

## New Collections Procedures

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The following is a brief timeline of the assessment collection procedures, with references to the new requirements:

1. Send the annual notices to the owners; the new one required by Civil Code Section 1365.1 and the lien and collection policies and procedures (as well as all other annual disclosures).
2. If an owner becomes delinquent, make the decision whether to record a lien or not. **(This is new:)** Note that the board must make this decision at an open meeting (by a majority vote and reflected in the minutes). This decision cannot be delegated to anyone else. Protect the owners' identity by referring to the property by parcel number.
3. At least thirty days before recording a lien, send a pre-lien letter to the delinquent owner. The prelien letter needs to include the following:
  - (a) A general description of the collection and lien enforcement procedures of the Association;
  - (b) the method of calculation of the delinquent amount;
  - (c) a statement that the owner of the separate interest has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code;
  - (d) a statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION;"
  - (e) 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;
  - (f) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association;
  - (g) The right to request a meeting with the Board;
  - (h) **(This is new:)** The right to dispute the assessment debt by submitting a written request for dispute resolution pursuant to Civil Code Sections 1363.810, et. seq.; and
  - (i) **(This is new:)** The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 1369.510, et. seq. before the Association may initiate foreclosure, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.
4. **(This is new:)** Sometime before recording the lien, you must offer an owner a chance to "meet and confer" with the association pursuant to your dispute resolution program adopted under Civil Code Sections 1363.810 et. seq., if any. Even if you don't have a program, you still must make this offer.
5. Record the lien. The lien needs to include (a) the amount of the assessment and other sums imposed in accordance with Section 1366, (b) a legal description of the Owner's Unit, (c) the name of the record Owner of the Unit, and

(d) **(This is new:)** an itemized statement of the charges owed by the owner. In order for the lien to be enforced by nonjudicial foreclosure, the lien must also state the name and address of the trustee authorized by the association to enforce the lien by sale. The lien must be signed by the person designated in the CC&Rs or by the association for that purpose, or if no one is designated, it must be signed by the president of the association.

6. Send a copy of the recorded lien to every person whose name is shown as an owner of the home by certified mail no later than 10 calendar days after recording.

Alright! So, now you have a lien recorded against the delinquent owner. Now what? Well, until the principle assessment amount is \$1,800.00 or 12 months delinquent, you can't do anything with the lien. It'll just sit there, protecting the association's position in the event of a bankruptcy, sale or refinance.

Once the delinquency reaches \$1,800.00 or 12 months delinquent, the association may proceed with judicial or nonjudicial foreclosure to collect the delinquent payments. However, before it can proceed, all the following has to happen:

1. **(This is new:)** At least 30 days prior to any sale, make the decision to initiate foreclosure. This decision can only be made by the board, by a majority vote in executive session, and may not be delegated to anyone else. This vote must be put in the minutes of the next open meeting. Maintain the confidentiality of the owner or owners by identifying the matter in the minutes by the parcel number of the property.
2. **(This is new:)** Provide notice by personal service to an owner who occupies the home or to the owner's legal representative, of the board's decision to foreclose on the home. If the owner does not occupy the home, you must provide written notice by first-class mail, postage prepaid, to the most current address shown on the books of the association.
3. **(This is new:)** Sometime before starting a foreclosure on an owner's home, you must offer the owner to participate in dispute resolution pursuant to Civil Code Section 1363.810 et. seq., or alternative dispute resolution as set forth in Civil Code Section 1369.510 et. seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution is the choice of the owner, except that binding arbitration is not available if the association intends to initiate a judicial foreclosure.

If at any time in this process the owner agrees to participate in dispute resolution, the association must participate. The new law does not reference how the costs of the dispute resolution are to be shared, unless it is found that the association has recorded a lien in error. If there is an error, the association must pay all the costs of the dispute resolution, as well as reverse all late charges, fees, interest, attorneys' fees, collection costs and other costs. If there is no error, "meet and confer" costs cannot be charged to an owner, but ADR costs can be "...borne by the parties."

Also, owners will now have the right to provide you with a secondary address to send information to. If you receive such a secondary address, you must send additional copies of everything to this second address. ■