

FIESTA GARDENS ASSOCIATION, INC.
ASSESSMENT COLLECTION POLICY

NOTICE TO MEMBERS: This document sets forth the Association's policy regarding the collection of assessments pursuant to the Association's Declaration of Covenants, Conditions & Restrictions, its Bylaws, and California Civil Code §§ 5600-5740.

1. **ASSESSMENTS IN GENERAL.** The Association has a duty to levy regular and special assessments sufficient to perform its obligations under the governing documents and California law. Regular assessments are determined at least once annually and are payable annually or at such other intervals as the Board of Directors shall designate. The Association shall distribute the written notice described in Civil Code § 5730 to each member of the Association during the 60-day period immediately preceding the beginning of the Association's fiscal year.
2. **OBLIGATION TO PAY ASSESSMENTS.** A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Civil Code §§ 5600-5650, shall be a debt of the owner at the time the assessment or other sums are levied. Each assessment or charge is also a lien on the owner's property from and after the time the Association causes a Notice of Delinquent Assessment Lien to be recorded with the Recorder's Office of San Mateo County.
3. **MONETARY CHARGE FOR REIMBURSEMENT TO ASSOCIATION FOR DAMAGE TO COMMON AREAS AND FACILITIES.** A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Civil Code sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents.
4. **MONETARY PENALTY IMPOSED BY THE ASSOCIATION AS A DISCIPLINARY MEASURE.** A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing documents, except for late payments, may not be characterized nor treated in the governing documents as an assessment that may become a lien against the member's lot interest enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.
5. **NOTICE OF ASSESSMENTS.** Not less than 30 days nor more than 60 days before any increase in the regular assessment or any special assessment becomes due, the Association will give the owners notice of the assessment pursuant to Civil Code section 4040. The Board of Directors may elect from time to time to provide additional periodic statements of assessments and charges, but lack of such statements does not relieve the owners of the obligation to pay assessments.
6. **DESIGNATION OF AGENT.** The Board of Directors may designate an agent or agents to collect assessment payments and administer this Assessment Collection Policy. Such designated agent may be an officer of the Association, manager, collection service, banking institution, attorney, law firm or other appropriate agent.
7. **ASSOCIATION CANNOT VOLUNTARILY ASSIGN OR PLEDGE THE ASSOCIATION'S RIGHT TO COLLECT.** An Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of an Association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien per the Covenants, Conditions and Restrictions (CC&R's), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be

conducted in accordance with Civil Code sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in sections 2924c and 2924d.

8. **DUE DATE/ DELINQUENCY DATE OF ASSESSMENTS.** Unless otherwise specified by the Board or the governing documents, an assessment is due on the first of each month. An assessment, or any portion thereof, is delinquent if it has not been received as directed by the Board or its designated agent 15 days after it is due.
9. **LATE CHARGES AND INTEREST ON DELINQUENT AMOUNTS.** Delinquent accounts become subject to the following additional charges as contained in Civil Code § 5650(a) and the governing documents: costs of collection including reasonable attorney's fees; a late charge of **\$10.00 or 10% of the delinquent assessment, whichever is greater** and interest on all sums (including the delinquent assessment, collection fees and costs, and reasonable attorney's fees) at an annual interest rate of 10% commencing 30 days after the assessment becomes due, whether or not charged prior to collection. If it is determined the assessment was paid on time to the Association, the owner will not be liable to pay the charges, interest, and costs of collection.
10. **COLLECTION CHARGES.** Any costs and fees incurred in setting up, processing and collecting delinquent amounts, including, without limitation, late charges, statement charges, monthly administrative charges, charges for preparation of delinquency notices or collection charges, or request for a payment plan as well as the recordation of a lien or initiation of foreclosure proceedings, postage, copies, envelopes, labels, filing and recordation charges, delivery charges, and attorney's fees and costs, title searches, bankruptcy searches, pulling copies or grant deeds or property ownership history, address and or phone number verification searches, in addition to any other charges necessary to collect a delinquent assessment shall become an additional charge against the owner and the owner's property and shall be subject to collection action pursuant to this Policy.
11. **APPLICATION OF PAYMENTS.** Partial payments will be applied first to the oldest assessments owed, and, only after the assessments owed are paid in full will the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. Owners may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. Payments may be required to be made in certified funds, by cashier's check, or by money order.
12. **INITIAL DELINQUENCY NOTICE.** Once an assessment, or any portion thereof, has become delinquent, the owner may receive an initial delinquency notice stating all amounts past due and any known collection charges imposed as of the date of the notice, which may be in the form of a letter, monthly statement, past due notice, or any other form of writing or notice from the Association or its designated agent.
13. **NOTICE OF INTENT TO RECORD A LIEN.** If an assessment account remains unpaid, the Association or its designated agent shall, at least 30 days prior to recording a lien upon the separate interest of the owner, notify the owner of record in writing by certified mail pursuant to Civil Code § 5675(e).
14. **RECORDING OF LIEN.** At the expiration of 30 days following the Notice of Intent to Record a Lien, the Association or its designated agent will without further notice to the owner, record a lien against the owner's property. The notice of delinquent assessment shall be mailed in the manner set forth in Civil Code section 2924b, to all record owners of the owner's interest no later than 10 calendar days after recordation.
15. **ASSOCIATION LIEN SUBORDINATION.** A lien created pursuant to this Policy shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.
16. **RECORDING OF RELEASE OF LIEN.** A release of lien will not be recorded until the entire balance of the owner's account is paid in full. All charges incurred in recording a Release of Lien, including reasonable attorney or agent fees and costs, will be charged to the account. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide

the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

17. **LIEN RECORDED IN ERROR.** If it is determined that a lien previously recorded against a separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded, a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the Association fails to comply with the procedures set forth in this section it shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the owner of a separate interest.
18. **FORECLOSURE.** Foreclosure proceedings may not begin until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. An Association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Civil Code §§ 5900-5965.
19. **DEED IN LIEU OF FORECLOSURE.** Nothing in this section or in subdivision (a) of section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created or prohibits an Association from taking a deed in lieu of foreclosure.
20. **PAYMENT PLAN AGREEMENT.** An owner of a separate interest may submit a written request to meet with the Board of Directors to discuss a payment plan agreement to allow the owner to make periodic partial payments on the entire balance of the assessment account in addition to assessments that will accrue during the payment plan period. The Association has no obligation to enter into such a payment agreement. If the Association accepts an agreement with the owner it shall be reasonable, as determined by the Board in its sole discretion, and in accordance with the standards for payment plans if any exist. The payment agreement shall be in writing and will include a provision that additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. Interest and administrative charges will accrue until the account is paid in full. The agreement will also include a provision that in the event of a default on the payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan. A lien will be recorded against the property to secure debt for the Association. The owner will be charged for the additional collection fees and costs to administer the payment plan. The Board shall 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 *13.0 Notice of Intent to Record a Lien* unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.
21. **VALIDATION OF DEBT.** Unless an owner disputes the validity of the debt, or any portion thereof, within thirty (30) days after receipt of the notice pursuant to *13.0 Notice of Intent to Record a Lien*, the debt will be assumed to be valid. Validation of the debt will be provided in writing, at no additional cost to the owner and will include:
 - 1) 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;
 - 2) the Association's name; and
 - 3) the Association's mailing address.
22. **DISPUTES.** Federal law states that initial dispute can be either oral or in writing. State law requires disputes to be in writing. It is therefore recommended that all disputes be put in writing to avoid misunderstanding. An owner may pay the amount owed under protest and then commence an action in small claims court.

23. **DISPUTE RESOLUTION PROCEDURE, MEET AND CONFER.** An owner has the right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code §§ 5900-5920. A copy of the Meet and Confer Procedure (Internal Dispute Resolution) is attached to this collection policy as an Exhibit "A".
24. **ADR-ALTERNATIVE DISPUTE RESOLUTION.** An owner has the right to request alternative dispute resolution with a neutral third party pursuant to Civil Code § 5935 before the Association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure.
25. **OWNER HAS RIGHT TO REQUEST MEETING WITH BOARD.** Owner has the right to request a meeting with the board. The board shall 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 in *13. Notice of Intent to Record a Lien*, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.
26. **OWNER HAS RIGHT TO INSPECT ASSOCIATION RECORDS.** Owner has the right to inspect the Association records, pursuant to sections 5200-5240 of the Civil Code. Owner should contact the Association's managing agent for the policies and procedures set forth to inspect the records.
27. **OTHER REMEDIES.** The Association reserves the right to avail itself of any other remedy permitted by law and the Association's governing documents to collect assessments and related costs and charges, including but not limited to bringing an action in Small Claims or Superior Court. Such remedies may be taken in addition to, or in lieu of, any action already taken, and commencement of one remedy shall not prevent the Association from electing at a later date to pursue another remedy.
28. **ADDRESS OF THE ASSOCIATION AND THE BOARD OF DIRECTORS.** Owners should respond in writing or make payments to the address as directed by the designated agent. **Overnight payments and Correspondence** should be mailed to: Fiesta Gardens Association, Inc., 1075 Bermuda Dr., San Mateo, CA 94403 This address is subject to change after the distribution of this policy. Notification of a change will be in writing to the membership through normal day-to-day correspondence from the Association or its managing agent. It is the owners' responsibility to note any changes for their records.
29. **RETURNED PAYMENTS.** Payments returned for insufficient funds, closed account, stop payment or for any other reason will be charged back to the owners account in addition to any administrative fee, bank fee or collection fees and costs incurred to handle the returned payment. If any two payments to the account in a 24-month period are "Returned" to the bank, personal checks will no longer be accepted. The charge for a returned check will be \$25.00 at a minimum.
30. **SUFFICIENCY OF NOTICE.** Except for notice that under California law must be sent by certified mail, notice is sufficient if hand delivered, sent by express mail, or overnight delivery, or mailed first class, postage prepaid, to the owner at the address on the membership register at the time of notice. Notice is deemed delivered when the notice is deposited in the United States mail. Owner is required to notify the Association of any change in the owner's name or mailing address. An owner may provide written notice to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required pursuant to the article to both the primary and secondary address.
31. **VOID PROVISIONS.** If any provision of this Policy is determined to be null and void, all other provisions of the Policy shall remain in full force and effect.

Exhibit "A"

ASSESSMENT COLLECTION POLICY: OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER AND ADR DISPUTE RESOLUTION MEET AND CONFER PROCEDURE CIVIL CODE § 5900-5920

WHO MAY START: This procedure may be invoked by the Association or an Owner. Either party may make a written request to meet and confer to resolve a dispute. The Board shall designate a member or members of the Board to meet and confer.

WHO PARTICIPATES: When a written request for Dispute Resolution is received from an owner, the Association shall participate. If the Association makes a written request for an owner to participate, the owner may elect not to participate.

NON-PARTICIPATION BY THE OWNER: If the owner declines to participate, the Association may begin Alternative Dispute Resolution, pursuant to Civil Code §§ 5925-5965.

IF THE OWNER PARTICIPATES, THEN THE MEET AND CONFER TAKES PLACE:

- A. The Association will act on a request by the owner within 45 days of receipt of the written request to meet.
- B. The meeting shall be established in good faith, take place promptly at a mutually convenient date, time and location (public location recommended). Each party shall explain their position and shall confer in good faith to resolve the dispute.
- C. If an attorney or other person will be present to assist the owner, the Association must be notified in writing 10 days prior to the established date. If notice is not given 10 days prior, the Association may request a continuance. Each party to pay for their own costs.
- D. An agreement resolving the dispute by the parties shall be made in writing and dated and signed by the parties, including the Board designee(s) on behalf of the Association.
- E. If the owner participates, but the dispute is resolved other than by agreement of the owner, the owner shall have the right to appeal to the Association's Board of Directors.

NO CONFLICT:

- A. The resolution must not be in conflict with the law or the governing documents.
- B. The agreement must be consistent with the authority granted by the Board of Directors to its designee or the Board must ratify the agreement.
- C. The written agreement, which is dated and signed by the parties, will bind the parties and be judicially enforceable.

NO FEE: No fee will be charged to the owner during this process.

EXCEPTIONS: Reasonable exceptions may be made to the time deadlines, in the discretion of the Board. Any exceptions will be made on a case-by-case basis.

ADR - ALTERNATIVE DISPUTE RESOLUTION CIVIL CODE §§ 5925 - 5965 (SUMMARY)

1. If an association, owner or member of an association seeks either:
 - A. Declaratory or injunctive relief; or
 - B. Declaratory or injunctive relief and a claim for monetary damages not in excess of the jurisdictional limits of small claims court (as of January 1, 2012: \$10,000 for individuals or \$5,000 for homeowner association), other than for association assessments, concerning the enforcement of the governing documents; the parties shall submit their dispute to Alternative Dispute Resolution (ADR), such as mediation or arbitration. A Request for Resolution ("Request") begins the process and shall include: 1) A description of the dispute; 2) A request for ADR; and 3) Notice that the party receiving the Request is required to respond within thirty (30) days or the Request will be deemed rejected.
 - C. This procedure does not apply to small claims actions.
 - D. Except as required by law, this procedure does not apply to an assessment dispute.
2. A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.
3. If the Request is accepted, ADR shall be completed within ninety (90) days from the date of acceptance, or it can be extended by a written stipulation signed by both parties.

"FAILURE OF A MEMBER OF THE ASSOCIATION TO COMPLY WITH THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS OF SECTION 5935-5940 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."

Unless otherwise stated by the Association, this document serves as the Association's OFFER FOR INTERNAL DISPUTE RESOLUTION (IDR), MEET AND CONFER, AND ADR and it serves as its procedure f