

# DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

## DELINQUENT ASSESSMENT COLLECTION POLICY

**Effective: SEPTEMBER 2018**

Prompt payment of assessments by all owners is critical to the financial health of the Association and to the enhancement of the property values of our Association. Your Board of Directors takes very seriously its obligation under the CC&R's and the California Civil Code (Civ. Code§ 5650) to enforce the members' obligation to pay assessments. The Board has adopted this Collection Policy in an effort to discharge that obligation in a fair, consistent, and effective manner. Therefore, pursuant to the CC&R's and Civil Code, the following are the Association's assessment collection practices and policies:

- Regular monthly assessments are due and payable on the 1<sup>st</sup> day of each month. A courtesy coupon book is sent at the beginning of each fiscal year to the billing address on record with the Association. However, it is the owner of record's responsibility to pay each assessment in full each month regardless of whether a coupon book is received.
- All other assessments, including, but not limited to, Special Assessments, Reimbursement Assessments, Reconstruction Assessments, and Capital Improvement Assessments are due and payable on the date specified by the Board in the notice of assessment.
- Regular monthly assessments and all other assessments (as defined in Bullet 2) are collectively referred to herein as "Assessments".
- Assessments, late charges, interest and collection costs, including any attorneys' fees, are the personal obligation of the owner of the property at the time the Assessment or other sums are levied.
- Unpaid Assessments are delinquent 30 days after they are due.
- A late charge of \$10.00 or 10%, whichever is greater, will be charged for any Assessment that is not received on or before the 30th day of the month, prior to the close of business.
- When Assessments become delinquent, the Association may, but is not required to, send a courtesy reminder notice to the owner of record for all outstanding charges on the owner's account. (Assessments, late fees, interest, costs of collection, including attorneys' fees). A fee of \$25.00 may be charged for this notice.
- Interest on the balance due will accrue at a rate not to exceed 6% per annum; commencing thirty (30) days after the Assessment becomes due.
- At thirty (30) days past due, the association may invite owner(s) to a hearing for the purpose of revoking membership privileges. Those privileges can include access to common areas or facilities, services paid for by the association, and/or the member's right to vote in association elections.
- When an Assessment becomes more than sixty (60) days past due, the Association will send a pre-lien letter to each owner, as required (Civ. Code§ 5660), by certified mail to the owner's address of record. The owner will be charged \$200.00 for the pre-lien letter, as well as title check fees and all costs to complete the transmittal of the letters.
- If the owner fails to pay the amounts set forth in the pre-lien letter within 30 days of receipt of that letter, a Notice of Delinquent Assessment (Lien) for the amount of any delinquent Assessments, late charges, interest and/or costs of collection, including attorneys' fees, may be recorded against the owner's property. The owner will be charged \$250.00 for the lien as well as any processing fees and costs. A \$25.00 recording service will be charged for the recording of the Notice of Delinquent Assessment (Lien) with the County Recorder Office. All county recording fees are charged as applicable as counties may charge from time to time. Such fees will be charged to the owners account. A copy of the lien will be sent to each owner at his/her address of record via certified mail within ten (10) days of recordation thereof. After the expiration of thirty

## DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

(30) days following recordation of the lien, the lien may be enforced in any manner permitted by law.

- Prior to the recording of a Board authorized lien for delinquent Assessments, an owner that is delinquent has the right to participate in internal dispute resolution (“IDR”) pursuant to the “meet and confer” program in accordance with California Civil Code (Civ. Code § 5910). Prior to recording a lien, the Board of Directors will approve such action by a majority vote of the Board of Directors.
- Upon receipt of payment in full, that includes any late fees, interest, collection costs and/or attorneys’ fees, a Release of Lien will be recorded. Copies of the Release of Lien will be sent to all owners of record. A charge of \$140.00 for this release will be levied against the owners account. An additional \$25.00 recording service will be charged for the recording of the Release of Lien with the County Recorder Office. All county recording fees are charged as applicable and as counties may charge from time to time. Such fees will be charged to the owners account.
- If an owner is delinquent for thirty (30) additional days after the Notice of Delinquent Assessment (Lien) has been recorded, the Assessment collection matter will be referred to the Association’s attorney or collection agent, and the lien may be enforced by judicial or non-judicial foreclosure sale, or by money judgment at the Association’s option. An actual foreclosure sale of an owner’s property will not be conducted unless or until either; (a) the delinquent assessment amount totals One Thousand, Eight Hundred Dollars (\$1,800) or more, excluding accelerated assessments and specified late charges and/or fees; or (b) the assessments are delinquent for more than twelve (12) months. [You could lose ownership of your property if a foreclosure action is completed. You will be responsible for significant additional fees and costs, including attorneys’ fees, if a foreclosure action is commenced against your property.] The decision to foreclose on a lien must be made by a majority of the Board of Directors in an Executive Session meeting and the Board of Directors must record their votes in the Minutes of the next open session Meeting of the Board. The Board must maintain the confidentiality of the delinquent owner(s) by identifying the matter in the Minutes by only the parcel number of the owner’s property. Prior to initiating any foreclosure sale on a recorded lien, the Association shall offer delinquent owners the option of participating in IDR or Alternative Dispute Resolution (“ADR”).
- Nothing herein limits or otherwise affects the Association’s right to proceed in any other lawful manner to collect any delinquent sums owed to the Association.
- The Association will charge a processing fee to the owner for a returned check.
- Any owner who is unable to pay Assessments will be entitled to submit a written request for a payment plan to be considered by the Board of Directors. The Board of Directors is not required to approve a payment plan. If a payment plan is approved, the Board of Directors may establish the terms of the payment plan. A payment plan request or approved payment plan will not impede the Board’s ability to vote for and record a lien.
- The mailing address for overnight payment of assessments is:
  - FirstService Residential California, LLC  
5651 Palmer Way, Suite A  
Carlsbad, CA 92010

# DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

- Fee Schedule

Service	Fee(s)
Intent to Lien Letter	\$200.00
Notice of Delinquent Assessment Lien	\$250.00
Intent to Foreclose Letter	\$50.00
Release of Lien	\$140.00
Foreclosure Package	\$300.00
Title Report	\$50.00
Notary Service	\$15.00
Recording Service	\$25.00
State SB2 Recording Fee	\$75.00
Additional Letter Fee	\$15.00

## 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 30 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. (Civ. Code§ 5700 through 5720).

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. (Civ. Code§ 5725).

The association must comply with the requirements of Article 2 (Civ. Code§ 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. (Civ. Code§ 5675).

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. (Civ. Code§ 5660).

## **DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION**

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. (Civ. Code§ 5685).

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. (Civ. Code§ 5655).

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. (Civ. Code§ 5685).

### **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. (Civ. Code§ 5665).

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. (Civ. Code§ 5665).

### **ASSIGNMENT OF RENTS**

In the event that the Association files any action against an Owner for unpaid Assessments on Owner's Unit, and said Unit is or becomes rented or leased at any time during the pendency of the action, the Association shall have the right, upon ex parte notice and application, to request that the Court order Owner to assign all rents due from the renter/lessor of said Unit to the Association until such time as all Assessment delinquencies are cured.

### **ALTERNATIVE DISPUTE RESOLUTION**

(Note: The information below is taken directly from the California Civil Code Sections as noted)

5925. As used in this article:

(a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

## DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

(b) "Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

- (1) Enforcement of this act.
- (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).
- (3) Enforcement of the governing documents.

5930. (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

5935. (a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

5940. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

5945. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

5950. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions are satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

## **DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION**

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

5955. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

5960. In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

5965. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

(b) The summary shall be included in the annual policy statement prepared pursuant to Section 5310.

### **INTERNAL DISPUTE RESOLUTION**

5915. (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association shall not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute. The parties may be assisted by an attorney or another person at their own cost when conferring.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) A written agreement reached under this section binds the parties and is judicially enforceable if it is signed by both parties and both of the following 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 either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member shall not be charged a fee to participate in the process.