

Mesa View Homeowners' Association #2 (MVHOA #2)
Assessment Collection Policies
Effective April 13, 2021

1. Regular and Special Assessments. Regular assessments are billed twice a year for 6 months in advance. They are due January 1 (late if postmarked after January 31) and July 1 (late if postmarked after July 31). Special assessments shall be due and payable on the due date specified by the Board in any notice imposing the special assessment, or in a ballot presenting the special assessment to the members for approval where required. A special assessment will not be due and payable earlier than fifteen (15) days after the special assessment is duly imposed.

2. Late charges and Interest. A late charge (currently \$1.00) per billing cycle will be applied if payment is not postmarked by January 31 or July 31. Interest (currently 12% APR or 1% per month) may be added to the past due balance of assessments. Interest may also accrue on late charges and costs of collection.

3. Costs/ Attorney Fees Incurred in Collection. Pursuant to Civil Code Section 5650(b)(1) the Association is entitled to collect reasonable attorney's fees and costs incurred in collecting delinquent assessments, whether incurred in the event of a lawsuit or other proceedings, such as a non-judicial foreclosure. These fees will be added to the Owner's account and the Owner is responsible to pay them. This also includes direct costs incurred by the Association.

All assessments and collection costs are the personal obligation of the owner and are a debt of the owner of the separate interest at the time that the assessment or other sums are levied.

4. Application of Payments on Delinquent Assessments. Payments received on delinquent assessments will be applied first to the principal owed, then applied to interest, late charges, collection expenses, administration fees, attorneys' fees, reimbursement assessments, monetary penalties or fines, and any other amount due to the Association in connection with collection of delinquencies.

5. Communications to Delinquent Homeowners:

--- **Step 1: Billing Statements.** When late fees, interest or collection costs are added to a Homeowner account, they will be sent a billing statement each month showing the late fee, interest and collection costs and the new balance owed. The statement will include a notation to please contact the HOA if there any problems or questions about the fees or account balance. Billing statements are a courtesy. Owners are responsible for making payments on time, whether or not a statement is received.

--- **Step 2: Collection Letter.** When a homeowner is delinquent, they may be sent a letter stating that their account is past due. It will show the balance owed including late fees, interest and any collection costs. It will ask the homeowner to contact the HOA if they

have questions regarding the balance or fees. It will alert the homeowner that if payment is not received within 30 days of the date of the letter, they will receive a Pre Lien Letter which will add additional fees to their account and start the lien process.

--- **Step 3: Pre Lien Letter.** If a homeowner has not paid their balance by the 30 day deadline included in the Step 2 - Collection Letter, they will be sent a Pre Lien Letter via Certified Mail. This letter has very specific legal requirements of items to be included. This Pre Lien letter will incur significant collection costs which will be added to the homeowner's account. This letter will include a 35 day deadline to pay the past due account balance. Failure to pay will result in a lien being recorded against their property upon authorization of the Board of Directors.

6. Assessment Lien. If the delinquent homeowner does not bring their account current with the deadline set forth in the Step 3 - Pre Lien Letter, the Association may refer the matter to the Association's attorneys for collection and will record a lien ("Notice of Delinquent Assessment") with the San Diego County Recorder's office which sets forth the amount of delinquent assessment and other sums levied such as late charges, costs and reasonable attorney's fees, a legal description of the property, the name of the recorded owner, and name and address of Trustee authorized to enforce the lien by sale. Any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof (i.e. a continuing lien). Additional monies shall accrue under this claim at the rate of regular or special, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of the originally recorded lien. Recording this notice creates a lien, which may be foreclosed upon by the Association. The recording of this Notice will create a lien on the Owner and would make their property subject to foreclosure. A copy of the lien will be mailed to the Owner within ten (10) calendar days after recordation.

7. Foreclosure. If an Owner is delinquent for thirty (30) additional days after the Notice of Delinquent Assessment/Lien has been recorded and sent to the delinquent Owner, non-judicial foreclosure proceedings may begin pursuant to the Association's Declaration of Covenants, Conditions and Restrictions (CC&R's) and Civ. Code 5700 and 2924 et. seq.

A. Notice of Default and Election to Sell

A-1. A Notice of Default and Election to Sell (NOD) will be recorded at the County Recorder's Office (a ninety (90) day time frame beginning with the filing of the NOD.)

A-2. A Title Report will be obtained from a title company, the cost of which is charged to the Owner.

A-3. Attorney's fees will be imposed at this stage.

B. Notice of Sale

B-1. If the delinquency is not cured within ninety (90) days after the NOD is recorded, (and a lawsuit has not been filed as set forth in Section 9) the HOA may proceed with the recording and publishing of a Notice of Sale (NOS). Attorney's fees in addition to publication, recording, posting and other related costs may be charges.

8. Lawsuit. The HOA may, at any time, decide to file a personal lawsuit against the delinquent Owner to recover all delinquent assessments owed to the Association, in lieu of pursuing foreclosure. In the event of a lawsuit, all costs and attorney's fees in connection with the lawsuit, in addition to delinquent assessments, late charges and other charges will be paid by the delinquent Owner.

9. Payment. If at any time an Owner pays all delinquent assessments and charges in full, the attorney will prepare a Release of Lien, which will be recorded in the San Diego County Recorder's Office.

10. Partial Payments. Once a delinquent account has been turned over to the Association's legal counsel, owners shall not send any assessment payments to the Association; such payments shall only be accepted by the Association's legal counsel. Any payments delivered to the collection agent shall be forwarded to the attorney's office. Owner is permitted to submit partial payment on the delinquent amount owed. The notice of assessment lien is not required to be amended by the Association, its attorney or trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the notice of assessment lien. The notice of assessment lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments. The attorney shall then release the lien if and when payment in full has been made by the delinquent Owner.

11. Payment Plans. An Owner of a separate interest which is not a timeshare or who is not a developer may, if mailed to the Association within fifteen (15) days of the postmark date of the pay or lien notice, submit a written request to meet with the Board to discuss a payment plan for the payment of any delinquency. The Association shall provide the Owner with the Association's standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, unless there is no regularly scheduled Board meeting within that period, in which case the Board shall designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's separate interest 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. In the event of a default on any payment plan, the Association may resume its efforts to collect delinquent assessments from the time prior to entering into the payment plan. The Association shall have the power and authority to include (without limitation) the following elements/terms in any payment plan agreement that is reached with the Owner:

- a. That Owner comply with the governing documents during the course of the payment plan agreement;
- b. That Owner waive any defenses or claims related to the Association's collection efforts;
- c. That the Association may place a lien against other real or personal property owned by Owner;

- d. That Owner agrees to waive any homestead rights he/she may have relative to the delinquent assessments;
- e. That Owner assign the Association all amounts owed under any rental/lease agreement; and,
- f. That Owner be required to provide identifying information, including social security number, driver's license number, off-site address(es), phone numbers, etc.

12. Assessment Lien. Prior to recording an assessment lien, the Association shall offer the Owner and, if so requested by the Owner, the option of participating in dispute resolution, consistent with Civil Code sections 5910 and 5915, et seq. The Association's offer shall either be placed within the Association's Pay or Lien Letter or in a separate written communication to the Owner. An Owner who desires to accept the offer to "meet and confer" under this section shall elect such option by submitting a written request to the Association or the Association's legal counsel, which written request must be received by the Association within twenty (20) days from the date of the offer to "meet and confer." If the offer to "meet and confer" under sections 5910 and 5915, is accepted by the Owner, the Association shall designate a prompt date and time for the meet and confer, at a location that shall either be the Association's principal office or another convenient location as designated by the Association. The Association shall designate a Board officer, along with its Property Manager to participate in the meet and confer with the Owner.

- b. Foreclosure. Prior to initiating foreclosure proceedings against an Owner's separate interest, the Association shall offer the delinquent Owner, and if so requested by the Owner, to meet and confer with a delinquent Owner (Civil Code sections 5910 and 5915) OR alternative dispute resolution (Civil Code section 5925, et seq.) to resolve any dispute related to the total amount of delinquencies owed by the delinquent Owner to the Association and/or the Association's Collection Policy ("ADR Offer"). The Association's ADR Offer shall either be placed within the Association's Pay or Lien Letter or in a separate written communication to the delinquent Owner. An Owner who wishes to accept the ADR Offer must do so by submitting his/her/its written request to facilitate the ADR that is elected with the Association, which written request must be received by the Association within thirty (30) days from the day the ADR Offer is submitted to the delinquent Owner. The Association shall designate a prompt date and time for the elected ADR. If a "meet and confer" is elected by the delinquent Owner, the Association shall designate a Board member, along with its Property Manager to participate in the meet and confer with the delinquent Owner. 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.

13. COMPLIANCE WITH CIVIL CODE SECTIONS 5730 AND 5310. The following notice is set forth to comply with the Civil Code.

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 30 days after they are due, unless the governing documents provide for a longer time. The failure to pay the 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, the 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, the 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, the 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 with the payment plan standards of the Association if they exist. (Section 5665 of the Civil Code).

14. Overnight Payments. Overnight payments may be sent to 10606 Camino Ruiz, Suite 8, Box 224, San Diego CA 92126-3263