

Bollinger Hills Homeowners Association

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 in a timely fashion. The Association is entitled to recover assessments, reasonable collection costs, reasonable attorney's fees, late fees and interest. The Association may not use non-judicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or guest, if the governing documents so provide. The association must comply with requirements of 1367 or 1367.1 of the Civil Code when collecting delinquent assessments. If the Association fails to follow these requirements, it may not record a lien until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the Association. (Note: Civil Code Section 1367 applied to the collection of liens recorded before January 1, 2003.)
2. Assessments are due bi annually on January 1st and July 1st and are delinquent at 5:00 p.m. on the 30th of the month, at which time a late charge of \$10.00 or 10% of the assessment (or special assessment), whichever is greater will be charged on following month. All balances due as of 5:00 p.m. on the 30th day of the month will be subject to interest of 12% per annum. All such amounts must be paid in full and the Association shall not be required to accept partial payments absent an agreement. (Note: Amended Section 1366(e) provides that assessments shall become delinquent on the 15th day after they become due, unless the governing documents provides for a longer time period, in which case, that period applied. Also, the late charges and interest rate will be determined by statute, unless the governing documents provide for a lesser amount, in which case the amount in the governing documents applies.)
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 30-day 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. 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.

5. On or about the 30th day after the Pre-Lien Notice is sent, if all such amounts have not been paid, a Notice of Delinquent Assessment (“Lien”) will be prepared and recorded. All resulting collection fees and costs will be added to the total delinquent amount as the Association reserves the right to recover costs of collection. A copy of the recorded Lien will be sent, certified mail, to the address as described in item (5) above, 10 days after recordation. If a lien is recorded in error, the person who recorded the lien is required to record a lien release within 21 days.
6. All charges assessed to the account must be paid in full as a condition to curing and releasing such Lien, and the Association shall not be required to accept any partial or installment payments from the Lien date to the time that all such amounts are paid in full, except by a execution of a mutually agreeable payment plan and forbearance agreement. Arrangements for such an agreement must be made with the Association’s Agent assigned to the collection of the account.
7. If all such amounts have not been paid, in full, within thirty (30) days after the recordation of such Lien, the Association may, without further advance notice, proceed to take any and all additional enforcement remedies as the Association, in its sole discretion, deems appropriate, including, without limitation, non-judicial foreclosure of such Lien, judicial foreclosure, or suit for money damages, all at the expense of such owner.
8. When a payment is made, 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 person who received it.
9. Each payment from an owner shall be applied first to the principal sum owed, then, in descending order, to interest, late and collection expenses, unless a payment agreement and forbearance agreement is executed between the Association and the owner.
10. Assessment collection issues are generally exempt from Civil Code Section 1354, which provides a process for resolving matters through alternative dispute resolution (ADR). An owner may dispute an assessment by giving the Board a written explanation and the Board must respond within 15 days if certain conditions are met. However, a homeowner may lift the exception for association assessments through the following steps:
 - a. Homeowner pays in full all of the assessments in dispute, late charges, interest and all fees and cost associated with preparation and filing of a lien (including mailing costs, and attorneys fees not to exceed \$425);
 - b. This payment must be made along with a written statement of protest from the homeowner, which is sent to the association via certified mail, not more than 30 days after the Lien is recorded;
 - c. Upon receipt of such a written protest, the association must inform the owner of the right to resolve the matter through ADR as set forth in Civil Code Section 1354, a civil action or any other procedures that the Board might establish to resolve this matter. The Association is under no obligation to agree to ADR, even if an owner properly requests ADR;

- d. A homeowner may use this exception for ADR for delinquent disputes not more than 2 times in any single year and not more than 3 times in any five calendar years;
 - e. If through ADR it is determined that some of the assessments are levied in error, the homeowner is entitled to recovery of interest in a reasonable amount.
11. An owner may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform the owner of the standards for payment plans, if any exist. The Board must 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 of delinquency, unless there is no regularly scheduled BOD meeting during that period. In that case, the BOD may designate a committee of one or more members to meet with the owner. These payment plans must conform with the payment plan standards of the association, if they exist.
 12. 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.
 13. The mailing address for overnight payment of assessments is the same as that for routine assessment payments unless otherwise noted.
 14. An owner of a separate interest has the right to inspect the association's records pursuant to Corporations Code Section 8333 (Note: See Civil Code Section 1367.(a)(1).).
 15. 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.

ADDENDUM TO DELINQUENCY POLICY

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 NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using 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 lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. **(Sections 1366 and 1367.1 of the Civil Code)**

In a 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 for this. **(Sections 1366 and 1367.1 of the Civil Code)**

The association must comply with the requirements of Section 1367.1 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 1367.1 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. Among these documents, the association must send 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 1367.1 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 1367.1 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.

(Sections 1367.1 and 1367.1 of the Civil Code)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. **(Sections 1366.3 and 1367.1 of the Civil Code)**

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 1367.1 of the Civil Code)**

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share 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 1367.1 of the Civil Code)

The board of the directors 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 1367.1 of the Civil Code)**

On the 11th day of November, 2002 I do hereby approve the Bollinger Hills HOA policy on Collections of Delinquent Assessments and addendum by authority given to me by consent of the Board of Directors as follows:

DIRECTOR

Victor Petersen	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Absent/Not Voting <input type="checkbox"/>
John Youngblood	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Absent/Not Voting <input checked="" type="checkbox"/>
Susan Friedman	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Absent/Not Voting <input type="checkbox"/>
Greg Tedesco	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Absent/Not Voting <input type="checkbox"/>
Rene Harwood	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Absent/Not Voting <input type="checkbox"/>

Terry S. Cunningham - Treasurer