



Bonita Highlands Homeowners' Association

P.O. Box 458

Bonita, CA 91908-0458

COLLECTION POLICY

1. The Bonita Highlands Homeowners' Association (the "Association") has the right and duty under the Association's governing documents and California law to impose and collect assessments so that the Association can, among other things, manage, maintain and operate your development.

2. Timely payment of assessments is of critical importance to the Association. Although most property Owners consistently pay their assessments on time, the failure of any Owner to pay assessments when due creates a cash-flow problem for the Association and causes those Owners who make timely payments of their assessments to bear a disproportionate share of the Association's financial obligations. Therefore, to encourage the prompt payment of assessments and as required by law and/or the Association's governing documents, the Board of Directors has enacted the following policies and procedures (this "Collection Policy") concerning collection of delinquent assessment accounts, subject to **California Civil Code** section 4340, *et seq.*, if applicable.

3. **DUE DATES.** All Regular Assessments shall be due and payable, in advance, in one annual payment on the first day of each fiscal year, being **April 1st**. 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.

4. **PAYMENT / RECEIPTS / OVERNIGHT PAYMENT LOCATION.** The Association will be the collector of the assessments (current and delinquent), late charges, interest, and collection costs (which may include attorneys' fees). Assessments may be paid by personal check, bank drafts, cashier's checks and/or money orders, as well as by electronic payment, if available. **A charge of \$35.00**, in addition to late fees, if applicable, will be assessed against any account whose check has been returned for Non-Sufficient Funds (NSF). When an Owner makes a payment, the Owner may request a receipt and the Association will provide such receipt, which will indicate the date of payment and person who received such payment. (Civil Code section 5655.) Any Owner is entitled to inspect the Association's accounting books and records. 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:

**BONITA HIGHLANDS HOMEOWNERS' ASSOCIATION
P.O. BOX 458
BONITA, CA 91908-0458**

5. **APPLICATION OF PAYMENTS.** Payments received on delinquent assessments shall be applied to the Owner's account in the following order of priority: First, the principal on the assessments owed; then to accrued interest, late charges, attorneys' fees, or the title company and foreclosure service company charges and other reasonable costs of collection. Payments on account of principal shall be applied in reverse order so that the oldest arrearages are retired first.

6. **LATE CHARGE:** All assessments shall be delinquent if not paid within **fifteen (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 collection costs, including attorneys' fees, that the Association then incurs in its efforts to collect the delinquent sums.

7. LATE LETTER. If a delinquent assessment payment is not paid within **fifteen (15) days** after it becomes due, a late letter or current ledger may be sent to the Owner reminding the Owner of his or her delinquent account status. The Association, however, is in no way required to send a late letter or ledger before sending a pre-lien letter referenced below.

8. 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, attorneys' fees, collection costs, and late charges, at an annual percentage rate of **nine percent (9%)**, but in no event more than the maximum rate permitted by law.

9. 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 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.

10. NOTIFICATION OF DELINQUENT ASSESSMENTS. If an assessment payment from the Owner is not paid within **fifteen (15) days** after its original due date (for example, if an Owner fails to pay an assessment which was due on April 1st and the failure to pay continues through April 16th, then the April assessment would not have been paid within fifteen (15) days after its original due date, the Association may send the Owner a Notification of Delinquent Assessments ("NODA"), notifying the Owner of the outstanding debt and the procedures to cure the default. The NODA shall advise the delinquent Owner of their rights under the Federal Fair Debt Collection Practices Act ("FDCPA") and give them thirty (30) days from the date of receipt of the NODA to dispute the debt and request verification/validation of the debt, if they so choose.

11. PRE-LIEN LETTER. Following the 30-day dispute period and once the Association sends verification/validation of the debt to the Owner (if so requested by the Owner), the Association may send the delinquent Owner a **Pre-Lien Letter** by regular first-class mail and certified mail, return receipt requested. The Pre-Lien Letter shall provide **at least thirty (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 the following items: (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 Pre-Lien Letter.

12. ALTERNATIVE DISPUTE RESOLUTION PROCESS.

a. Assessment Lien. Prior to recording an assessment lien, the Association shall offer the Owner and, if so requested by the Owner, the option of participating in dispute resolution, consistent with Civil Code sections 5910 and 5915, *et seq.* The Association's offer shall either be placed within the Association's Pay or Lien Letter or in a separate written communication to the Owner. An Owner who desires to accept the offer to "meet and confer" under this section shall elect such option by submitting

a written request to the Association or the Association's legal counsel, which written request must be received by the Association within twenty (20) days from the date of the offer to "meet and confer." If the offer to "meet and confer" under Civil Code sections 5910 and 5915, is accepted by the Owner, 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 Property Manager (if one exists) to participate in the meet and confer with the Owner.

b. **Foreclosure.** Prior to initiating foreclosure proceedings against an Owner's separate interest, the Association shall offer the delinquent Owner, and if so requested by the Owner, an opportunity **to meet and confer** (Civil Code sections 5910 and 5915) OR enter into an **alternative dispute resolution** (Civil Code section 5925, *et seq.*) to resolve any dispute related to the total amount of delinquencies owed by the delinquent Owner to the Association and/or the Association's Collection Policy ("ADR Offer"). The Association's ADR 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 ADR Offer must do so by submitting his/her/its written request to facilitate the ADR that is elected with the Association, which written request must be received by the Association within thirty (30) days from the day the ADR Offer is submitted to the delinquent Owner. The Association shall designate a prompt date and time for the elected ADR. If a "meet and confer" is elected by the delinquent Owner, the Association shall designate a Board member, along with its Property Manager (if one exists) to participate in the meet and confer with the delinquent Owner. The decision to pursue dispute resolution or a particular type of alternative 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.

13. SHOW CAUSE HEARING. Additionally, the Association may elect to provide a delinquent Owner 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; and/or (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 governing documents for the Association.

14. ASSESSMENT LIEN.

a. If the delinquent Owner does not bring his or her account current within the deadline set forth in the Pay or Lien Letter, the Board of Directors may proceed with recording an assessment lien against that Owner's separate interest.

b. The decision to record a lien for delinquent assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. Prior to causing an assessment lien to be recorded, the Board of Directors must approve the recordation of an assessment lien against the delinquent Owner's separate interest. The Board of Directors for the Association shall approve the decision to record an assessment lien by a majority vote in an open meeting; the Board shall record the vote in the minutes of that meeting. The Board's action should refer to the Unit or account number of the property that is delinquent, rather than the name of the Owner.

c. The Assessment Lien shall be recorded in the County Recorder's Office itemizing all sums that are then delinquent, including the delinquent assessment(s), the then current yearly assessment amount which will also accrue and be a part of the lien, interest, late charges, collection costs and reasonable attorneys' fees. Recording this notice creates a lien, which may be foreclosed upon by the Association.

15. FORECLOSURE.

a. ADR Procedure. The Association, prior to initiating foreclosure proceedings against a delinquent Owner's separate interest, must comply with the alternative dispute resolution procedure set forth above (except that the timeline for the delinquent Owner to accept a meet and confer would be **thirty (30) days** from the date of the Owner's receipt of this pre-foreclosure offer) or alternative dispute resolution consistent with Civil Code sections 5925, 5910, and 5915. ("IDR/ADR Offer"). The Owner shall have thirty (30) days from the date of the IDR/ADR Offer to decide whether or not the 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. Board Approval. Prior to initiating foreclosure proceedings, the Board of Directors must, in executive session, approve the decision to proceed with foreclosure by a majority vote. The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. 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 Unit or account number of the property that is delinquent, not the name of the delinquent Owner. A Board vote to approve foreclosure of a lien shall take place **at least thirty (30) days** prior to any public sale. The Board of Directors shall provide notice by personal service to an Owner of a separate interest who occupies the separate interest or to the Owner's legal representative, if the Board votes to foreclosure upon the separate interest. If the Owner does not occupy the subject lot/unit, the Board shall provide written notice via first-class mail to the most current address shown on the books of the Association.

c. Threshold. 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, attorneys' 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 sections 5700, 5705, 5710, 5715 and 5720. Unless otherwise provided herein, the procedure used shall be private foreclosure pursuant to Civil Code section 2924, *et seq.*, and Civil Code sections 5700 and 5710. The foreclosure action shall include, but is not necessarily limited to the following procedures:

- i. Notice of Default (NOD). A NOD will be recorded at the County Recorders office. The cost of all attorneys' fees and/or trustee's fees will be added to the debt.
- ii. Notice of Trustee's Sale (NOS). If the delinquency is not paid within ninety (90) days after the NOD is recorded (and a lawsuit has not been filed), the Association will proceed with the recording and publishing of an NOS. The Owner is responsible for all publication, recording, posting and mailing costs, as well as attorneys' and/or trustee's fees.

- iii. Sale of Property by Public Auction. If the trustee's sale proceeds, it is conducted as a public auction in the county in which the separate interest is located, 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 SELECTION IN ORDER TO BE PROPERLY ADVISED OF THE OWNER'S RIGHTS AND OPTIONS AND THE TECHNICAL REQUIREMENTS OF THE FORECLOSURE PROCESS.
- iv. Right of Redemption. The Trustee's Sale shall be subject to a statutory right of redemption, which shall terminate ninety (90) days after the trustee's sale is completed

16. MONEY JUDGMENT OPTION. If the Association determines that the property is over-encumbered, or otherwise makes a determination that a lawsuit is appropriate, the Association may 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. The Association may also refer certain accounts to collection agencies.

17. RELEASE OF LIEN. 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 within **twenty-one (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 Lot.

18. PAYMENT PLANS. An Owner of a separate interest which is not a timeshare or who is not a developer may, if mailed to the Association within **fifteen (15) days** of the postmark date of the pay or lien notice, submit a written request to meet with the Board to discuss a payment plan for the payment of any delinquency. The Association shall provide the Owner with the Association's 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, unless there is no regularly scheduled Board meeting within that period, in which case the Board shall designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's separate interest 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 delinquent assessments from the time prior to entering into the payment plan. The Association shall have the power and authority to include (without limitation) the following elements/terms in any payment plan agreement that is reached with the Owner:

- a. That Owner comply with the governing documents during the course of the payment plan agreement;
- b. That Owner waive any defenses or claims related to the Association's collection efforts;
- c. That the Association may place a lien against other real or personal property owned by Owner;

d. That Owner agrees to waive any homestead rights he/she may have relative to the delinquent assessments;

e. That Owner assign the Association all amounts owed under any rental/lease agreement;

f. That Owner be required to provide identifying information, including social security number, driver's license number, off-site address(es), phone numbers, etc.

19. PARTIAL PAYMENTS. Once a delinquent account has been turned over to the Association's legal counsel, owners shall not send any assessment payments to the Association; such payments shall only be accepted by the Association's legal counsel. Any payments delivered to the collection agent shall be forwarded to the attorney's office. Owner is permitted to submit partial payment on the delinquent amount owed. The notice of assessment lien is not required to be amended by the Association, its attorney or trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the notice of assessment lien. The notice of assessment lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments. The attorney shall then release the lien if and when payment in full has been made by the delinquent Owner.

20. PERSONAL OBLIGATION TO PAY ASSESSMENTS AND CHARGES. Assessments, together with late charges, reasonable fees and costs of collection, reasonable attorneys' fees, and interest determined in accordance with California Civil Code sections 5600 and 5605 and the Association's governing documents are a debt of the Owner of a separate interest (the Owner's lot) at the time that the assessment or other charges are levied. Whether or not the Association records a notice of delinquent assessment (lien) on your property, the Association has a right to look to the Owner, personally, to pay the debt and pursue collection of that debt in a court action. The Association is also entitled, upon compliance with the requirements of California law and provided certain criteria and procedures as specified by law are satisfied, to record a lien against your property and to take enforcement action to sell your property without court action by non-judicial foreclosure. The recording of a lien against your property does not limit the right of the Association to pursue any Owner personally for payment of all monies due.

21. COURTESY STATEMENTS AND TIMELY PAYMENTS. It is the Owner's responsibility to allow ample time to drop off or mail all monies due before the delinquency date. **As a courtesy only**, invoices or statements for regular assessments may be regularly sent to an Owner 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 pay any and all assessments when due, whether or not an invoice or statement has been sent. Owners should promptly advise the Association of any changes in the Owner's mailing address. The Association also reserves the right to send out coupon booklets in lieu of sending invoices or statements.

22. RIGHT TO REQUEST VALIDATION OF DEBT. An Owner has the right to request validation of the debt by notifying the Association in writing of such request within **thirty (30) days** of receipt of the Association's Notification of Delinquent Assessment ("NODA") sent to the Owner. (See Paragraph 8 above.) Upon such request being made, an account history or other document reflecting the delinquent balance will be forwarded to the Owner. Any information obtained in the collection process or obtained from an Owner will be used for the purpose of collecting any monies owed.

23. COMPLIANCE WITH CIVIL CODE SECTIONS 5730 AND 5310. The following notice is set forth to comply with the Civil Code of the State of California.

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.

a. **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).

b. 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).

c. 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).

d. 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).

e. 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).

f. 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.

24. PAYMENTS.

a. 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).

b. 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.

c. 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.

d. 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).

25. MEETINGS AND PAYMENT PLANS

a. 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).

b. 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. (Section 5665 of the Civil Code).

26. EFFECTIVE DATE OF THIS POLICY. This policy shall be deemed effective once it is approved by the Board of Directors after compliance with Civil Code section 4340, *et seq.*

Approved and Adopted by Resolution of the Board at its meeting on March 12, 2019.