

CAMPOLINDO HOMEOWNERS ASSOCIATION

DELINQUENT ASSESSMENT COLLECTION POLICY

Timely payment of regular and special assessments is of critical importance to the CAMPOLINDO HOMEOWNERS ASSOCIATION ("CHOA"). Although most property owners consistently pay their assessments on time, the failure of any owner to pay annual assessments when due creates a cash-flow problem for CHOA and causes those owners who make timely payment of their assessments to bear a disproportionate share of the CHOA's financial obligations. Therefore, to encourage the prompt payment of annual assessments, the Board of Directors has enacted the following policies and procedures concerning collection of delinquent assessment accounts.

We sincerely trust that all property owners, in the spirit of cooperation, will make timely payments and avoid the imposition of late charges and possible resultant legal action. It is in the best interests of members and the CHOA that you do so.

1. **Due Dates, Late Charges, Collection Costs; and Interest**

- (a) **CHOA Assessment Due Dates.** All regular assessments are due and payable on January 1st and July 1st of each year and become delinquent if not received in full by the CHOA's business manager within 30 days of the due date. Special assessments shall be due on the date billed. In no event shall a special assessment be due and payable earlier than 30 days after the special assessment has been duly imposed.
- (b) **Late Charges.** When payment of a regular assessment or a special assessment becomes delinquent, the owner's account with the association shall be charged with a late payment equal to the greater of \$10.00 or 10 percent of the delinquent amount.
- (c) **Collection Costs Are Also Recoverable.** As provided by law, the CHOA is also entitled to recover all reasonable costs incurred in collecting delinquent assessments including the following: (i) reasonable charges imposed to defray the cost of preparing and mailing demand letters; (ii) legal expenses incurred; (iii) recording costs; (iv) costs incurred with title companies or foreclosure service providers; and (v) costs associated with small claims court actions (collectively "reasonable costs of collection").
- (d) **Policy Regarding Requests From Owners To Waive Costs.** It is the policy of the CHOA not to waive any duly imposed reasonable costs of collection. It is the owner's responsibility to allow ample time to drop off or mail payment before the delinquency date. All notices or invoices for assessments will be sent to property owners by first-class mail addressed to the owner at his or her address as shown on the books and records of the Association. However, it is the owner's responsibility to be aware of the assessment payment due dates and to advise the CHOA of any changes in the owner's mailing address.
- (e) **Interest.** State law and the governing documents of the Association also provide for the imposition of interest at the rate of 8 percent per annum as of October 13, 2003 on all delinquent assessments, late charges, and reasonable costs of collection commencing 30 days after the due date of the delinquent assessment(s).

- (f) **Application of Payments.** Any payments made by the Owner of a separate interest toward the debt set shall first be applied to the assessment owed, and, only after the assessments owed are paid in full, shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. Payments on accounts of principal shall be applied in reverse order so that the oldest arrearages are retired first. When an owner makes a payment, the owner may request a receipt and the CHOA shall provide it. The receipt shall indicate the date of payment and the person who received it. The CHOA shall provide a mailing address for overnight payment of assessments. Interest shall continue to accrue on paid balances of principal and other costs and charges imposed in accordance with Civil Code Section 1866(e)(3).

2. **Enforcement and Collection Remedies Available to the Association.**

- (a) **The First Demand Letter.** When an owner becomes delinquent in the payment of assessments, the CHOA will mail by first-class mail to the owner a "First Demand" letter advising the owner that he or she is late in the payment of assessments and requesting immediate payment. The letter shall also inform the owner of the total amount then due, including late charges and any costs imposed by the association to recover the expense incurred in preparing and mailing the letter (which charge is currently \$5.00).
- (b) **Collection Alternatives Available to the CHOA if First Demand Does Not Result in Payment in Full.** If the owner's assessment account remains delinquent for more than 60 days, the CHOA shall be entitled to pursue either of two alternatives:

Small Claims Actions: First, the CHOA may elect to instruct its Business Manager, or a person designated by the Board of Directors, to pursue the Association's claims against the owner in a Small Claims Court Action (if this action is taken, paragraphs (c) through (f) of this subparagraph 2 do not apply to that collection matter).

Second Demand (Certified Mail) Followed by Foreclosure Proceedings. Second, the CHOA may elect to refer the owner's file to legal counsel with directions to send the delinquent owner, by certified mail, a second demand letter. That letter shall provide an itemized statement of the total amount of assessments then due and the amount of late charges, collection costs, and interest then posted to the owner's account (and a statement of how those sums were calculated). In addition, this letter shall advise the owner of the Association's fee and penalty procedures and the Association's collection policies by including a copy of this Policy with the letter. In addition, this letter shall advise the owner that the owner has the right to inspect the CHOA records, pursuant to Section 8333 of the Corporation Code, that the owner shall not be liable to pay the charges, interest and costs of collection if it is determined the assessment was paid on time to the CHOA, that the owner has the right to make a written request to meet with the Board to discuss a payment plan for the debt, and that the owner has the right to dispute the debt by submitting to the Board a written explanation of the reasons for the owner's dispute. The charge that the owner will incur for this letter from legal counsel will be first \$125.00 plus costs of \$6.00 as of October 13, 2003.

Suspension of Membership Privileges. In addition to pursuing either of the above options, membership must be maintained in good standing to retain privileges, including but not limited to, the exercise of member voting rights and the right to use the CHOA recreational facilities. Membership is considered not in good standing if any assessments, dues, fees, fines, interest, late charges, or any other charges remain unpaid 30 days after the due date for the delinquent assessments and membership rights shall be immediately suspended.

(c) **Options Available to Delinquent Owners Other Than Payment In Full.**

Disputing the Debt. The owner may dispute the debt which is the subject of the letter by submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the demand letter.

Request for Payment Plan. An owner may submit a written request to meet with the Board to discuss a payment plan for the debt described in the letter. The CHOA shall provide the owner with standards for payment plans, if any exist. The Board shall meet with the owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the letter, unless there is no regularly scheduled board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the owner.

- (d) **Recordation of a Notice of Delinquent Assessment.** If a delinquent assessment remains delinquent 30 days after the Second Demand Letter is sent to an owner by certified mail, the CHOA shall be entitled to cause to be recorded in the chain of title to the delinquent owner's lot in the Office of the County Recorder a Notice of Delinquent Assessment covering all sums that are then delinquent, including the delinquent assessment, late charges, costs, and reasonable attorney fees plus costs. A recorded Notice of Delinquent Assessment creates a lien on the delinquent owner's lot that is subject to foreclosure. The CHOA has the option of pursuing foreclosure judicially or non-judicially.
- (e) **Notification of All Record Owners of the Liened Lot.** Once a Notice of Delinquent Assessment has been recorded, the CHOA must send a copy of the Notice to all record owners of the subject lot within 10 days following the date of recordation. That mailing shall be certified, with all postage prepaid.
- (f) **Options Available to Liened Owners.** The delinquent owner of the liened lot to which the Notice of Delinquent Assessment pertains then has 30 days from the recordation date (of the Notice of Delinquent Assessment) to pursue either of the following alternatives:
- (i) **Payment in Full and Termination of Collection Process.** First, the owner can simply pay all amounts shown in the Notice of Delinquent Assessment and thereby conclude the collection process. It is advisable that the owner first

contact the attorney's office to confirm the amounts accrued and owing as of the pay-off date. The attorney is Victoria Robinson Smith and her telephone number is (925) 253-1844. Immediately following receipt of the owner's payment, the CHOA shall cause to be recorded a release of its assessment lien.

- (ii) **Alternative of Payment Under Protest; Limitations on Exercise of This Option.** The second alternative for delinquent owners who receive a Notice of Delinquent Assessment is: (A) to pay in full and under protest all delinquent sums, interest, late charges, and other noted costs of collection; and (B) to send the Association, by *certified mail*, a written notice that the amount is paid under protest. That notice should be mailed to:

**Campolindo Homeowners Association
P.O. Box 6281
Moraga, CA 94570-6201**

On receipt of that notice, the CHOA must inform the protesting owner of his or her right to have the matter resolved through alternative dispute resolution in accordance with Civil Code section 1354, through the filing of a civil action or through use of any other dispute resolution procedures available through the CHOA. Monies received under protest shall be held in a segregated account until such time as the alternative dispute resolution process has concluded, provided the owner's protest is timely and properly made and the limitations described in the immediately following paragraph do not apply. If an owner elects to pursue alternative dispute resolution in accordance with civil Code section 1354, it shall be the responsibility of the owner to comply with the statutory requirements relating to the preparation and service of a Request for Resolution.

NOTICE REGARDING LIMITATIONS ON OWNER PROTEST RIGHTS: Unless the CHOA otherwise agrees, State law provides that this right to pay delinquent assessments under protest and to demand alternative dispute resolution (which is a statutory right conferred by Civil Code section 1366.3) may be exercised only two times in any single calendar year and not more than three times in any five calendar years. Except to the extent that notices are required by law, the CHOA shall not provide advice to property owners regarding technical requirements of these ADR procedures. Owners should consult their own counsel regarding such matters.

- (g) **Continuation With Foreclosure Proceedings.** Following the later of 30 days from recordation of the Notice of Delinquent Assessment or conclusion of alternative dispute resolution procedures following a valid owner's protest in a manner that does not result in a binding adverse determination against the CHOA (see California Civil Code Section 1363.3(a) and paragraph (e), above), the CHOA's lien may be enforced in any manner 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 California Civil Code Section 2934a. Any sale by a trustee in foreclosure shall be conducted in accordance with the California Civil Code provisions relating to

foreclosure of a deed of trust under a power of sale (see Civil Code sections 2924, 2924b and 2924c).

- (h) **Authority of the Association To Recover Attorney Fees and All Reasonable Costs of Collection.** If a lawsuit or foreclosure proceeding is initiated by the CHOA to recover assessments, the CHOA is entitled, by law (California Civil Code Section 1366(e)) and by the By-laws, to recover not only the amount in default, plus late charges and interest, but also all attorneys' fees, and reasonable costs of collection, including title company charges. As of August, 2002, the CHOA charges \$5.00 for the preparation and mailing of the first demand letter, and its legal counsel charges \$125.00 plus costs of \$6.00 for the preparation and mailing of the second demand letter and \$250.00 plus costs of \$30.00 for the preparation and recordation of the Notice of Delinquent Assessment. Title company costs and charges incurred by the Association with foreclosure service companies (following recordation of a Notice of Delinquent Assessment) are unknown at this time.
3. **Authority of the Association To Publish List of Delinquent Owners.** In addition to the foregoing remedies, the CHOA intends to publish a list in the Association's newsletter of the names of all owners whose assessment payments are delinquent more than 30 days after the Association has complied with subparagraph 2(a) of this policy.
4. **Charge for Returned Checks.** A \$10.00 charge shall be posted to an owner's account for any checks that are returned.
5. **Mailing of Notices to Owners.** All notices, and assessments, will be mailed to the owner at the last mailing address provided in writing to CHOA by the owner.
6. **Effective Date of This Policy.** This policy was duly amended by action of the Board of Directors on October 13, 2003.