

**AUBURN VALLEY PROPERTY OWNERS' ASSOCIATION  
ASSESSMENT COLLECTION POLICY**

*• adopted 2011*

Each year our 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's Assessment Authority Generally.

a. Association's Legal Obligation to Levy Assessments on Its Members to Support Association's Operations: California Civil Code §5600(a) imposes an obligation on common interest development property owner 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 our Association. Civil Code §5300 requires community associations to distribute an operating budget (or a summary of the budget) to all members within 30 to 90 days before the end of the fiscal year. All regular assessments levied by the Association are due and payable in advance semiannually. In accordance with the Association's Declaration, regular assessments are delinquent if not paid within 30 days after the due date. In no event shall a special assessment be due and payable earlier than 30 days after the date when it is imposed.

b. Limitations on 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 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 20 percent over the amount of the regular assessment imposed during the immediately prior year. Civil Code §5605. This authority to increase the regular assessment by any amount that is less than 20 percent more than the prior year's assessment can be exercised by the Board without 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) 5 percent of the Association's budgeted gross expenses for the year in which the special assessments are imposed.

c. Member Approval Requirements for Certain Assessments: Regular assessment increases and special assessments in excess of the percentage caps stated in subparagraph (b) above 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. Civil Code §5605(c). 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 before the end of the fiscal year that is prescribed for the distribution of budget information under 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 §§5100-5145.

d. Exception for “Emergency Assessments”: Civil Code §5610 provides an exception to the member approval requirements (summarized in subparagraph (c) above) for any assessment that would otherwise be a special assessment that the Board of Directors must levy to respond to an “emergency situation” (referred to in this Policy as Emergency Assessments). The Code identifies the following three types of emergency situations that justify Board action to impose an Emergency Assessment:

(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.

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 “individual notice” (first-class mail (postage prepaid); registered or certified mail; overnight mail; or by e-mail or facsimile transmission if the receiving owner consents in writing) within 30 to 60 days before the due date of the assessment. Civil Code §§5615, 4040. 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 within 30 to 90 days before the end of the fiscal year. Civil Code §5300; see paragraph 1a above. Under Civil Code §5320, the financial information that is required to be provided to the members each year under Civil Code §5300 must be provided by “individual delivery,” which means by any of the following methods: (i) first-class mail (postage prepaid); registered or certified mail; or express mail or overnight delivery; or (ii) e-mail, facsimile, or other electronic means as long as the recipient member has consented in writing to that method of delivery. (That definition of “individual delivery” is in Civil Code §4040.)

3. **Annual Obligation to Notify Members of the Association’s Lien and Assessment Collection Procedures.** Civil Code §5310(a)(7) requires the Association to provide its members with 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. That statement of collection policies and practices must be delivered to the members within 30 to 90 days before the end of the Association's fiscal year. In addition, the statutory notice regarding assessments and foreclosure required by Civil Code §5730 must be delivered as part of the Association's annual policy statement (Civil Code §5310) within 30 to 90 days before the end of the Association's fiscal year by individual delivery (Civil Code §4040). Please refer to Exhibit A for a copy of the required statutory notice.

4. **When Do Levied Assessments Become Delinquent?** The earliest permissible due date for a regular or special assessment is 15 days after the notice of assessment is given, unless the Association's Declaration provides a longer time for payment, in which case the longer time period shall apply. Civil Code §5650(b). The Association's Declaration 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 under the Declaration (such as special assessments) shall be stated in the assessment notice 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 Common Interest Development Act and our governing documents, to recover the following sums from you (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 10 percent of the amount of the delinquent assessment or \$10.00, whichever is greater; and
- d. Interest on all sums (assessments, costs, late charges, and legal fees) at a rate not to exceed 12 percent per annum, unless the Association's Declaration gives a lesser interest rate, in which case the lesser rate of interest shall apply. Interest begins to accrue from the time the delinquent assessment is 30 days past due. The interest rate in the Declaration is 6 percent.

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.** In accordance with Civil Code §5650(a)-(b), 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 and 5650(b)(3) and (c) 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 Placer County Recorder against the owner's separate interest in the development. 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 and a lien is recorded against the owner's separate interest, the Association is not limited to seeking recovery of the delinquent assessment from the sale of the owner's separate interest in foreclosure. Civil Code §§5700-5710, 5730. The Association also has the option to pursue other remedies available at law, including the filing of an action against the owner in small claims court. Civil Code §§5700, 5720. Further, if an owner loses his or her separate interest in a foreclosure proceeding initiated by another lienholder, the Association continues to have the right to maintain an action against the owner personally. See Civil Code §5700.

7. 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 (Civil Code §5660):

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 under 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 the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney fees, late charges, and interest, if any, that the owner has incurred as a result of the delinquency;

e. A statement that the owner shall not be liable to pay the charges, interest, and costs of collection if it is determined that the assessment was paid on time to the Association;

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 9);

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 under the Association's "meet and confer" program required under Civil Code §§5900-5920; and

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 under Civil Code §§5925-5965. 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 nonjudicial, foreclosure.

8. **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 to reduce 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. Civil Code §5655(b). The Association must also provide its members with a mailing address for overnight payment of assessments. Civil Code §5655(c). In the case of your Association, that overnight mailing address is as follows:

Auburn Vally Property Owners' Association  
8815 Auburn Valley Road  
Auburn, CA 95602

9. **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 paragraph 7 above, the noticed owner has four possible courses of action that he or she can elect to pursue at this point in the collection process, namely:

a. **Pay the Amounts Claimed as Due and Owing in Full.** 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. **Negotiate a Payment Plan to Retire the Delinquency.** As provided under Civil Code §5665, 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). The Board shall meet with the owner in executive session within 45 days of the postmark of the owner's request, if the request is mailed within 15 days of the date of the postmark of the Association's Pre-Lien Notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more directors to meet with the owner. If a payment plan is negotiated, it may include assessment payments that become due during the payment plan period; however, the plan cannot call for additional late fees to accrue during the payment plan period as long as the owner is in compliance with the terms of the payment plan. By agreeing to a payment plan, the Association is not waiving its right to record a lien against the owner's separate interest to secure the delinquent payments, and if the owner subsequently defaults on his or her obligations under the negotiated payment plan, the Association may resume its efforts to collect the delinquent assessments from the time before entering into the payment plan.

c. Dispute the Amount Claimed as Due; Request Internal Dispute Resolution (IDR). 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 under the Association's "meet and confer" program required by Civil Code §§5900-5920.

d. Dispute the Amount Claimed as Due; Request Alternative Dispute Resolution (ADR). If the owner disputes the debt, he or she can choose to have the dispute resolved by alternative dispute resolution before a neutral third party under Civil Code §§5925-5965. 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. Civil Code §5660(f).

10. Association's Right to Record a Notice of Delinquent Assessment. In accordance with Civil Code §5675, 30 days after the Association mails to the defaulting owner the certified Pre-Lien Notice required by Civil Code §5660 (see paragraph 7), the Association is entitled to record, in the Official Records of Placer County, a Notice of Delinquent Assessment. However, Civil Code §5670 instructs that before the Association can record the Notice of Delinquent Assessment, the owner of the separate interest that is about to be liened must be offered, and if requested by the owner the Association must participate in, the Association's "meet and confer" program (Civil Code §§5900-5920).

Recording the Notice of Delinquent Assessment 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 15). 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 that begins the lien process must include all of the following information (Civil Code §5675):

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;

d. The name and address of the trustee authorized by the Association to enforce the lien by sale (Civil Code §5675(c)) (required only for the lien to be enforced by nonjudicial foreclosure as provided in Civil Code §§5700-5725); and

e. A copy of the itemized statement of the charges owed by the owner that was included in the Association's Pre-Lien Notice (Civil Code §5660(b)).

The Notice of Delinquent Assessment (Civil Code §5675(a)) 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 of Delinquent Assessment on behalf of the Association. Civil Code §5675(d). However, only the Board of Directors of the Association, by majority vote, can approve recordation of the Notice of Delinquent Assessment. Under Civil Code §5673, the decision to record a lien for delinquent assessments must be made by the Board 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 record of the Board vote must be recorded in the minutes of that meeting.

The Notice of Delinquent Assessment must be mailed by certified mail to every person who is shown as an owner of the separate interest on the Association's records. Civil Code §§5660, 5730.

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 21 days following receipt of payment of all sums specified in the Notice of Delinquent Assessment to record in the Office of the Placer County Recorder a lien release or notice of rescission and to provide the owner with a copy of that lien release or notice.

11. 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 after 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 §5700(a). Furthermore, before initiating foreclosure on an owner's separate interest, the Association must first offer the owner and (if so requested by the owner) participate in either a "meet and confer" session with the Board (Civil Code §§5900-5920) or alternative dispute resolution (in accordance with Civil Code §§5925-5965). The choice of what form of dispute resolution to pursue is up to the owner; however, binding arbitration is not available if the Association indicates that it intends to pursue judicial foreclosure. Civil Code §5705(b).

The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded may be made only by the vote of a majority of the directors in executive session and may not be delegated to an agent of the Association. The Board shall maintain the confidentiality of the owner or owners of the separate interest that is the subject of the foreclosure action by identifying the matter in the minutes of meeting by the parcel number of the property rather than by the name of the owner(s). A Board vote to approve foreclosure of the Association's lien shall take place at least 30 days before any public sale. Civil Code §5705(c).

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 (see Code of Civil Procedure §415.10)—that is, personal delivery to the owner or his or her legal representative if the owner is living in the separate interest that is the subject of the foreclosure action. Civil Code §5705(d). If the owner does not occupy the separate interest in question, then this notice must be served by first-class mail (postage prepaid) at the most current address shown on the books of the Association. In the absence of written notification by the

owner to the Association, the address of the owner's separate interest may be treated as the owner's mailing address for purposes of this paragraph 11.

12. Limitations on Board's Authority to Commence Foreclosure of an Assessment Lien. In accordance with Civil Code §5720(b) and (c)(1), an association is prohibited from using either judicial or nonjudicial 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 fees, or interest) is at least \$1800.00 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 the following remedies (Civil Code §5720(b)):

a. The Association can seek to recover the delinquent sums in a small claims court action (assuming the amount claimed is \$5000.00 or less as provided under CCP §116.220(a)(1));

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 is 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 owner, participate in dispute resolution as set forth in Civil Code §§5900-5920; or

c. The Association may pursue collection in any other manner provided by law other than the use of judicial or nonjudicial foreclosure.

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

13. Pursuit of Nonjudicial Foreclosure to Collect Assessments. In accordance with Civil Code §§5700-5725, once all of these pre-foreclosure notice and hearing procedures have been satisfied (see paragraphs 7-12) 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 under Civil Code §2934(a). Civil Code §5700(a). Any sale by a trustee in a nonjudicial foreclosure must be conducted in accordance with Civil Code §§2924, 2924b, and 2924c (on the exercise of powers of sale in a mortgage or deed of trust), and the trustee's fees 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 Board must 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 paragraph 11).

Nonjudicial foreclosure is a finely detailed process that permits the trustee identified in the Association's Notice of Delinquent Assessment to sell the separate interest subject to the lien without filing a judicial foreclosure action in the Placer County 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 any other persons who have recorded a request for a copy of a Notice of Default. Once the Notice of Default is recorded, a period of 3 months must elapse before a Notice of Sale can be recorded and served. CC §2924(a)(2)-(3). Under Civil Code §2924c(a), during that 3-month period, the delinquent owner has a right to stop the process by paying the amounts in default in full. Once the 3 months have passed, the trustee can give Notice of Sale for a date that is at least 20 days later in accordance with 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 Placer County 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 CHOICE TO OBTAIN PROPER ADVICE ABOUT THAT OWNER'S RIGHTS AND OPTIONS AND THE TECHNICAL REQUIREMENTS OF THE FORECLOSURE PROCESS.

14. Owners Who Lose Their Separate Interest in an Association Foreclosure Have a Statutory Right of Redemption. A nonjudicial foreclosure by the Association to collect a debt for delinquent assessments is subject to a right of redemption that ends 90 days after the foreclosure sale. In addition to the requirements for the content of a Notice of Sale in a nonjudicial foreclosure 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. CCP §§729.035, 729.040. This statutory right of redemption following a nonjudicial foreclosure is unique to the nonjudicial foreclosure of association assessment liens.

15. Limitations on Use of Nonjudicial Foreclosure to Collect Certain Monetary Charges or Penalty Assessments. Civil Code §5725 prohibits the governing documents from characterizing or treating monetary charges imposed by the Association—whether as a means of reimbursing the Association or as a disciplinary measure for an owner's failure to comply with the Association's governing documents (other than late payments that may be imposed for delinquent assessments)—as an assessment that may become a lien against the owner's separate interest enforceable by nonjudicial foreclosure under Civil Code §§2924, 2924(b), and 2924(c). However, the same Civil Code section 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 to repair damage to common areas and common facilities for which the owner or the owner's guests or tenants were responsible, as long as the governing documents specifically state that such lien and foreclosure remedies can be used. Our governing documents include such an authorization.

16. Alternative of Pursuing Collection of Delinquent Assessments in a Court Proceeding. Civil Code §5700(b) allows 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.

17. Consequences of Failing to Follow the Statutorily Mandated Notice and Other Procedures Required Before 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 in error, the Association must, within 21 calendar days, record or cause to be recorded with 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.

18. Obligation to Record Releases of Assessment Liens After Payment. Within 21 days after payment of the sums specified in the Association's Notice of Delinquent Assessment, the Association must 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. Civil Code §5685(a).

19. Annual Notice to Members of Assessment and Assessment Collection Rules. In addition to the Association's obligation to adopt and distribute this Assessment Collection Policy, Civil Code §§5310(a)(6) and 5730 require community associations to distribute to each member, within 30 to 90 days before the end of the Association's fiscal year, a notice, printed in 12-point type, that reads as set forth in Exhibit A attached to this Collection Policy.

Date \_\_\_\_\_

Auburn Valley Property Owners' Association

By \_\_\_\_\_

## EXHIBIT A

### CIVIL CODE §5730 NOTICE ON 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 in a California common interest development (as defined in Civil Code §4100) within 30 to 90 days before the end 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 indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

#### ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on or 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 (\$1800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1800) 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 §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. (Civil Code §§5700-5720)

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 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 Article 2 (commencing with §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. (Civil 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. (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 §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 §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 §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. (Civil 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. (Civil 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 with the payment plan standards of the association, if they exist. (Civil Code §5665)