

## Rancho Santa Teresa Swim & Racquet Club

### ASSESSMENT COLLECTION POLICY

#### **Notice to Members:**

This document sets forth the Association's policy regarding the collection of assessments pursuant to the Association's Governing Documents and California Civil Code Sections 5600 - 5740.

#### **1.0 Assessments in General.**

The Association has a duty to levy regular and special assessments sufficient to perform its obligations under the governing documents and California law. Regular assessments are determined at least once annually and are payable during the year in Quarterly installments or at such other intervals as the Board of Directors shall designate. The Association shall distribute the written notice described in Civil Code Section 5730 to each member of the Association during the 60-day period immediately preceding the beginning of the Association's fiscal year.

#### **2.0 Obligation to Pay Assessments.**

A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Civil Code Section 5650, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Each assessment or charge is also a lien on the owner's property from and after the time the Association causes a Notice of Delinquent Assessment (Lien) to be recorded with the County Recorder's Office of the County in which the property is located.

#### **3.0 Monetary Charge for Reimbursement to Association for Damage to Common Areas and Facilities.**

A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents.

#### **4.0 Monetary Penalty Imposed by the Association as a Disciplinary Measure.**

A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

#### **5.0 Notice of Assessments.**

Not less than 30 days nor more than 60 days before any increase in the regular assessment or any special assessment becomes due, the Association will give the owners notice of the assessment. Notice will be sent by first-class mail to addresses on the membership register as of the date of notice. The Association can deliver notice of change of assessments via e-mail, if the owner has agreed in writing to accept Association documents via e-mail. The Board of Directors may elect from time to time to provide additional periodic statements of assessments and charges, but lack of such statements does not relieve the owners of the obligation to pay assessments.

#### **6.0 Designation of Agent.**

The Board of Directors may designate an agent or agents to collect assessment payments and administer this Assessment Collection Policy. Such designated agent may be an officer of the Association, manager, collection service, banking institution, law firm, attorney or other appropriate agent. A.S.A.P. Collection Services at 331 Piercy Road, San Jose, CA 95138 (408) 363-9600 is one of the designated agents authorized to administer this policy.

#### **7.0 Association Cannot Voluntarily Assign or Pledge the Association's Right to Collect.**

An Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of an Association to assign any unpaid obligations of a former member to a third party for purposes of collection. After the expiration of 30 days following the recording of a lien per the Covenants, Conditions and Restrictions (CC&R's), the 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 pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

#### **8.0 Due Date/ Delinquency Date of Assessments.**

Unless otherwise specified by the Board or the governing documents, an assessment is due on the first of each quarter. An assessment, or any portion thereof, is delinquent if it has not been received as directed by the Board or its designated agent 15 days after it is due.

### **9.0 Late Charges and Interest on Delinquent Amounts.**

Delinquent accounts become subject to the following additional charges as contained in Civil Code section 5650 and the governing documents: costs of collection including reasonable attorney's fees; a late charge of \$10 or 10% of the delinquent assessment, whichever is greater and interest on all sums (including the delinquent assessment, collection fees and costs, and reasonable attorney's fees) at an annual interest rate not to exceed 12.00% commencing 30 days after the assessment becomes due; whether or not charged prior to collection. If it is determined the assessment was paid on time to the association the owner will not be liable to pay the charges, interest, and costs of collection.

### **10.0 Collection Charges.**

Any costs and fees \*incurred in setting up, processing and collecting delinquent amounts, including, without limitation, late charges, statement charges, monthly administrative charges, charges for preparation of delinquency notices or forward to collection charges, or request for a payment plan as well as the recordation of a lien or initiation of foreclosure proceedings, postage, copies, envelopes, labels, filing and recordation charges, delivery charges, and attorney's fees and costs, title searches, bankruptcy searches, pulling copies of grant deeds or property ownership history, address and or phone number verification searches, in addition to any other charges necessary to collect a delinquent assessment shall become an additional charge against the owner and the owner's property and shall be subject to collection action pursuant to this Policy.

\*Incurred means as the services are provided, they are added to the owner's account.

### **11.0 Application of Payments.**

If partial payments are accepted, they must be applied pursuant to Civil Code 5655: first to assessments owed, then when those are paid in full, payments shall be applied to the fees and costs of collection, then attorney's fees, then late charges, or interest. Owners may request a receipt and the association shall provide it. The receipt shall indicate the date of payments and the person who received it. Payments may be required to be made in certified funds, i.e. cashier's check or money order.

### **12.0 Initial Delinquency Notice.**

Once an assessment, or any portion thereof, has become delinquent, the owner may receive an initial delinquency notice stating all amounts past due and any known collection charges imposed as of the date of the notice, which may be in the form of a letter, monthly statement, past due notice, or any other form of writing or notice from the Association or its designated agent.

### **13.0 Notice of Intent to Record a Lien.**

If an assessment account remains unpaid for 45 days after it is due, the Association or its designated agent shall, at least 30 days prior to recording a lien upon the separate interest of the owner of record, notify the owner in writing by certified mail all of the notice requirements pursuant to Civil Code Section 5660. Prior to recording a lien for delinquent assessments, the owner has the right to request to participate in dispute resolution pursuant to the Association's "Meet and Confer" program required in Civil Code Sections 5900 - 5920. A copy of the "Meet and Confer" Offer and Procedure is attached to this collection policy as an ADDENDUM titled "ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR."

### **14.0 Recording of Lien.**

At the expiration of 30 days following the Notice of Intent to Record a Lien, the Association or its designated agent will without further notice to the owner, record a lien against the owner's property. The notice of delinquent assessment shall be mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation.

### **15.0 Association Lien Subordination.**

A lien created pursuant to 14.0 Recording of Lien shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

### **16.0 Recording of Release of Lien.**

A release of lien will not be recorded until the entire balance of the owner's account is paid in full. All charges incurred in recording a Release of Lien, including reasonable attorney or agent fees and costs, will be charged to the account. Within 21 days of payment in full the Association shall record or cause to be recorded in the office of the county recorder a release of lien or notice of rescission and provide the owner of the separate interest a copy of the recorded release of lien.

### **17.0 Lien Recorded In Error.**

If it is determined that a lien previously recorded against a separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder, a release of lien or notice of rescission and provide the owner of the separate interest a copy of the recorded document with a declaration stating that the recording was in error.

### **18.0 Foreclosure.**

Judicial or Non Judicial foreclosure proceedings may not begin until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. Prior to initiating a foreclosure for delinquent assessments, the association will offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "Meet and Confer" program required in Civil Code Sections 5900 - 5920 or alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 5925 - 5965. 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. A copy of the "Meet and Confer" Offer and Procedure is attached to this collection policy as an ADDENDUM titled "ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR."

### **19.0 Deed in Lieu of Foreclosure.**

Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created or prohibits an association from taking a deed in lieu of foreclosure.

### **20.0 Payment Plan Agreement.**

An owner of a separate interest may submit a written request to meet with the Board of Directors, in executive session, to discuss a payment plan agreement to allow the owner to make periodic partial payments on the entire balance of the assessment account in addition to assessments that will accrue during the payment plan period. The Association has no obligation to enter into such a payment agreement. If the Association accepts an agreement with the owner it shall be reasonable, as determined by the Board in its sole discretion, and in accordance with the standards for payment plans, if any exist. The payment agreement shall be in writing and will include a provision that additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. Interest and administrative charges will accrue until the account is paid in full. The agreement will also include a provision that in the event of a default on the payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan. A lien will be recorded against the property to secure debt for the Association. The owner will be charged for the additional collection fees and costs to administer the payment plan. Payment plan requests outside of the Association's payment plan standards require Board approval. The board may designate a committee of one or more members to meet with an owner .

### **21.0 Validation of Debt.**

Unless an owner disputes the validity of the debt, or any portion thereof, within 30 days after receipt of the notice pursuant to 13.0 Notice of Intent to Record a Lien, the debt will be assumed to be valid. Validation of the debt will be provided in writing, at no additional cost to the owner and will include 1) an itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any 2) the Association's name and 3) the Association's mailing address.

### **22.0 Disputes.**

Federal law states that initial dispute can be either oral or in writing. State law requires disputes to be in writing. It is therefore recommended that all disputes be put in writing to avoid misunderstanding.

### **23.0 Internal Dispute Resolution (IDR) Procedure, Meet And Confer.**

An owner has the right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "Meet and Confer" program required in Civil Code Sections 5900 - 5920. A copy of the "Meet and Confer" Offer and Procedure is attached to this collection policy and serves as an official offer to the owner. See attached ADDENDUM titled "ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR."

### **24.0 ADR - Alternative Dispute Resolution.**

An owner has the right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 5925 - 5965 before the Association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure. A summary of the ADR - Alternative Dispute Resolution Civil Code 5965 is attached as an ADDENDUM to this policy titled "ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR."

### **25.0 Owner has Right to Request Meeting with Board.**

An owner has the right to request a meeting with the board. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice 13.0 Notice of Intent to Record a Lien, 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.

**26.0 Owner has Right to Review Association Records.**

Owner has the right to review the Association records, pursuant to Civil Code Section 5205. Owner should contact the Association's managing agent for the policies and procedures set forth to inspect the records.

**27.0 Dispute Resolution, Meet And Confer Procedure Civil Code Section § 5920. See attached Addendum titled "ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR."**

**28.0 Other Remedies.**

The Association reserves the right to avail itself of any other remedy permitted by law and the Association's governing documents to collect assessments and related costs and charges, including but not limited to bringing an action in Small Claims or Superior Court. Such remedies may be taken in addition to, or in lieu of, any action already taken, and commencement of one remedy shall not prevent the Association from electing at a later date to pursue another remedy.

**29.0 Address of the Association and the Board of Directors.**

For the purpose of OVERNIGHT PAYMENTS owners are directed to use the same mailing address that is used for mailing routine assessment payments, unless otherwise directed by the designated agent. For the purpose of CORRESPONDENCE owners are directed to use the mailing addresses of the designated agent, unless otherwise directed. These addresses are subject to change after the distribution of this policy. Notification of a change will be in writing to the membership through normal day-to-day correspondence from the association or its designated managing agent. It is the owners' responsibility to note any changes for their records.

**30.0 Returned Payments.**

Payments returned for insufficient funds, closed account, stop payment or for any other reason will be charged back to the owners account in addition to any administrative fee, bank fee or collection fees and costs incurred to handle the returned payment. Personal checks will not be accepted if two (2) payments are "Returned" by the bank for any reason.

**31.0 Sufficiency of Notice.**

Except for notice that under California law must be sent by certified mail, notice is sufficient if either hand delivered or mailed first class, postage prepaid, to the owner at the address on the membership register at the time of notice. Notice is presumed received three (3) days after notice was mailed.

**32.0 Owner's Change of Address.**

Owner is required to notify the Association of any change in the owner's name or mailing address. Upon receipt of a written request by an owner identifying a SECONDARY ADDRESS for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

**33.0 Void Provisions.**

If any provision of this Policy is determined to be null and void, all other provisions of the Policy shall remain in full force and effect.

## **ADDENDUM TO ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR**

### **DISPUTE RESOLUTION, MEET AND CONFER PROCEDURE CC §5920**

**WHO MAY START:** This procedure may be invoked by the Association or an Owner. Either party may make a written request to meet and confer to resolve a dispute. The Board shall designate a member of the Board to meet and confer.

**WHO PARTICIPATES:** When a written request for Dispute Resolution is received from an owner, the Association shall participate. If the Association makes a written request for an owner to participate, the owner may elect not to participate.

**NON-PARTICIPATION BY THE OWNER:** If the owner declines to participate, the Association may begin Alternative Dispute Resolution, pursuant to Civil Code § 5930.

### **IF THE OWNER PARTICIPATES, THEN THE MEET AND CONFER TAKES PLACE:**

- A. The Association will act on a request by the owner within 45 days of receipt of the written request to meet.
- B. The meeting shall be established in good faith, take place promptly at a mutually convenient date, time and location. Each party shall explain their position and shall confer in good faith to resolve the dispute. If an attorney or other person will be present to assist the owner, the Association must be notified in writing 10 days prior to the established date. If notice is not given 10 days prior, the Association can request a continuance. Each party to pay for their own costs.
- C. An agreement resolving the dispute by the parties shall be made in writing and dated and signed by the parties, including the Board designee on behalf of the Association.
- D. A written decision shall be made by the designated Board Member and delivered or received by the owner within ten (10) days after the meet and confer.
- E. If the owner participates, but the dispute is resolved other than by agreement of the owner, the owner shall have the right to appeal to the Association's Board of Directors.

### **APPEAL:**

- A. If the owner disputes the resolution, an appeal must be taken to the Board of Directors within thirty (30) days of the date of the decision by the designated Board member.
- B. If there is an appeal, the Board must hear the Appeal at its next regularly scheduled meeting in executive session, then issue a written decision within ten (10) days.

### **NO CONFLICT:**

- A. The resolution must not be in conflict with the law or the governing documents.
- B. The agreement must be consistent with the authority granted to the Board of Directors or the Board must ratify the agreement.
- C. The written agreement, which is dated and signed by the parties, will bind both parties and be judicially enforceable.

**NO FEE:** No fee will be charged to the owner during this process.

**EXCEPTIONS:** Reasonable exceptions may be made to the time deadlines, in the discretion of the Board. Any exceptions will be made on a case-by-case basis.

**TIME:** The maximum time to act on a written request by the owner is forty-five (45) days. Initiation to completion of the dispute will take no more than one hundred eighty (180) days, unless extended by both parties.

### **ADR - ALTERNATIVE DISPUTE RESOLUTION CC §5925 - 5965 [SUMMARY] As of January 1, 2006**

- 1. If an association, owner or member of an association seeks either:
  - A. Declaratory or injunctive relief; or
  - B. Declaratory or injunctive relief and a claim for monetary damages not in excess of the jurisdictional limits of small claims court (as of January 1, 2012: \$10,000 for individuals or \$5,000 for homeowner association), other than for association assessments, concerning the enforcement of the governing documents; the parties shall submit their dispute to Alternative Dispute Resolution (ADR), such as mediation or arbitration. A Request for Resolution ("Request") begins the process and it shall include:
    - 1) A description of the dispute;
    - 2) A request for ADR
    - 3) Notice that the party receiving the Request is required to respond within thirty (30) days or the Request will be deemed rejected.
  - C. This does not apply to small claims action.
  - D. Except as required by law, this does not apply to an assessment dispute.
- 2. A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.
- 3. If the Request is accepted, ADR shall be completed within ninety (90) days from the date of acceptance, or it can be extended by a written stipulation signed by both parties.

"FAILURE OF A MEMBER OF THE ASSOCIATION TO COMPLY WITH THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS OF SECTION 5930 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF THE MEMBER'S RIGHT TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS OR THE APPLICABLE LAW."

Unless otherwise stated by the Association, this document serves as the Association's OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR and it serves as its procedure for the same.

# **Required Notice Regarding Assessments And Foreclosure**

## **\*Civil Code §5730 – Effective January 1, 2006**

### **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 Article 3 (commencing with Section 5700 - 5740) 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 5740 of the Civil Code, inclusive)

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)

The association must comply with the requirements of Civil Code Sections 5650 – 5740 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 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 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.

# **Required Notice Regarding Assessments And Foreclosure**

## **\*Civil Code §5730 – Effective January 1, 2006**

### **PAYMENTS**

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)

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 Civil Code Section 5900 – 5965. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth Civil Code Sections 5935 - 5965, 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 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 exists. (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 with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)

(b) An association distributing the notice required by this section to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans.