

# **PALISAIR HOMEOWNERS ASSOCIATION**

## **PHOA ASSESSMENT/ DUES COLLECTION POLICY**

Prompt payment of PHOA Dues/Assessments by all owners is critical to the financial health of the Association and to the enhancement of the property values of our homes. Your Board of Directors takes very seriously its obligation under the Declaration of Covenants, Conditions and Restrictions (CC&Rs) and the California Civil Code to enforce the members' obligation to pay dues/assessments (herein collectively "assessments"). In keeping with the CC&Rs and Civil Code § 1366 *et seq.*, the following are the Association's assessment practices and policies:

**Assessments, late charges, interest, and collection costs, including any attorneys' fees, are the personal obligation of the owner of the property at the time the assessment or other sums are levied [Civil Code Section 1367.1(a)].**

**Regular annual assessments are due and payable on the first day (1st) of each year, as stated in Article VII of the CC&R's. All other assessments, including special assessments and compliance assessments, are due and payable on the date specified by the Board on the Notice of Assessment, which date will not be less than thirty (30) days after the date of notice of the assessment.**

Any payments made shall be first applied to assessment(s) owed and, only after such are paid in full, shall such payments be applied to late charges, interest, and collection expenses, including attorneys' fees, unless the owner and the Association enter into an agreement providing for payments to be applied in a different manner.

**Assessments not received within 30 days of the applicable due date are delinquent and shall be automatically subject to a late charge of 10 percent of the assessment.**

**An interest charge at the rate of twelve percent (12%) per annum may be assessed against any outstanding balance, including delinquent charges and costs of collection, which may include attorneys' fees.** Such interest shall accrue annually and shall continue to be assessed until the account is brought current.

If a special assessment is payable in installments and an installment payment of that assessment is delinquent for more than thirty (30) days, all installments will be accelerated and the entire unpaid balance of the special assessment shall become immediately due and payable. The remaining balance shall be subject to a late charge and interest, as provided above.

**If any assessment or other charge remain unpaid for thirty (30) days after it becomes delinquent, the Association or its designee, in the event the account is turned over to a Collection Agent, will send a pre-lien letter to the owner, as required under Civil Code § 1367.1(a).** That notice shall provide an itemized statement of the type and amount of assessments owed by the Owner, including the principal and charges assessed, and the collection practices used by the Association, including the right to collect the reasonable cost of collection, to the owner's mailing address of record. Notwithstanding the provisions of this Paragraph, the Association may send a pre-lien letter to a delinquent Owner (i) at

any time when there is an open escrow involving the Owner's Unit/Lot, and (ii) immediately where a special assessment becomes delinquent. Any payment toward such a debt shall first be applied to the principal owed and, only after the principal owed is paid in full, shall such payments be applied to interest and/or collection expense.

**If an owner fails to pay the amounts set forth in the pre-lien letter and within thirty (30) days of its posting, the Board shall decide, by majority vote in an open meeting, whether to authorize a lien in the amount of the delinquent assessment against the owner's property.** If the Association authorizes a lien, the Owner will be charged for the fees and costs of preparing and recording the lien. The lien may be enforced in any manner permitted by law.

An owner is entitled to inspect the Association's accounting books and records to verify the amounts owed, pursuant to Corporations Code § 8333.

An owner has the right to dispute an assessment by submitting a written request for dispute resolution to the Association, pursuant to Civil Code § 1363.810 *et seq.* The Association shall respond in writing within fifteen (15) days of the postmark date of the request and may elect to participate in a meet-and-confer process under the terms and procedures outlined in Civil Code § 1363.840. Further, the owner may make a written request to meet with the Board to discuss a payment plan, and the Board or appointed Committee shall promptly meet with the owner and discuss a potential plan in good faith.

**The Board acknowledges that, under the parameters outlined in Civil Code § 1367.4, the Board may apply its rights to seek foreclosure of a lien validly recorded on the subject property in connection with delinquent assessments and reserves all legal rights which exist to pursue this option, as provide under the terms of the law and the CC&Rs.** The Board also acknowledges, however, that this means of seeking the collection of delinquent assessments shall be applied only after other more reasonable efforts have been attempted and/or exhausted.

The Board will consider payment plan requests on a case-by-case basis and is under no obligation to grant such requests. Payment plans shall not interfere with the Association's ability to record a lien on an owner's separate interest to secure payment for the owner's delinquent assessments. If the Board authorizes a payment plan, it may incorporate payment of ongoing assessments that accrue during the plan period.

If a payment plan is approved, additional late fees from the homeowner will not accrue, while the owner remains current under the plan. If the Owner breaches the terms of an approved plan, the Association may resume its collection action from the time the payment plan was approved. Nothing herein limits or otherwise affects the Association's right to proceed in any lawful manner to collect any delinquent sums owed to the Association.

**Prior to the release of any lien, or dismissal of any legal action, all assessments, late charges, interest, and costs of collection, including attorneys' fees, must be paid in full to the Association.**

There is no right of offset. An owner may not withhold assessments owed to the Association on the alleged grounds that the owner is entitled to recover money or damages from the Association for some other obligation.

**The Association shall charge the Owner a Twenty-Five Dollar (\$25.00) fee for the first check tendered to the Association that is returned unpaid by the owner's bank and Thirty-Five Dollars (\$35.00) for each subsequent check passed on insufficient funds. If the check cannot be negotiated, the Association may also seek to recover damages of at least One Hundred Dollars (\$100.00), or, if higher, three (3) times the amount of the check up to One Thousand, Five Hundred Dollars (\$1,500.00) pursuant to Civil Code § 1719.**

Owners have the right to provide a secondary mailing address for the purposes of collections. The request shall be in writing and shall be mailed to the Association by means which shall indicate that the Association has received it. An Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during a collection process, the Association shall only be required to send notices to the indicated secondary address from actual receipt of the request.

All charges listed herein are subject to change on thirty (30) days' prior written notice.

Until the Owner has paid all amounts due, the Board of Directors may suspend the Owner's right to vote, after providing a duly noticed hearing, pursuant to Civil Code § 1363(h).

## **TIMELINE FOR ASSESSMENT AND COLLECTION PROCESS**

### **1. Regular Annual Assessment**

The regular annual assessment is due and payable on January 1 of each year. If payment of the regular annual assessment is then not made by the close of January 30, payment is deemed delinquent and automatically subject to a late charge of 10 percent with the additional potential application of an interest charge at the rate of twelve percent (12%) per annum on any outstanding balance until the account is brought current.

### **2. Pre-Lien Letter**

A pre-lien letter may be sent to the Owner of record, by certified and regular mail, if any assessment or other charge remains unpaid for 30 days after it becomes delinquent.

### **3. Lien**

If the Owner has not responded to the pre-lien letter, the next action can be to prepare and record a lien.

*California Civil Code § 1367.1(c)(B)(2) requires that a MAJORITY of the Board must vote to record a lien at an OPEN Meeting (not Executive Session). The decision must then be recorded in the minutes.*

The lien is recorded and a letter with lien is mailed to the Owner within 10 days of recording the lien.

## **LIEN SCHEDULE OF FEES AND COSTS – SAMPLE**

The fees listed below present a sample of costs associated with the lien process, as based on a survey of the current costs and charges imposed for the referenced services. Ultimately, the delinquent Owner will be charged for all services required at the cost and/or rate prevailing at the time such is rendered. Collection Agent/Lien Services charges for most services on a set fee and cost basis that include, but are not limited to, the following services:

***Open Account- \$78.00:*** Includes opening file and obtaining and review of title holder verification report.

***Initial Attorney Demand Letter- \$275.00:*** Includes review and confirmation of homeowner accounting, computation of interest and late fees, preparation of Accounting Statement, review of the association's governing documents to confirm association collection policies and lien procedures, preparation of attorney demand letter, and telephone calls and other communications with Owner.

***Letter with Lien Already Recorded- \$325.00:*** Includes review of pre-lien letter and lien for compliance with California Civil Code, recalculation of homeowner accounting statement, computation of interest and late fees, review of the Association's governing documents to confirm compliance with the collection policies and lien procedures, preparation of attorney demand letter to Owner, and telephone calls and other communications with Owner.

***Preparation of Lien- \$350.00:*** Includes lien preparation and release of lien, when applicable, after payment, correspondence, and communications with Owner regarding the lien and related matters.

***Payment Plan Request and Approval - \$125.00:*** Communications with Owner regarding proposed payment plan; preparation of payment plan agreement showing monthly payment breakdown, incorporating all outstanding balances, assessments, interest, and costs under plan and; and monitor payment plan.

***Verification of Account - \$125.00:*** Respond to homeowner disputes over amount owed and verifying account with Association, pursuant to the Fair Debt Collection Practices Act.

***Personal Check Payment - \$30.00:*** Verification of clearance of personal check prior to account distribution.

***Extraordinary Attorney's Fees:*** Additional attorney's fees (and/or paralegal or collection staff fees) will be charged to Owner for extraordinary services, including preparing and responding to Owner's attorney letters/telephone calls, excessive homeowner letters/telephone calls, and the like.

***Costs:*** All costs relating to the above services are additional and include, but are not limited to Collection Agency and/or outside vendor costs and handling fees, recording, delivery, mailing, publication, posting and process service.