

VILLA ANTIGUA HOMEOWNERS ASSOCIATION

NOTICE/ASSESSMENTS AND FORECLOSURE ASSESSMENT DISPUTE RIGHTS & COLLECTION POLICY FOR DELINQUENT ASSESSMENTS

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

ASSESSMENT DISPUTE RIGHTS
“NOTICE ASSESSMENTS AND FORECLOSURE”
(CIVIL CODE Section 5730)

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 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. (Sections 5700 through 5720 of the Civil Code, inclusive)

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. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 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. (Section 5675 of the Civil Code)

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. (Section 5660 of the Civil Code)

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. (Section 5685 of the Civil Code)

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. (Section 5655 of the Civil Code)

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. (Section 5685 of the Civil Code)

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. (Section 5665 of the Civil Code)

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. (Section 5665 of the Civil Code)"

**ASSESSMENT COLLECTION AND
FULL PAY FOR ASSESSMENTS POLICY**
EXHIBIT A

1. **DUE DATES:** All Regular Assessments shall be due and payable, in advance, in equal monthly installments, on the first day of each month. Special Assessments shall be due and payable on the due date specified by the Board in the notice imposing the assessment or in the ballot presenting the special assessment to the members for approval. In no event shall a Special Assessment be due and payable earlier than thirty (30) days after it is imposed.

2. **PAYMENT RECEIPTS / OVERNIGHT PAYMENT LOCATION:** Owners can request a receipt from the Association which shall indicate the date of payment and the person who received it. Any request for a receipt of payment must be submitted directly to the Association's business address (separately from any actual payment). **Overnight payment of assessments may be sent/delivered to the following address:**

VILLA ANTIGUA HOMEOWNERS ASSOCIATION
5844 Menorca Drive
San Diego, CA 92124.

3. **APPLICATION:** Payments received on delinquent assessments shall be applied to the Owner's account as follows: payment shall be applied to the assessments owed first. Payments on assessments shall be applied to the Owner's account by the "balance forward payment" method, i.e., in reverse order so that the oldest arrearages of the principal are retired first. Only after assessments owed are paid in full shall such payments be applied to interest, late charges, collection expenses, administration fees, attorneys' fees, or any other amount due to the Association which result in continued delinquencies.

4. **LATE CHARGE:** All assessments shall be delinquent if not paid within 15 days after they become due and *will* result in the imposition of a late charge of ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), *whichever is greater*. Furthermore, the Association shall be entitled to recover any reasonable collections costs, including attorneys' fees, that the Association then incurs in its efforts to collect the delinquent sums.

5. **INTEREST:** If an assessment payment is not paid within thirty (30) days of its original due date, interest may be imposed on all sums due, including the delinquent assessment, collection costs, and late charges, at an annual percentage rate of ten percent (10%).

6. **SECONDARY ADDRESS:** Upon receipt of a written request by an Owner identifying a secondary address for the purposes of assessment collection notices, the Association shall send additional copies of any collection notices required by this Collection Policy to the secondary address provided. The Owner's notice of a secondary address must be in writing and mailed to the Association in a manner that shall indicate that the Association has received it. The Association shall only send notices to the indicated secondary address at the point in time the Association receives the written request.

7. **PAY OR LIEN LETTER:** *If an assessment payment from the Owner is not paid within forty-five (45) days after its original due date (for example, if an Owner fails to pay an assessment which was due on June 1 and the failure to pay continues through July 15, then the June assessment would not have been paid within 45 days after its original due date), a notice of delinquency (Pay or Lien Letter) shall be sent to the Owner by regular first-class mail and certified mail, return receipt requested. The Pay or Lien Letter shall provide at least 30 days' written notice to a delinquent Owner prior to recording an Assessment Lien and further provide an itemized statement of the*

charges owed, including a breakdown of: (a) the principal amount owed; (b) any late charges with the method of calculation used to determine such charges; (c) any attorneys' fees incurred; and (d) a description of collection practices, including the right of the association to the reasonable costs of collection. A copy of the Association's collection policy shall be attached to the Pay or Lien Letter.

8. INTERNAL DISPUTE RESOLUTION PROCESS* : The Association shall offer to meet and confer with a delinquent owner to resolve any dispute related to the total amount due from the delinquent Owner to the Association and/or the Association's Collection Policy ("Meet and Confer Offer"). The Association's Meet and Confer Offer shall either be placed within the Association's Pay or Lien Letter or in a separate written communication to the delinquent Owner. An Owner who wishes to accept the Meet and Confer Offer must do so by submitting his/her/its written request to facilitate the meet and confer with the Association, which written request must be received by the Association within twenty (20) days of the date of the Meet and Confer Offer. The Association shall designate a prompt date and time for the meet and confer, at a location that shall either be the Association's principal office or another convenient location as designated by the Association. The Association shall designate a Board officer, along with its CID Manager to participate in the meet and confer with the delinquent Owner.

Prior to recording a lien for delinquent assessments, the Association shall participate in any meet and confer so accepted by the delinquent Owner, provided, however, that the Owner's acceptance of the Association's Meet and Confer Offer is made within twenty (20) days of the date of the Meet and Confer Offer.

* Pursuant to a 1994 California decision, Park Place Estates Homeowners Association, Inc. v. Naber (1994) 29 Cal App. 4th 427, the appellate court held that homeowners have an independent obligation to pay monthly assessments and do not have a right to set off or withhold payments of assessments.

9. SHOW CAUSE HEARING: Additionally, a delinquent Owner may be given a written notice (either in the Pay or Lien Letter or in a separate written document, as determined by the Board of Directors) of a hearing before the Board of Directors, wherein the Owner shall be invited to show good cause why (a) the Owner's voting privileges; (b) the Owner's privileges for use of the common area/recreational facilities (hereinafter collectively "Membership Privileges") should not be suspended for non-payment of the delinquent assessment(s) ("Show Cause Hearing").

The notice and hearing procedures shall be in accordance with the following:

a. Written notice shall be mailed to the Owner not less than ten (10) days prior to the date of such hearing by first class or certified mail at Owner's last known address as shown on the Association's records. The notice shall set forth the amount of delinquency owed by the Owner and the time, date and place on which the hearing shall be held;

b. The Board of Directors shall provide an opportunity for the Owner to be heard, orally or in writing, at the Show Cause Hearing prior to making any determination on the suspension of any Membership Privileges;

c. In the event good cause is not shown and the Owner's account has not been brought current, then the Board may suspend any of the Owner's Membership Privileges. The Board shall hold the hearing in Executive Session; provided, however, if the Board is requested by a Member to have his/her matter be heard in an open Board meeting, then the matter must be heard in an open Board meeting, and not in Executive Session.

d. After the Show Cause Hearing, the Board of Directors shall provide within fifteen (15) days written notice to the Owner of the suspension of any Membership Privileges.

10. ASSESSMENT LIEN:

a. If the delinquent Owner does not bring his/her account current within the deadline set forth in the Pay or Lien Letter, the Board of Directors may approve the recordation of an assessment lien against the delinquent Owner's property. The Board's decision to record the assessment lien shall be by a majority vote of a quorum of the Board members at an open Board meeting. The Board's action should refer to the Lot/parcel number of the property that is delinquent, rather than the name of the owner. The Assessment Lien shall be recorded in the County Recorder's Office itemizing all sums that are then delinquent, including the delinquent assessment(s), then current monthly assessment amount which will also accrue and be a part of the lien, interest, late charges, collection costs & reasonable attorneys' fees. Recording this notice creates a lien, which is subject to foreclosure, against the delinquent Owner's property.

b. At the same time, the Association shall advise the Association's collection agent/bank that it should accept no further monies from this delinquent Owner until the assessment lien has been paid in full.

Owners shall not send any assessment payments to the Association once the matter has been turned over to the Attorney for collection; such payments shall only be accepted by the law firm. Any payments delivered to the collection agent shall be forwarded to the attorney's office; the attorney shall then release the lien if payment in full was made by the delinquent Owner. A charge of not less than \$300 for attorneys' fees shall be charged to the Owner at this stage (pursuant to *Civil Code* § 5650).

11. PRE-FORECLOSURE ACTIONS:

a. No earlier than thirty (30) days after the Notice of Assessment lien has been recorded, the Association shall make a written pre-foreclosure offer to meet and confer with the delinquent Owner, consistent with the process identified in paragraph 8 herein (except that the timeline for the delinquent Owner to accept a meet and confer would be thirty-five (35) days from the date of the Owner's receipt of this preforeclosure offer) or alternative dispute resolution consistent with *Civil Code* §5925, et. seq. ("IDR/ADR Offer"). Owner shall have thirty-five (35) days from the date of the IDR/ADR Offer to decide whether or not Owner wishes to pursue dispute resolution or a particular type of alternative dispute resolution (except that binding arbitration is not available to any delinquent Owner if the Association intends to initiate a judicial foreclosure).

b. Prior to initiating foreclosure, the Board of Directors must, in executive session, approve the decision to proceed with foreclosure by a majority vote of a quorum of the Board of Directors. The Board shall record the Board's executive session decision in the minutes of the next meeting of the Board open to the members by referencing the lot/parcel number of the property that is delinquent.

c. The Board of Directors shall not proceed with any form of foreclosure unless and until the amount of delinquent assessments (exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney's fees or interest) equals or exceeds One Thousand Eight Hundred Dollars (\$1,800.00) or the assessments have been delinquent for more than twelve (12) months ("Threshold"). Once the Threshold has been met and all other requirements identified above have been completed, the Board may proceed with foreclosure of the assessment lien pursuant to the Association's governing documents and *Civil Code* §5700 et seq. The procedure used shall be a private foreclosure, pursuant to *Civil Code* §2924 et seq. and *Civil Code* §5700 et seq.. The foreclosure action shall include:

i..A **Notice of Default and Election to Sell** shall be recorded at the County Recorder's Office and a ninety-day reinstatement period shall begin.

ii..A **Title Report** shall be obtained from a title company at a cost of approximately \$350.00 and this shall also be charged to the delinquent Owner.

iii. Furthermore, not less than \$300.00 in attorneys' or trustees' fees shall be charged at this stage..

12. If the Association determines that the property is over-encumbered, or otherwise makes a determination that a lawsuit is appropriate, the Association shall file a personal lawsuit against the delinquent Owner to recover all delinquent assessments owing to the Association. If a lawsuit is necessary to collect the delinquent assessments from the Owner, all expenses, costs and attorneys' fees in connection with said lawsuit, including but not limited to pre-and post-judgment costs for filing fees, personal service, witness fees, interest, execution of judgment and/or writ fees shall be recovered from the Owner defendant.

13. If the delinquency is still not cured ninety (90) days after the Notice of Default and Election to Sell was recorded, the foreclosure trustee shall proceed to record and publish the **Notice of Trustee's Sale**. This Notice must also be published three (3) times during a three-week period and posted in a public place. At this final stage, there shall be additional publication costs, as well as trustee's fees of not less than \$125.00. If a non judicial foreclosure sale is completed by the Association against the delinquent Owner's property, the Owner shall have the right to redeem the property for a period of time up to and including ninety (90) days after the date of the Trustee's Sale.

14. When a delinquent Owner has paid in full all delinquent assessments and charges, the attorney shall prepare a Release of Lien which shall be recorded in the County Recorder's Office of San Diego County, California within 21 days of receipt of the sums necessary to satisfy the delinquent amount and mail a copy of the lien release to the Owner of the residential unit.

15. **PAYMENT PLAN STANDARDS:** The Association hereby establishes the following payment plan standards:
a. **Payment Within 60 Days:** If an Owner can bring himself/herself/itself current within sixty (60) days, inclusive of assessments which accrue within the sixty (60) days of the payment plan, the Association will forbear filing an Assessment Lien and the Owner will not incur the Assessment Lien costs if the payment plan is strictly followed.

The payment plan shall include an administrative cost of \$75.00. By agreeing to the 60 day payment plan, the Owner further agrees that if he/she/it fails to make any of the payments identified in the payment plan, the Association shall have the right to file an Assessment Lien without recommencing the pre-lien or Pay or Lien Notice process.

b. **Payment Exceeding 60 Days:** In light of the length of time of this payment plan, payment plans exceeding sixty (60) days shall require that the Association record its Assessment Lien to establish itself as a secured creditor. The payment plan shall also include an administrative cost of \$100 or \$25.00 per month of each month of the plan, whichever is greater. All costs related to the recordation of the Assessment Lien shall be part of this payment plan. The payment plan would require payment of all delinquent assessments amortized over the length of the payment plan, along with all assessments which will accrue during the payment plan. The Association shall further require that the Owner sign a Forbearance Agreement which identifies his/her/its obligations of repayment consistent with the payment plan and further provides that if there is a default under the payment plan, the Association can proceed with the collection process as particularly identified within the Forbearance Agreement. Payment plans under this paragraph 15.b should normally not exceed six (6) months.

16. **REQUEST FOR PAYMENT PLAN:** An Owner may submit a written request to the Association for a payment plan consistent with either paragraph 15.a or 15.b above. An Owner can also submit a written request to meet with the Board to identify which payment plan the Owner chooses, as identified in paragraph 15 above. The Board is required to meet with the Owner in executive session within 45 days of the postmark of the request for the meeting, if the request is mailed within fifteen days of the date of the postmark of the Pay or Lien Notice. If there is no

regularly scheduled board meeting within the 45 day timeline, the Board has designated the Assessment Dispute Resolution Committee to meet with the Owner.

17. In general, the Association's Board intends to take whatever actions are authorized by law and the Association's governing documents to collect assessments. If the Board elects to use practices, procedures or notices which exceed those required by law or under the governing documents, it does so without waiving the Association's right to exercise collection remedies to the fullest extent permissible. Any additional notices or time periods the Association might use are extended solely as a courtesy. No owner shall be entitled to expect longer time limits or notices other than those which are required by law or the governing documents.