

*Assessment
Enforcement*

ISLE COVE HOMEOWNERS ASSOCIATION

Summary of the Association's Delinquency Policy

Timely payment of regular and Special Assessments is of critical importance to the Association. Members' failure to pay assessments when due creates a cash flow problem for the Association and causes those owners who make timely payments of their assessments to bear a disproportionate share of the Community's financial obligations. Therefore, the Board of Directors has enacted the following policies and procedures concerning the collection of delinquent assessment accounts:

1. All regular assessments shall be due and payable on the first day of each month. Special Assessments shall be due and payable on the date(s) specified by the Board upon their adoption.
2. Assessments shall be delinquent on the 15th day of the month after they become due, if not actually received prior to such date.
3. A twenty-five dollar (\$25.00) service fee will be charged on all checks returned by the bank.
4. Prior to the time the Association retains counsel to handle an assessment delinquency, the mailing address for overnight payment of assessments to the Association is:

Isle Cove Homeowners Association
C/O MUFG, Union Bank, N.A.
1751 Harbor Bay Parkway, Suite 100
Alameda, CA 94502

5. If any assessment is not received, in full, prior to the delinquency date, a late charge of 10% shall be due, and the Association may then commence enforcement action in any manner permitted by law, subject to, and in accordance with, all applicable legal requirements. In such event, the Association may recover from the delinquent owner any reasonable costs, including attorneys' fees that the Association incurs in its efforts to collect the delinquent sums, and may require that all such charges be paid in full, together with all delinquent assessments, late charges, interest or other charges due, to cure the delinquency.
6. If any assessment payment is due and unpaid for more than 30 days, interest shall be imposed on all sums due, including the delinquent assessments, collection costs (including attorneys' fees), and late charges, at the rate of 12% per annum.
7. Once any assessment is delinquent, the Association may cause a notice to be issued by certified mail to the owner's address of record of the existence and amount of the delinquency, and providing other relevant information ("Delinquency Notice").
8. Owners who dispute any amounts specified in a Delinquency Notice may submit a written request for dispute resolution to the Association under the Association's "meet and confer" dispute resolution program. If any such request is received by the Association, the Association will meet and confer with the owner making such request in accordance with the Association's "meet and confer" procedure.

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9. Owners desiring a payment plan to resolve the delinquency giving rise to a Delinquency Notice may submit a written request for a meeting with the Board to discuss a payment plan. Provided that such request is mailed within 15 days of the date of the postmark on the Delinquency Notice, and a regular meeting of the Board is scheduled to occur within 45 days, the Board will meet with the owner in executive session. If there is no such scheduled meeting during such period, a committee of one or more members may be designated by the Board to meet with the owner and discuss such request. Payment plans shall contain such terms as the Board, or its designated committee, may approve on a case by case basis, shall be in writing, and shall be signed by the owner(s) and an authorized representative of the Association.
10. If a delinquency has not been paid within 30 days after the mailing of a Delinquency Notice, the Association may cause to be recorded in the County Recorder's Office a Notice of Delinquent Assessment ("Lien") concerning all sums which are then due, including any assessments, late charges, costs, and reasonable attorneys' fees, to confirm and give public notice that the Association claims a lien against the delinquent owner's property which may be subject to foreclosure by either nonjudicial or judicial foreclosure.
11. From and after the recordation of a Lien, the Association may enforce the Lien, or otherwise pursue its rights to recover all unpaid assessments and related amounts due, in any manner permitted by law, including without limitation judicial or nonjudicial foreclosure, as the Association determines to be appropriate, subject to, and in accordance with, all applicable legal requirements.
12. Subject solely to the provisions of Paragraphs 8 and 9 above, (i) from and after the issuance of a Delinquency Notice, the Association, acting through counsel or any other authorized representative of the Association, may give written notice to the delinquent owner establishing a new address for all further communications to the Association relating to delinquent and/or newly accruing obligations for assessments and other charges due to the Association, and restricting the authorized addresses and/or recipients for any notices or other communications to the Association concerning, or during the pendency of, any delinquency proceedings relating to such Delinquency Notice; and (ii) once the Association has retained counsel to handle an assessment delinquency for the Association, communications concerning such matters on behalf of the Association shall be conducted exclusively by counsel for the Association and/or the trustee designated in the Lien until any such delinquency is fully satisfied.
13. Owners have the right to submit a written request to the Association identifying a secondary address for the purposes of collection notices. If the Association receives any such written request designating or changing any such secondary address, the Association shall send a second copy of any legal notices or other required correspondence issued in support of the Association's assessment enforcement procedures to such secondary address from and after the time of actual receipt by the Association of any such request.

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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 5600 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.

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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 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.

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Summary of Dispute Resolution Procedures

Internal Dispute Resolution (§5900)

This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

- (1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
- (2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.
- (3) The board shall designate a director to meet and confer.
- (4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
- (5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

- (1) The agreement is not in conflict with law or the governing documents of the common interest development or association.
- (2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member may not be charged a fee to participate in the process.

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Alternate Dispute Resolution (§5930)

Effective January 1, 1994, the law in California strongly encourages procedures alternative to litigation to resolve disputes between homeowners and HOAs and its residents/owners. There are various forms of Alternative Dispute Resolution (hereinafter referred to as "ADR") including mediation and arbitration. If the Association is considering suing a homeowner relating to enforcement of the Declaration of Covenants, Conditions, and Restrictions ("CC&Rs"), the Association must go through the preliminary steps of the procedure that are outlined below. If a homeowner is considering suing the Association for failure to enforce the governing documents or some other CC&R-based claim, the homeowner also must go through the preliminary procedure before filing a lawsuit. The steps are:

1. Either party must serve a "Request for Resolution" on the other party, either by certified mail (return receipt requested) or personal delivery. If a certified letter is sent out and no response is forthcoming, the personal delivery is required. The person who "serves" the Request for Resolution may not be a party to the action.
2. This Request for Resolution must include:
 - a. A brief description of the dispute between the parties;
 - b. A request for ADR; and,
 - c. A notice that the party receiving the Request for Resolution is required to respond within 30 days or it will be deemed rejected.
3. The party receiving a Request for Resolution has 30 days from the date he or she receives it to accept or reject ADR and if not accepted, it shall be deemed rejected.
4. If the party receiving the Request for Resolution agrees to ADR, the parties have 90 days to complete the process (more by agreement of the parties).
5. The costs of ADR shall be paid by the parties.
6. At the time either party files a civil action in court, that party must file a certificate stating that ADR has been completed in compliance with the law. Failure to file the certificate might be grounds for the other party to seek dismissal of the complaint. Conversely, the certificate should state that where the party filing the complaint served a Request for Resolution, it was either rejected or "deemed rejected" by the other party.
7. Exceptions to the process:
 - Where the time limit for bringing a legal action by a party would expire within 120 days;
 - Where temporary restraining orders or preliminary injunctions are needed immediately to stop a particular action;
 - Where either party would suffer substantial prejudice by delays caused by filing of the Request For Resolution; or,
 - Where any damage claim exceeds \$5,000.

Failure to follow the steps above would give a judge the right to decrease any attorney's fees award where either party of the lawsuit would otherwise be entitled to reimbursement of all reasonable attorney's fees under statute or contract.

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.