

PGA WEST RESIDENTIAL ASSOCIATION, INC.

**SUMMARY OF POLICIES AND PROCEDURES OF LIEN RIGHTS AND
OTHER LEGAL REMEDIES FOR DEFAULT IN PAYMENT OF
ASSESSMENTS - 2012**

1. **Regular and Special Assessments.** Regular assessments are due and payable, in advance, on the first day of each month. If imposed, special assessments shall be due and payable on the due date specified by the Board. Assessments, interest, late charges, costs and reasonable attorney's fees, if any are imposed, are the personal obligation of the person who was the owner of the subdivision interest at the time when the assessment fell due.
2. **Late Charges.** Regular and special assessments are delinquent fifteen (15) days after they become due. A late charge of ten percent (10%) of the delinquent assessment will be applied if payment in full is not received fifteen (15) days after the payment is due.
3. **Interest.** Interest at the annual rate of twelve percent (12%) may be charged on all sums due that are thirty (30) or more days delinquent.
4. **Additional Charges, Costs and Attorneys Fees.** Pursuant to *Civil Code Section 1366(e)(1)*, the Association is entitled to recover reasonable collection costs, including reasonable attorney's fees, incurred in connection with collection. Costs may include, but are not limited to publication, recording, posting, service and mailing.
5. **Application of Payments on Delinquent Assessments.** Payments received on delinquent assessments will be applied first to the regular or special assessments owed, and then applied to interest, late charges, collection expenses, administration fees, attorney's fees, reimbursement assessments, and any other amount due to the Association in connection with collection of delinquencies.
6. **Pay or Lien Letter.** Any Owner who is more than thirty (30) days delinquent in the payment of his or her assessments will be subject to an action to collect said delinquent assessments, including, but not limited to non-judicial foreclosure and/or a personal lawsuit. If the Association elects a non-judicial foreclosure remedy, the delinquent Owner may receive a pay or lien letter, via certified mail. The letter will be sent at least thirty (30) days prior to a lien being recorded against the Owner's property, and will notify the owner of record in writing of the following, pursuant to *Civil Code Section 1367.1*:

A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount;

An itemized statement of the amounts owed, including delinquent assessments, fees and reasonable costs of collection, reasonable attorney's fees, any late charges and interest if any;

The owners' right to inspect the Association's records to verify the debt;

The owners' right to request a meeting with the Board, as set forth below;

That the owner will not be liable for late charges, interest and costs of collection if it is determined that the assessment was paid on time to the association.

The owners' right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to its Meet and Confer Program (known as IDR/Internal/Informal Dispute Resolution) pursuant to *Civil Code* Sections 1363.810, et seq.;

The owners' right to request alternative dispute resolution (ADR) with a neutral third party pursuant to *Civil Code* Sections 1369.510 et. seq. before the association may initiate foreclosure against the owner;

1. **Owner's Dispute of Debt/Request For Meeting With Board Prior to Lien/Commencement of Small Claims Lawsuit.** Pursuant to *Civil Code* Sections 1367.1 and 1367.6, the owner has the following rights:

Meet and Confer. Prior to recording a lien, the Association shall offer and, if so requested by the owner, to participate in dispute resolution pursuant to the Association's meet and confer program (known as IDR-Internal/Informal Dispute Resolution) commencing with *Civil Code* Section 1363.810.

Request to Meet With Board to Discuss Payment Plan. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt owed. The Association will provide any standards it has adopted regarding payment plans to Owners. The Board will meet with the Owner in executive session in conjunction with a regularly scheduled Board meeting, within 45 days of the postmark of the request, if such was mailed no later than 15 days after the postmark of the pay or lien letter. If there is no regularly scheduled Board meeting within that period, the Board may designate a committee of one or more members to meet with the Owner.

Payment Under Protest and Commencement of Small Claims Action. In addition to pursuing dispute resolution pursuant to *Civil Code* Section 1363.810, pursuant to *Civil Code* Section 1367.6, the Owner may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, and may thereafter commence an action in Small Claims Court provided the amount in dispute does not exceed the jurisdictional limits of that Court.

8. **Lien/Notice of Delinquent Assessment.** If the delinquent owner does not bring their account current within thirty (30) days of the Pay or Lien Demand Letter, and unless a dispute over such debt has been resolved or a payment plan has been entered into as set forth above, a Lien (also referred to as Notice of Delinquent Assessment) may be recorded against the owner's property upon a majority of the Board voting to record the Lien in an open meeting. The Board shall record the vote in the minutes of that meeting. The President or other person designated by the Association shall sign the lien. Such lien will set forth the amount of delinquent assessments and all other sums owed, such as late charges, costs and reasonable attorneys fees, a legal description of the property, name of the record owner, and the name and address of the trustee authorized to enforce the lien by sale. A copy of the itemized statement of charges owed by the owner shall be recorded together with the Notice of Delinquent Assessment.

A copy of such Lien will be mailed to every person whose name is shown as an owner of the separate interest in the Association's records within 10 days of the date the Lien is recorded. Upon receipt of a written request by an owner (mailed in a manner indicating the association has received it, such as by certified mail) identifying a secondary address for purposes of collection notices, the association shall also send additional copies of any required collection notices to such secondary address. The Lien is subject to non-judicial foreclosure, and the property may ultimately be foreclosed upon and sold without court action to satisfy the debt owed. Reasonable attorney's fees and costs may be collected in connection with preparing and recording the lien.

9. **Dispute of Charges After Lien.** Prior to initiating foreclosure for delinquent assessments, the Association 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 (known as IDR-Internal/Informal Dispute Resolution pursuant to *Civil Code Sections 1363.810 et. seq.*, or Alternative Dispute Resolution with a neutral third party pursuant to *Civil Code Sections 1369.510 et. seq.* The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner (binding arbitration not available if the Association pursues judicial foreclosure.)

10. **Cable Disconnect Notice and Gate Transponder Deactivation Notice.** Notice will be sent to any Owner who is sixty (60) days delinquent in the payment of his or her assessments, advising that if payment in full is not received within fifteen (15) days of the date of any such notice, the Association will turn off the television service to the Owner's separate interest. Please note that disconnecting the Association's bulk cable television services may also result in the disconnection of other television or internet services individually contracted for by the Owner. In the event an Owner's television service is disconnected pursuant to this section, when the account is brought current and service is restored, an eighty-four dollar (\$84.00) re-connection fee will be assessed against the Owner's account.

Additionally, notice will be sent to any Owner who is sixty (60) days delinquent in the payment of his or her assessments advising that if payment in full is not received within fifteen (15) days of the date of any such notice, the Association will deactivate the gate operation transponder which

operates entrance gates granting the Owner access to the project. In the event a delinquent homeowner has not previously been issued a transponder, he or she will not be issued said transponder until his or her delinquent account has been brought current. The Association shall not otherwise deny any delinquent Owner the right of ingress and egress over, through and across Association property to that Owner's separate interest. Such access may be obtained by the delinquent homeowner, or his or her guests and invitees, through a manned gate but will be required to first obtain a daily pass granting such access.

The foregoing notice will provide that, prior to actual turn-off of the Owner's television service or deactivation of the Owner's gate operation transponder, the Owner is entitled to notice and opportunity to be heard before the Board or a designated Committee. In the event, the Owner does not request a hearing within fifteen (15) days from the date of such notice, the Owner will be deemed to have waived his or her right to a hearing and cable television service will be turned off and the gate operation transponder will be deactivated. The hearing will be held in accordance with the Association's standard Notice and Right to Hearing Policy found in the Association's Governing Documents.

11. **Foreclosure.** If the delinquent owner does not bring their account current after the Lien has been recorded, and after the foregoing offers of dispute resolution have been presented, a majority of the Board may vote to initiate foreclosure on the Lien in an executive session meeting of the Board. The Board may only authorize foreclosure on a Lien for those regular or special assessments which are of an amount equal to or exceeding one thousand eight hundred dollars (\$1,800) exclusive of late charges, fees, costs of collection, attorney s fees and interest, or which are more than twelve (12) months delinquent. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. Confidentiality shall be maintained by identifying the property by parcel number in those minutes.

The Board shall also vote to approve foreclosure on a Lien, which vote shall occur at least thirty (30) days prior to any public sale of the owner's separate interest property. The Board shall deliver notice of the foreclosure sale by personal service to owner-occupants or to the owner's legal representative, and by first class mail, postage pre-paid to non-occupant owners at the most current address shown on the association's books.

Non-judicial foreclosure will then commence by the Association's law firm, pursuant to the CC&Rs, and *Civil Code* Sections 1367.1 and 2924, et seq. as follows:

Initiate Foreclosure-Notice of Default and Election to Sell (NOD). A Notice of Default and Election to Sell (NOD) will be recorded with the County Recorder's Office, which puts the property into foreclosure. The Association cannot proceed with the nonjudicial foreclosure action for ninety (90) days from the date the NOD is recorded. The delinquent owner is responsible for all fees and costs incurred to initiate foreclosure in addition to the delinquent assessments, late charges and interest.

Approve Foreclosure- Notice of Sale (NOS). If the delinquency is not cured within ninety (90) days of the NOD being recorded, the attorney will proceed by recording, publishing and posting a NOS upon receipt of approval and authorization of that action by the Board pursuant to a vote. The delinquent owner is responsible for all fees and costs incurred to prepare, record, publish and post the NOS, in addition to the delinquent assessments, late charges and interest.

12. **Payments After Lien.** Once a delinquent account has been turned over to the law firm, THE ASSOCIATION WILL NOT ACCEPT ANY ASSESSMENT PAYMENTS. ANY SUCH PAYMENTS WILL BE FORWARDED TO THE LAW FIRM AND WILL BE RETURNED TO THE OWNER UNLESS THEY ARE PAYMENT IN FULL OF ALL OUTSTANDING AMOUNTS, OR ARE PAYMENTS REMITTED PURSUANT TO WRITTEN FORBEARANCE AGREEMENT.

13. **Redemption.** An owner may redeem the property foreclosed upon within ninety (90) days after the sale, by paying all charges owed.

14. **Lawsuit.** The Association may, at any time, determine to file a personal lawsuit against the delinquent Owner to recover all delinquent charges pursuant to relevant law. All costs and attorney's fees in connection with the lawsuit, in addition to the delinquent charges and other collection costs, will be sought from the delinquent owner.

15. **Release of Liens Upon Payment.** Within twenty-one (21) days of payment in full of all delinquent assessments and charges, or if it is determined that a lien previously recorded was in error, a Release of Lien will be prepared and recorded in the County Recorder's Office, and owner will be provided with a copy of such release or notice that the delinquent assessment has been satisfied.

16. **Right To Receipt.** When an owner makes a payment, the owner may request a receipt and the Association will provide same, which shall indicate the amount of payment, date of payment and person who received such payment.

17. **Overnight Payments.** Payments may be made by overnight mail to the following address:

If account is being handled by Association:
If account is being handled by Attorneys office:

PGA WEST Residential Association 54-
320 Southern Hills
La Quinta, CA 92253
(760) 771-1234

Peters & Freedman, L.L.P. Attn:
Collection Department
43-100 Cook Street, #202
Palm Desert, CA 92211
(760) 436-3441

