

# PINE MOUNTAIN CLUB PROPERTY OWNERS ASSOCIATION, Inc.

## Delinquency and Collections Policy

The following policies and procedures apply to the collection of all monies due to the Association including, but not limited to, regular assessments, special assessments, late-payment charges, interest, fines, dues and other charges.

1. Regular, Capital and Special Assessments. The Association imposes and collects regular, capital and special assessments as permitted by the terms of its CC&Rs and by California law.
2. Personal Obligation. All assessments, late charges, interest and collection costs, including attorneys' fees, are the personal obligation of the owner of the property at the time the assessment or other sums are levied.
3. Assessment Due Date. Regular assessments are due and payable on the first day of July of each year. A courtesy billing statement will be sent to the billing address on record with the Association. However, it is the owner of record's responsibility to pay each assessment in full regardless of whether a statement is received. All other assessments, including capital and special 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 on the special assessment.
4. Application of Payments. Any payments made shall be first applied to assessments owed, and only after the assessments owed 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. All checks returned for insufficient funds shall result in a ~~twenty five dollar (\$25.00)~~ **thirty-five dollar (\$35.00)** fee.
5. Late Fees. All regular assessments that are not received within thirty (30) days of the stated due date are delinquent and shall be subject to a late charge of nine percent (9%) for each delinquent assessment per unit. All special assessments not paid by their due date are delinquent and shall be subject to a late charge of nine percent (9%) for each delinquent assessment per unit. The Association shall be entitled to recover all collection costs, including attorneys' fees, that the Association incurs in its efforts to collect the delinquent sums. A first notice of past due assessment ("statement" or "late letter") will be prepared and mailed once an assessment or invoice becomes delinquent.
6. Collection. If an assessment is not received within seventy-seven (77) days after it is due and payable, the assessment 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 by Civil Code, via certified and first-class mail, to the owner's mailing address of record advising of the delinquent status of the account and impending collection action. The owner will be charged a fee for the pre-lien letter.
7. Collection Fees and Costs Liability. If an owner fails to pay the amounts set forth in the pre-lien letter within thirty (30) days of the date of that letter, the Association will authorize a Trustee to record a lien, as permitted by law, for the amount of any delinquent assessments, late charges, interest and/or costs of collection including attorneys' fees against the owner's property. The owner will be charged for the fees and cost of preparing and recording the lien.
8. Enforcement. No less than thirty (30) days following the recordation of the lien, the lien may be enforced in any manner permitted by law, including, without limitation, judicial or non-judicial foreclosure. Nothing in this collection policy limits the Association's right to proceed in any lawful manner to collect any delinquent sums owed to the Association.

9. Disputes. As an owner you have the right to dispute an assessment by submitting a written request for dispute resolution to the Association pursuant to the Association's meet and confer program as required in Chapter 10, Article 2, and Article 3 (commencing with Section §5900 of the Civil Code). You are offered and advised that you have the right to request a meeting with the Board as provided in Section §5665 of the Civil Code. You have the right to request that the Association participate in some form of Internal Dispute Resolution ("IDR"). If an owner disputes the amount of any late charge or other charge, the owner may pay all delinquent amounts in full under protest and send the Association, by certified mail, a written notice that the amount is paid under protest. This notice must be given within thirty (30) days of the recordation of the Notice of Delinquent Assessment. The owner has the right to demand that the matter be resolved through Alternative Dispute Resolution (ADR) in accordance with California Civil Code Section §5935. An owner may not demand ADR more than two (2) times in a single calendar year or three (3) times in any five (5) calendar years.

10. Inspection. An owner is entitled to inspect the Association's accounting books and records to verify the amounts owned pursuant to Corporations Code Section §8333.

11. Mistakes. If it is determined that the owner has paid the assessments on time, the owner will not be liable to pay the charges, interests, and costs of collection associated with collection of those assessments.

12. Payment Plan Requests. Any owner may make a formal request to the Board for a payment plan. An owner may also request to meet with the Board in executive session to discuss a payment plan. Each request is handled on a case-by-case basis. The Board is under no obligation to grant payment plan requests. Payment plan requests shall be submitted in writing and mailed to the Association at:

Pine Mountain Club Property Owners' Association, Inc.  
P.O. Box P  
Pine Mountain Club, CA 93222-0016

13. Paid in Full. Prior to recordation of 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.

14. Suspend Privileges and Voting Rights. The Board may suspend the common area privileges and voting rights of any member who is more than seventy-seven (77) days delinquent in their assessment. Common area privileges and voting rights will remain suspended until the delinquency, including any accumulated penalties, interest and costs of collection, has been paid in full.

15. Notice of Assessment and Foreclosure. The statutorily-required Notice of Assessment and Foreclosure is incorporated herein as Exhibit "A" to this policy.

16. Affectivity and Changes. The policies and procedures stated herein supersede all previous such versions, whether written or oral, regardless of the medium through which they were communicated. Additionally, these policies and procedures a subject to change upon thirty (30) days written notice.

17. Over-Night Payments. The mailing address for over-night payments pursuant to this collection process is:

Pine Mountain Club Property Owners' Association, Inc.  
c/o Best Alliance Foreclosure and Lien Services  
16133 Ventura Blvd., Suite 700  
Encino, CA 91436

**EXHIBIT "A"**  
**To the Delinquency and Collection Policy of**  
**The Pine Mountain Club Property Owners'**  
**Association, Inc.**

**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 fifteen (15) days after they are due, unless the governing documents provide for a longer tie. 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 twelve (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. (Section §5700 through §5720 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 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 thirty (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 twenty-one (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, 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 §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 for the in Article 3 (commencing with Section §5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if 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 exist. (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)

Approved by Resolution #07-03-16-19

**SUMMARY OF CALIFORNIA CIVIL CODE SECTION 5975  
RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS  
THROUGH ALTERNATIVE DISPUTE RESOLUTION**

**PLEASE TAKE NOTE:** *California Civil Code Section §5925 through §5965 addresses your rights to sue the Association or another member of the Association regarding the enforcement of the governing documents. The following is a summary of the provisions of Civil Code §5975 effective January 1, 2014.*

In general, Civil Code §5930 encourages parties to a dispute involving enforcement of an associations governing documents to submit the dispute to a for of alternative dispute resolution (ADR) such as mediation or arbitration prior to filing a lawsuit. The intent of the statute is to promote speedy and cost-effective resolution of such disputes, to better preserve community cohesiveness, and to channel CC&R disputes away from our states court system.

Under Civil Code Section §5925 through §5965, the form of alternative dispute resolution may be binding or non-binding and the costs will be borne as agreed to by the parties involved.

Any party to a dispute regarding enforcement of the governing documents may initiate the process of ADR by serving a Request for Resolution on another party to the dispute. A Request for Resolution must contain (1) a brief description of the nature of the dispute, (2) a request for ADR, and (3) a notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the Request will be deemed rejected.

If the Request is accepted, the ADR must be completed within 90 days of receipt of the acceptance, unless otherwise agreed by the parties. Any Request for Resolution sent to the owner of a separate interest must include a copy of Civil Code §5925 through §5965 in its entirety.

**FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PREFILING REQUIREMENT OF CIVIL CODE §5965 (A) ~~OF THE CIVIL CODE~~ MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.**

Should the Association or an individual member wish to file a lawsuit for enforcement of the Associations governing documents, the law requires the Association or the individual to file a certificate with the court stating that ADR has been completed prior to the filing of the suit. Failure to file this certificate can be grounds for dismissing the lawsuit. There are limited exceptions to the filing of this required certificate when (1) One of the other parties to the dispute refused ADR prior to the filing of the complaint, (2) preliminary or temporary injunctive relief is necessary, or (3) the statute of limitations period for filing the action will expire within 120 days of the lawsuit being filed. Each of these exceptions, however, must also be certified in writing to avoid the courts dismissing the action.

Furthermore, in any lawsuit to enforce the governing documents, while the prevailing party may be awarded attorney's fees and costs, under Civil Code §5960 the court may consider any party's refusal to participate in ADR prior to the lawsuit being filed when it determines the amount of the award.

## **INTERNAL DISPUTE RESOLUTION**

**Meet & Confer.** Associations must provide a “fair, reasonable and expeditious” procedure for resolving disputes between the association and its members without charging a fee to the member participating in the process. Civil Code §5910.

**Default Procedure.** If an association does not establish its own procedures, the following procedures automatically apply. Civil Code §5915.

1. Either the association or the member may request that the other side meet and confer in an effort to resolve the dispute. The request must be in writing. The association may not refuse such a request, and the member may not be charged a fee to participate in the process.
2. The association must designate a board member to attend the meet and confer session.
3. The meeting must occur promptly at a mutually convenient time and place. At the meeting, the parties must explain their position to each other and must confer in good faith in an effort to resolve the dispute.
4. If the parties agree on a resolution of the dispute, the agreement must be put in writing and signed by the parties. The agreement is binding and can be enforced by the courts if: a) it is not in conflict with the law or the governing documents, and b) the association’s representative had the authority to enter into the settlement or the settlement is ratified by the board.

**Notice.** Associations must notify their members of both **ADR** and **IDR** dispute resolution procedures.

**Rules Enforcement Appeals.** There is no specific appeals procedure described in the Davis-Stirling Act for penalties imposed by the board for violation of the rules and regulations. However, the IDR procedures described above can be used to “appeal” a decision of the board.

## **DAVIS-STIRLING ACT**

### **Civil Code §5910. Internal Dispute Resolution Procedure Requirements.**

A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

- (a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.
- (b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.
- (c) If the procedure is invoked by a member, the association shall participate in the procedure.
- (d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the association's board of directors.
- (e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing document, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.
- (f) The procedure shall provide a means by which the member and the association may explain their positions.
- (g) A member of the association shall not be charged a fee to participate in the process.