

# AVOCET

## ASSOCIATION, INC.

C/o Association Management Group  
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### ASSESSMENT COLLECTION POLICY

Adopted April 2009

**The Board of Directors for Avocet Association, Inc. has adopted the following policy for the collection of homeowner's assessments:**

- 1. Due Date:** Homeowner's assessments are due and payable quarterly on the 1st day of January, April, July and October, whether or not a homeowner ("Owner") receives a bill from the Association. Homeowners are required to prepay assessments in three month increments and must be paid in full to avoid a late charge.
- 2. Payment Location:** The Association is the collector of the assessments, late fees and interest. Assessments may be paid by check or by electronic payments. Please contact the Association in writing to make arrangements for electronic payments. Please submit all payments including overnight mail deliveries to the Association business address:  

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- 3. Returned Check / Payment Charge:** A Return Check / Payment Charge of \$25.00, in addition to any late charge, if applicable, will be assessed against an Owner's account whose check has been returned or whose electronic payment is not made by the bank for any reason.
- 4. Late Charge:** On the 16th day following the due date of any assessment, the assessment is delinquent and, a Late Charge of \$10.00 shall be applied to any unpaid balance. A reminder notice will be sent to remind the Owner of the delinquency.
- 5. Pay or Lien Letter:** On the 45th day following the due date of any assessment a Pay or Lien Letter will be sent to the Owner at a cost to the Owner of \$125.00, which is added to the amount of any delinquent assessment. In addition, beginning on the 30th day following the due date of any assessment, interest on the entire amount of the delinquent assessment (and all amounts added thereto) shall be charged at the rate of twelve percent (12%) per annum.
- 6. Payment Plan:** An Owner may submit a written request to meet with the Board to discuss a payment plan for any delinquent assessment. If the Owner's request is postmarked within fifteen (15) days of the postmark date of the Pay or Lien Letter, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the Owner's request, if there is a regularly scheduled Board meeting within that period. Payment plans must incorporate any assessments that accrue during the payment plan period. Acceptable payment plans must include a lump sum payment of no less than half the debt paid at the onset of the agreement. The remaining balance due must be paid in no more than six (6) equal payments in addition to the current assessment payment due quarterly. Payment plans shall not impede an Association's ability to record a lien against the homeowner's property ("separate interest"). Additional late fees shall not accrue during the payment plan period if the homeowner complies with the terms of the payment plan. In the event of a default on any

## **Avocet**

### **Assessment Collection Policy**

payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

7. **Lien:** On the 75th day following the due date of any assessment, a Lien will be placed against the Owner's property. The Lien will include the amount of the delinquent assessment, plus late charges, reasonable costs incurred in collecting the delinquent assessment (including reasonable attorney's fees) and interest which are payable by the Owner. The Board of Directors shall approve placing a lien against the Owners' property.
8. **Intent to Foreclose:** On the 100th day of any assessment period, an Intent to Foreclose notice will be sent to the Owner. The notice will include the amount of the delinquent assessment, plus late charges, reasonable costs incurred in collecting the delinquent assessment (including reasonable attorney's fees) and interest which are payable by the Owner.
9. **Foreclosure:** The Board of Directors shall not proceed with any form of foreclosure unless and until the amount of delinquent assessments are in excess of one thousand eight hundred dollars (\$1,800.00) or are more than 12 months delinquent. The Association may use judicial or non-judicial foreclosure or file a Small Claims Court lawsuit to collect from the Owner the delinquent assessment, plus late charges, reasonable costs incurred in collecting the delinquent assessment (including, without limitation, filing fees and reasonable attorney's fees) and interest, as more fully provided in Section 1367.4 of the Civil Code.
10. **Costs incurred by the Association:** Any and all costs incurred by the Association to collect delinquent assessments, including, without limitation, actual reasonable attorneys' fees and costs, will be charged directly to the Owner. The Owner must pay these costs before the Association will release the lien.
11. **Association's Rights:** In the event of a default on any payment plan, the Association may resume collection on delinquent assessment from the time prior to entering into the payment plan. In addition, when the account has been turned over to the Association's legal counsel, the Association and its legal counsel will not accept partial payments and will reject such partial payments until the Owner's account is brought current and paid in full. Owners shall not send any assessment payments to the Association once the matter has been turned over to the Attorney for collection; 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; the attorney shall release the lien when payment in full is made by the delinquent Owner.

12. Compliance with Civil Code:

#### **NOTICE ASSESSMENT 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 entire text of the sections of the California Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2006. You may wish to consult a lawyer if you dispute an assessment.

#### **ASSESSMENT 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 a homeowner'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 non-judicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or non-judicial foreclosure to enforce that

## **Avocet**

### **Assessment Collection Policy**

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 non-judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or non-judicial foreclosure, the association records a lien on the homeowner's property. The homeowner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (California Civil Code Sections 1366, 1367.1, and 1367.4)

In judicial or non-judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, 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 a member's guests, if the governing documents provide for this remedy. (Civil Code Sections 1366 and 1367.1) 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 homeowner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Civil Code Section 1367.1) At least 30 days prior to recording a lien on homeowner's separate interest, the association must provide the homeowner 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 homeowner. A homeowner has a right to review the association's records to verify the debt. (Civil Code Section 1367.1) If a lien is recorded against a homeowner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide a homeowner certain documents in this regard. (Civil Code Section 1367.1) 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 a homeowner 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. (Civil Code Section 1367.1) 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. A homeowner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Civil Code Section 1368.810) of Chapter 4 of Title 6 of Division 2 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 2 (commencing with Civil Code Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the homeowner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure. A homeowner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly and on time. (Civil Code Section 1367.1)

### **MEETINGS AND PAYMENT PLANS**

An owner of a separate interest that is not a timeshare 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. (Civil Code Section 1367.1) The board of directors may meet with a homeowner who makes a proper written request for a meeting to discuss a payment plan when the homeowner has received a notice of a delinquent assessment. Acceptable payment plans must include a lump sum payment of no less than half the debt paid at the onset of the agreement. The remaining balance due must be paid in no more than six (6) equal payments in addition to the current assessment payment due quarterly.