RIGHTS AND OPTIONS AND THE TECHNICAL REQUIREMENTS OF THE FORECLOSURE PROCESS.

Effective January 1, 2006, any sale of a separate interest in a common interest development through a foreclosure sale by the development's association of property owners under Civil Code §§1367.1(h) and 1367.4, is subject to a right of redemption for a period of ninety (90) days following the sale in the foreclosure action.

13) Limitations on the Use of Nonjudicial Foreclosure to Collect Certain Monetary Charges or Penalty Assessments.

a) Limitations during the period of developer control. As long as any separate interests in a common interest development are being sold pursuant to a Public Report issued by the California Department of Real Estate, any monetary penalty imposed by a community association (i) as a disciplinary measure for a member's failure to comply with the development's governing documents; (ii) as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities by a member; or (iii) in bringing the member and his or her separate interest into compliance with the governing documents, may not be characterized as an assessment that may become a lien against the member's separate interest which could be enforceable by a sale of the interest in accordance with the nonjudicial foreclosure provisions of Civil Code §§2924, 2924b, and 2924c. Title 10 California Code of Regulations §2792.26(c). Assessment collection costs, late payment penalties, and interest charges on delinquent assessments are not subject to this limitation. This Association is under developer control as of the distribution date of this Policy.

b) Limitations following the period of developer control. Once all sales of subdivision interests pursuant to a Public Report have ended, Civil Code §1367.1(d) [formerly, §1367(b)] prohibits monetary charges imposed by an association as a disciplinary measure for failure of a member to comply with the governing documents of the development (other than late payments 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 nonjudicial foreclosure pursuant to Civil Code §§2924, 2924b, and 2924c. However, Civil Code §1367.1(d) permits the use of lien and nonjudicial foreclosure remedies to collect monetary charges 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 common facilities for which the member or the members' guests or tenants were responsible, but only if the governing documents specifically state that such lien and foreclosure remedies can be used.

14) Alternative of Pursuing Collection in a Small Claims Court Proceeding. Both Civil Code §§1367.1(h) and 1367.4(b)(1) permit the Association to sue delinquent owners personally

(rather than pursuing lien and foreclosure remedies), or to take a deed in lieu of foreclosure on account of delinquent assessments. Because most assessment collections involve amounts that are less than Five Thousand Dollars (\$5000), the typical judicial remedy would be a small claims court action. A party that is an association created to manage a common interest development may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of the association. [See Code of Civil Procedure §116.540(c)(i).]

15) Consequences of Failing to Follow the Statutorily Mandated Notice and Other Procedures That Are a Prerequisite to Lien Recordation. If it is determined that a community association's lien previously recorded against an owner's unit was recorded in error, the party who recorded the lien (typically the association) must, within twenty-one (21) calendar days (a) record or cause to be recorded in the office of the County Recorder, a lien release or notice of rescission; and (b) 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. [See Civil Code §1367.1(i).] Furthermore, if it is determined, through dispute resolution proceedings conducted in accordance with an association's "meet and confer" program (see Civil Code §1363.810) or alternative dispute resolution with a neutral third party under Civil Code §1369.510, that an association has recorded a lien for a delinquent assessment in error, the association must (i) promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the Pre-Lien Notice, and costs of recordation and release of any lien recorded in the chain of title to the separate interest under Civil Code §1367.4(b); and (ii) pay all costs related to the dispute resolution or alternative dispute resolution process. (See Civil Code §1367.5.)

16) Annual Notice to Members of Assessment and Assessment Collection Rules. In support of the Civil Code assessment collection and enforcement rules summarized above, Civil Code §1365.1 requires community associations to distribute to each member, during the sixty (60)-day period immediately preceding the beginning of the association's fiscal year, a notice, printed in 12-point type, that reads as set forth in Exhibit A of this Policy.