

The Comstock Condominium HOA

DELINQUENT ASSESSMENT COLLECTION POLICY

1. It is the fiduciary responsibility of the Board of Directors to collect all assessments for the maintenance and replacement of common area property and other association expenses in a timely fashion. The Association is entitled to recover assessments, reasonable collection costs, reasonable attorney's fees, late fees and interest. The Association will not use non-judicial foreclosure to collect fines or penalties but other remedies are available to collect these and any sums not suitable for collection by non-judicial foreclosure. The association shall comply with requirements of their CC&R's and the California Civil Code when collecting delinquent assessments. If an error is made that requires termination of any collection proceeding or beginning a collection process over, the Association shall bear the costs; otherwise, the owner is responsible for all costs as identified above.

2. Assessments are due on the first day of each month and are delinquent if not received by 5:00 p.m. on the 15th day of the month. If the 15th falls on a Sunday, assessments received by 5 PM on the 16th will be applied prior to late charges. A late charge of \$10.00 or 10% of the assessment (or special assessment), whichever is greater, will be charged for any assessment not paid by the due date. Interest may accrue and be charged on all sums including Assessments, late fees and reasonable costs of collection as of 5:00 p.m. on the 30th day of the month at the rate of up to 12% per annum. After any payment is late (not paid by the 15th day after the due date), a late payment notice is prepared and sent to the owner of record.

3. **IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.**

4. On or about the 46th day after a payment is due, a Delinquency Notice is mailed to the owner of record. On or about the 60th day a Pre-Lien Notice will be prepared and sent, by certified mail, to the delinquent record owner(s) at the owners' last mailing address provided to the Association. If the delinquent record owner(s) have provided a written notice of a secondary address, all notices shall be sent to that address also. Such notice will include an itemized statement of the total amounts delinquent, including but not limited to, assessments, late charges, interest and costs of collection, if any, and a notice that the owner is entitled to ask to meet with the Board or Board representative(s) pursuant to the Association's internal dispute resolution "meet and confer" program.

5. The decision to record a lien shall be made by the Board of Directors, approved by a majority vote in an open meeting. The Board shall record the vote in the minutes of that meeting referring to the property by parcel number, and not name of the owner. Likewise, the decision to file in small claims shall be made by the Board and not the Association's agent.

6. On or about the 30th day after the Pre-Lien Notice is sent the Association may record a lien on the property to secure the debt; however, there are limitations that may preclude foreclosure of the lien at this time (see paragraph 7).

7. If all sums secured by the lien are not paid in full within thirty (30) days after recordation, and the amount of delinquent regular or special assessments reaches \$1,800.00, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or has been delinquent more than 12 months, the Board may make the decision to foreclose the lien. All resulting collection fees and costs will be added to the total delinquent amount. At some point in time prior to initiating foreclosure, the Board shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue 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.

8. The decision to initiate foreclosure shall be made only by the Board of Directors, by majority approval, and while the discussion may be held in executive session, the decision shall be recorded in the minutes of an open meeting in the same form as the decision to record a lien was made (by parcel number only). A Board vote to approve foreclosure of a lien must take place at least 30 days prior to any public sale.

9. If the Board votes to foreclose, the Board shall provide notice of its decision by personal service to an owner who occupies the separate interest or to the owner's legal representative. If the owner does not occupy the separate interest, said notice will be sent by first-class mail, postage prepaid, to the most current address shown on the books of the Association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address. In addition, statutory procedures including recorded notices regarding foreclosure and sale will be accomplished.

10. A non-judicial foreclosure by an association shall be subject to the owner's right to redeem the property up to 90 days after the sale.

11. All charges assessed to the assessment account must be paid in full as a condition to curing and releasing a recorded Lien and other documents of foreclosure. If the account is not paid in full, arrangements must be made with the Association's Agent assigned to the collection of the account or the Board or Board representative, at a meeting arranged under the "meet and confer" process of the Association.

12. When a payment is made, the owner may request a receipt and the association will provide it. On the receipt, the association shall indicate the date of payment and person who received it.

13. You may, but are 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.

14. Each payment from an owner shall be applied first to the principal assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to costs of collection, attorney's fees, late charges, or interest, unless an alternate agreement is entered into between the Association and the owner.

15. An owner may request the association to consider a payment plan to satisfy a delinquent assessment. The Board will inform the owners of the standards for payment plans, to the extent standards have been adopted by the Board. Certain timelines apply as follows: If an owner's request is mailed within 15 days of the date of the postmark of the notice of delinquency (lien), the Board will meet with the owner in executive session within 45 days of the postmark of that request. However, if there is no regularly scheduled Board meeting during that period, the Board may designate one or more Directors to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period, however they shall not impede an association's ability to record a lien 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. Payment plans will include all assessments, late charges, interest and costs of collection, that accrued prior to the commencement of the payment plan. The owner will be charged a payment plan fee to administer the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the

delinquent assessments from the time prior to entering into the payment plan and all late fees and interest that would have accrued for the time period the payment plan was in effect, will be reinstated to the Owners' account.

16. Any check returned by the bank for insufficient funds, stop payment or any other reasons will be charged back to the unit and a \$25.00 administrative fee plus any bank fees will be assessed to the account. If the account has been turned over to the Association's agent for collection and a check is returned, the account will be assessed whatever administrative fees as the Agent provides.

17. The mailing address for overnight payment of assessments is the same as that for routine assessment payments unless otherwise noted.

18. An owner of a separate interest has the right to inspect the association's financial books and records to verify the delinquency, per laws related to inspection of HOA records.

19. Except where prohibited by law, the Board of Directors of the Association may revise this policy, either generally or on a case-by-case basis, if it finds good cause to do so. To the extent there are any general discretionary changes (rather than compliance related to the law or governing documents); the Board shall circulate the policy to owners at least 30 days before the meeting at which the revisions will be considered.

This policy is consistent with the Association's CC&R's as well as the following Civil Code Sections in the Davis-Stirling Act:

DAVIS-STIRLING CONVERSION CHART Re: Collection Policy		
Civil Code 2013	Civil Code 2014	Subject
1363(f)&(g)	5850-5855	Monetary Penalty Schedule, Hearing Notice and Decision
1366	5600-5650	Levy of Assessments; Limitations, Increases; Delinquent Assessments; Late Fees and Interest
1367.1-1367.4	5650-5725	Payments; Disputes As To Debt; Procedure; Enforcement Of Lien; Penalty; Priority Of Lien; Assignment Or Pledge Of Right To Collect Payments; Actions Under Code Of Civil Procedure; Correction Of Errors; Application Of Section
1367.1	5665	Right To Request Meet And Confer (IDR) With The Board; Debts For Assessments That Arise On And After January 1, 2006; Collection Of Delinquent Assessments
1367.4	5715-5740	Application Of Limitation On Foreclosure Of Assessment Liens, Minimum Requirements Before Foreclosure Is Allowed, Right Of Redemption
1362.5	5205	Right To Inspect Association Records
1363.810	5900	IDR
1369.510	5925	ADR

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) 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)

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 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 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.

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 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.

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 to 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.