

MARWOOD CIRCLE HOMEOWNERS ASSOCIATION  
2008 DELINQUENT ASSESSMENT COLLECTION POLICY

1. It is the fiduciary responsibility of the Board of Directors to collect all assessments for the maintenance and replacement of common area property and other association expenses in a timely fashion. The Association is entitled to recover assessments, reasonable collection costs, reasonable attorney's fees, late fees and interest. The Association will not use non-judicial foreclosure to collect fines or penalties but other remedies are available to collect these and any sums not suitable for collection by non-judicial foreclosure. The association shall comply with requirements of 1367 or 1367.1 of the Civil Code when collecting delinquent assessments. If an error is made that requires termination of any collection proceeding or beginning a collection process over, the Association shall bear the costs; otherwise, the owner is responsible for all costs as identified above. (Note: Civil Code Section 1367 applies to the collection of liens recorded before January 1, 2003, and 1367.1 applies to liens recorded on or after that date.)

2. Assessments are due on the first day of each month and are delinquent at 5:00 p.m. on the 30th of the month, at which time a late charge of \$5.00 will be charged [per the governing documents] on the - 30th day. All balances due as of 5:00 p.m. on the 30th day of the month will be subject to interest of 12% per annum. All such amounts must be paid in full and the Association shall not be required to accept partial payments absent a written agreement.

**3. IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.**

4. On or about the 46th day after a payment is due, a 30-day Pre-Lien Notice will be prepared and sent, by certified mail, to the delinquent record owner(s) at the owners' last mailing address provided to the Association. If the delinquent record owner(s) have provided a written notice of a secondary address, all notices shall be sent to that address also. Such notice will include an itemized statement of the total amounts delinquent, including but not limited to, assessments, late charges, interest and costs of collection, if any, and a notice that the owner is entitled to ask to meet with the Board or Board representative(s) pursuant to the Association's internal dispute resolution "meet and confer" program.

5. The decision to record a lien shall be made by the Board of Directors, approved by a majority vote in an open meeting. The Board shall record the vote in the minutes of that meeting referring to the property by parcel number, and not name of the owner. Likewise, the decision to file in small claims shall be made by the Board and not the Association's agent.

6. On or about the 30th day after the Pre-Lien Notice is sent the Association may record a lien on the property to secure the debt; however, there are limitations that may preclude foreclosure of the lien at this time (see paragraph 7).

7. If all sums secured by the lien are not paid in full within thirty (30) days after recordation, and the amount of delinquent regular or special assessments reaches \$1,800.00, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or has been delinquent more than 12 months, the Board may make the decision to foreclose the lien.

All resulting collection fees and costs will be added to the total delinquent amount. At some point in time prior to initiating foreclosure, the Board shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue 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.

8. The decision to initiate foreclosure shall be made only by the Board of Directors, by majority approval, and while the discussion may be held in executive session, the decision shall be recorded in the minutes of an open meeting in the same form as the decision to record a lien was made (by parcel number only). A Board vote to approve foreclosure of a lien must take place at least 30 days prior to any public sale.

9. If the Board votes to foreclose, the Board shall provide notice of its decision by personal service to an owner who occupies the separate interest or to the owner's legal representative. If the owner does not occupy the separate interest, said notice will be sent by first-class mail, postage prepaid, to 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. In addition, statutory procedures including recorded notices regarding foreclosure and sale will be accomplished.

10. A non-judicial foreclosure by an association shall be subject to the owner's right to redeem the property up to 90 days after the sale.

11. All charges assessed to the assessment account must be paid in full as a condition to curing and releasing a recorded Lien and other documents of foreclosure. The Association is not required to accept any partial or installment payments, except with execution of a mutually agreeable payment agreement. Arrangements for such an agreement must be made with the Association's Agent assigned to the collection of the account or the Board or Board representative, at a meeting arranged under the "meet and confer" process of the Association.

12. When a payment is made, the owner may request a receipt and the association will provide it. On the receipt, the association shall indicate the date of payment and person who received it.

13. Each payment from an owner shall be applied first to the principal sum owed, then, in descending order, to interest, late and collection expenses, unless an alternate agreement is entered into between the Association and the owner.

14. An owner may request the association to consider a payment plan to satisfy a delinquent assessment. The Board will inform the owners of the standards for payment plans, to the extent standards have been adopted by the Board. Certain timelines apply as follows: If an owner's request is mailed within 15 days of the date of the postmark of the notice of delinquency (lien), the Board will meet with the owner in executive session within 45 days of the postmark of that request. However, if there is no regularly scheduled Board meeting during that period, the Board may designate one or more Directors to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period, however they shall not impede an association's ability to record a lien 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 prior to entering into the payment plan.

15. Any check returned by the bank for insufficient funds, stop payment or any other reasons will be charged back to the unit and a \$25 administrative fee plus any bank fees will be assessed to the account. If the account has been turned over to the Association's agent for collection and a check is returned, the account will be assessed whatever administrative fees as the Agent provides.

16. The mailing address for overnight payment of assessments is:

**Marwood Circle Homeowners' Association**  
c/o Eugene Burger Management Corporation  
6600 Hunter Drive  
Rohnert Park, CA 94928-2418

17. An owner of a separate interest has the right to inspect the association's financial books and records to verify the delinquency, per laws related to inspection of HOA records.

18. Except where prohibited by law, the Board of Directors of the Association may revise this policy, either generally or on a case-by-case basis, if it finds good cause to do so. To the extent there are any general discretionary changes (rather than compliance related to the law or governing documents), the Board shall circulate the policy to owners at least 30 days before the meeting at which the revisions will be considered.

## **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 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 Section 1367.4 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 1366, 1367.1, and 1367.4 of the Civil Code)

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. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 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 1367.1 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 1367.1 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 1367.1 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, 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. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 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 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 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 1367.1 of the Civil Code)

## **MEETINGS AND PAYMENT PLANS**

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code).

The board of directors 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 1367.1 of the Civil Code)"

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

# Internal Dispute Resolution (IDR)

Civil Code §§1363.810 through 1363.850 identifies an internal dispute resolution process (“IDR Process”) that an Owner and Community Association must pursue as a prerequisite to an enforcement action;

Civil Code §1363.840 identifies an IDR Process applicable to all community associations that do not otherwise provide for an alternative procedure. The IDR process contained within Civil Code §1363.840, which has been deemed to be fair, reasonable and expeditious as follows:

1. This IDR Process applies to the Association as well as an Owner as a prerequisite to the filing of any litigation related to a dispute involving their respective rights, duties or liabilities under the governing documents, the Davis-Stirling Common Interest Development Act and/or the nonprofit mutual benefit corporation law (collectively, “CID Dispute”). It does not relate to any collection of assessments unless the Association determines it needs to file litigation to collect same.
2. Either party (Association or Owner) to a CID Dispute may invoke the following procedure:
  - a. The party may request the other party to meet and confer, in an effort to resolve the CID Dispute. The request shall be in writing.
  - b. An Owner may refuse an Association request to meet and confer. The Association may not refuse an Owner’s request to meet and confer.
  - c. The Board hereby designates the President or in his/her absence, the Vice President (“Board Designee”), as well as the CID Manager to meet and confer with the Owner. The Board Designee shall also have the right to request the Chairperson of any applicable Committee involved in the CID dispute to assist the Board and attend the meet and confer with the Owner. If the Association is pursuing litigation related to a delinquent assessment, the Board designates the Treasurer in lieu of the President as the Board Designee.
3. Although not precluded, attorney participation in the IDR Process is discouraged in order to maintain direct discussions between the principals of the CID Dispute and to maintain the goal of resolution through an expeditious process. To the extent Owner requires that his/her attorney attend the IDR Process, the Owner shall be required to give five (5) business days’ notice to the Association so that the Association may ascertain if it desires its corporate counsel to also attend.
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 CID dispute.
5. A resolution of the CID 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.
6. The Agreement reached by the Owner and the Board Designee binds the parties and is judicially enforceable if both the following conditions are satisfied:
  - a. The Agreement is not in conflict with law or the governing documents of the Association; and
  - b. The Agreement is ratified by the Board of Directors within thirty (30) days of the date that the Agreement is executed by the Owner and the Board Designee.
7. The Owner participating in the IDR Process shall not be charged a fee to participate.

# Alternative Dispute Resolution (ADR)

## SUMMARY OF CIVIL CODE ▪ 1354 (b)

Under prior law, the covenants and restrictions in the declaration of a common interest development could be enforced in Court without prior attempts at mediation or arbitration, enforceable as equitable servitudes, and the prevailing party in any such action is entitled to recover its costs and attorney's fees.

The new law generally requires, that before a complaint is filed, relating to the enforcement of the governing documents of the Association, with or without damages up to \$5,000, the parties must offer to submit the matter to arbitration, mediation, or similar alternative dispute resolution (ADR) procedures. The law **does not** apply to an action that seeks only damages or delinquent assessments.

Under the law, any party to such a dispute may request the party to submit to ADR by serving a prescribed "Request for Resolution" on that party. If the party receiving the request for resolution does not reply within 30 days, the other party may commence an action in court by filing a complaint.

The law, with certain exception, requires that a certificate showing compliance with the above requirements be filed with the complaint. Failure to file the certificate, with certain exceptions, would render the complaint subject to a motion to strike or demurrer (i.e., be thrown out of Court). The law also allows the court to stay a pending action and refer it to ADR, upon stipulation of the parties. The law also entitles the prevailing party to an award of attorney's fees and costs, but would require the court to consider whether the prevailing party refused to engage in ADR before making such an award of attorney's fees and costs.

The above requirements are not applicable where the statute of limitations (the last day to file the complaint) would run within 120 days, and does not apply to filing a cross complaint. The law makes anything said in the course of alternative dispute resolution inadmissible in any civil action unless consented to by both parties, and would preclude compelling testimony or disclosure or specified related documents and any statement or admission made in the course of the alternative dispute resolution.

Association members must be provided annually with a summary of the provision of the law. Any Request for Resolution sent to an owner by the Association must include a copy of the provisions of the law.

Failure by any member of the Association to comply with the prevailing requirements of Section 1354 of the Civil Code may result in the loss of rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

# Marwood Circle Homeowners' Association

November 21, 2007

Dear Marwood Circle HOA Member,

This letter is to inform you that the Board of Directors of the Marwood Circle Homeowners' Association has approved current Board Vice President, John Levering, as the Associations' new handyman vendor.

John has a current state of California contractor's license and the insurance coverage that is required to provide services as a vendor to the Association per the management company's requirements. As John is an involved homeowner, the Association stands to benefit as John can perform the work in a timely manner and at a reduced rate to the Association.

According to the California Corporations Code 310; contracts between an association and a director, or between the association and any other entity in which a director has a material financial interest, are either void or voidable *unless*:

The material facts as to the transaction and the director's interest are *fully disclosed* or known to the membership and such contract or transaction is approved by the Board members, with the interested director abstaining from voting,

or

The material facts as to the transaction and the director's interest are *fully disclosed* or *known to the board or committee*, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors and the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified.

Sincerely,

Marwood Circle Homeowners' Association

Board of Directors