



**Laguna Woods, California 92637**

**2017 COLLECTION AND LIEN ENFORCEMENT POLICY AND  
PROCEDURES FOR ASSESSMENT DELINQUENCIES**

**PURPOSE  
STATEMENT**

The following is a statement of the specific procedures, policies and practices (“Policy Statement”) employed by Laguna Woods Mutual No. Fifty, a California nonprofit mutual benefit corporation (the “Mutual”) in enforcing lien rights or other legal remedies for default in payment of its assessments against its owners (“Members”). This Policy Statement is provided pursuant to the requirements of California Civil Code section 5310, subd. (a)(7).

The collection of delinquent assessments (sometimes referred to as Carrying Charges) is of vital concern to all Members of the Mutual. Such efforts ensure that all Members pay their fair share of the costs of services and facilities provided and maintained by the Mutual. Members’ failure to pay assessments when due creates a cash- flow problem for the Mutual and causes those Members who make timely payment of their assessments to bear a disproportionate share of the community’s financial obligations.

Accordingly, in order to reduce the amount and duration of delinquencies and to encourage the prompt and full payment of all assessments, the Mutual is vested with certain enforcement rights and remedies which are in addition to those which exist generally for creditors. These rights and remedies are described in this Policy Statement.

WE SINCERELY TRUST THAT ALL MEMBERS, IN THE SPIRIT OF COOPERATION AND RECOGNIZING THEIR LEGAL OBLIGATIONS, WILL MAKE TIMELY PAYMENTS AND AVOID THE IMPOSITION OF LATE CHARGES AND INTEREST, POSSIBLE RESULTANT LEGAL ACTION, AND THE LEGAL OBLIGATION TO REIMBURSE THE MUTUAL FOR THE COSTS OF SUCH LEGAL ACTION. IT IS IN THE BEST INTEREST OF ALL MEMBERS OF THE MUTUAL TO MAKE MONTHLY PAYMENTS ON TIME.

REGARDLESS OF WHETHER THE MUTUAL RECORDS A LIEN ON YOUR PROPERTY DURING THE COLLECTION OF PAST-DUE ASSESSMENTS, ALL MEMBERS HAVE A PERSONAL AND ONGOING OBLIGATION TO PAY ASSESSMENTS AND RELATED CHARGES.

### **BASIC POLICIES AND PROCEDURES**

Delinquency reports are made monthly by the Mutual's managing agent to the Board of the Mutual, identifying the delinquent Member, amount and the length of time the assessments have been in arrears. The policies and practices outlined in this Policy Statement shall remain in effect until such time as they may be changed, modified, or amended by a duly adopted resolution of the Mutual's Board of Directors, or unless the applicable statutory scheme changes, in which event, this Policy Statement shall be construed so as to be consistent with any newly adopted statutes or court decisions. In accordance with the Mutual's governing documents (including, without limitation, the Articles of Incorporation, the Bylaws, the Declaration of Covenants, Conditions and Restrictions and amendments thereto ("CC&Rs"), and the Rules & Regulations) and the California Civil Code, to ensure the prompt payment of monthly assessments, the Mutual employs the following collection and lien enforcement procedures:

#### **Assessment Due Date**

Regular assessments are due and payable to the Mutual, in advance, in equal monthly installments, on the first day of each month. It is each Member's responsibility to pay assessments in full each month regardless of whether a billing statement is received.

Special assessments are due and payable on the due date specified by the Board of Directors in the notice imposing the special assessment or in the ballot presenting the special assessment to the Members for approval. In no event shall a special assessment be due and payable earlier than thirty (30) days after the special assessment is imposed.

#### **Reminder Notice**

If the current monthly assessment is not received by the Mutual on or before the close of business on the sixteenth (16th) day of the month (or if a special assessment is not received by the Mutual on or before the close of business on the fifteenth (15th) day after it is due), a reminder notice may be sent to the Member. This reminder notice is sent as a courtesy only. Members should not expect to receive such courtesy reminder notices in every instance.

PLEASE NOTE THAT TO BE CONSIDERED TIMELY, THE PAYMENT MUST BE ACTUALLY RECEIVED BY THE MUTUAL PRIOR TO THE EXPIRATION OF THE GRACE PERIOD. SIMPLY PLACING THE PAYMENT IN THE MAIL BEFORE THE GRACE PERIOD EXPIRES IS NOT SUFFICIENT.

### **Administrative Collection Fee**

It is the policy of the Mutual not to routinely waive any late charges, interest, attorney's fees, or any other "Costs of Collection." "Costs of Collection" as used in this Policy Statement include, without limitation, an administrative collection fee, currently in the amount of Five Hundred Dollars (\$500) (the "Administrative Collection Fee"), which is charged by the Mutual's managing agent to cover staff costs to prepare the files for delivery to the Mutual's legal counsel in order to carry out legal actions authorized hereunder, as well as direct costs incurred in recording and/or mailing documents attendant to this legal process.

This Administrative Collection Fee may be increased upon approval by majority vote of the Mutual's Board, and may be collected by the Mutual's legal counsel on its behalf, and remitted to the Mutual's managing agent, or may be directly collected by the Mutual's managing agent.

### **Late Charge**

IT IS THE MEMBER'S RESPONSIBILITY TO ALLOW AMPLE TIME TO DROP OFF OR MAIL ALL PAYMENTS SO THAT THEY ARE RECEIVED BEFORE THE DELINQUENCY DATE. All notices or invoices for assessments will be sent to Members by first-class mail addressed to the Member at his or her address as shown on the books and records of the Mutual. However, it is the Member's responsibility to be aware of the assessment payment due dates and to advise the Mutual of any changes in the Member's mailing address.

A late payment charge for a delinquent assessment will be assessed in an amount not to exceed five percent (5%) of the delinquent assessment, as specified in Article VII, Section 2 of the CC&Rs and per Civil Code section 5650, subd. (b)(2), will be charged for each delinquent assessment, i.e., if payment is not received within 15 days of the due date. Such late charge may be imposed and collected regardless of whether the Member's delinquent account is referred to the Mutual's legal counsel for further handling, and regardless of whether a courtesy reminder notice was sent.

### **Interest**

State law and the Mutual's governing documents provide for interest on all delinquent assessments and the late charges. Accordingly, interest may be imposed thirty (30) days after the assessment is due, at an annual percentage rate not to exceed ten percent (10%), as specified in Civil Code section 5650, subd. (b)(3), and Article VII, Section 3 of the CC&Rs. Such interest may be imposed and collected regardless of whether the Member's delinquent account is referred to the Mutual's legal counsel for further handling, and regardless of whether a courtesy reminder notice was sent.

### **Priority of Assessment Payments**

Any payments made by the owner of a separate interest toward a debt shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the outstanding fees, costs of collection, attorney's fees, late charges, and/or interest. (Civil Code section 5655).

### **Pre-Lien Demand Letter**

If full payment of the delinquent amount is not received by the close of business on the day which is thirty (30) days after the date the delinquent assessment originally came due, a Pre-Lien Demand Letter will be sent to the Member via Certified Mail. The Mutual, through its managing agent, may also attempt to contact the Member by telephone to remind the Member of the delinquency and determine when payment will be made. However, no assurances can be given that the Mutual will in fact reach the Member by telephone, and the Member is responsible to pay the delinquency whether or not a telephone reminder is actually received by the Member.

### **Alternate Means to Collect Delinquent Sums**

If full payment of the delinquent amount is not received by the close of business on the thirtieth (30th) day after the date of the Demand Letter, the Mutual may, at its option, and based on the circumstances of the delinquency, including but not limited to, the total delinquent amount owing and the Member's payment history, undertake to collect the delinquency by: (1) suspending a Member's right to use Mutual or GRF facilities; (2) terminating the delinquent Member's Membership in the Mutual, (3) commencing legal action against the Member as discussed further below, or (4) through any other appropriate and lawful means.

The Mutual may, after following appropriate procedures prescribed by law and the Mutual's governing documents, suspend a delinquent Member's right to vote on matters as to which the Member would otherwise be entitled to vote (based on applicable law and/or the Mutual's governing documents), or to use facilities or receive services provided by the Mutual, or both, until the delinquency is paid in full. Failure to pay the delinquency may also result in suspension of Membership in and the ability to use the facilities or services provided by the Golden Rain Foundation of Laguna Woods or by this Mutual.

The Mutual may also take various legal actions to enforce the collection of delinquencies. THESE ACTIONS MAY BE TAKEN SEPARATELY OR CONCURRENTLY.

### **Asset Investigation**

The Mutual may, in its discretion, hire a Private Investigator to research a delinquent Member's available assets. An asset investigation will assist the Board in making an informed decision as to the correct collection action to take against the delinquent Member. Any and all costs of the

investigation will be included on the delinquent Member's account as a reasonable cost of collection pursuant to Civil Code Section 5650, subd. (a).

### **Small Claims Court**

A civil action in small claims court may be filed, with a management company representative, Board member, or bookkeeper appearing and participating on behalf of the Mutual.

PLEASE NOTE THAT A SMALL CLAIMS COURT ACTION MAY BE PURSUED BASED ON A BOARD RESOLUTION EITHER BEFORE OR AFTER RECORDING A NOTICE OF DELINQUENT ASSESSMENT.

Successive small claims court actions may be pursued, consistently with applicable laws, until the entire amount of the delinquency is recovered. If the amount owed to the Mutual by the delinquent Member exceeds the jurisdictional limits of the small claims court, an action may instead be filed in the Superior Court.

### **Foreclosure**

If the amount of delinquent assessments (not including any late charges, fees, attorney's fees, interest, or Costs of Collection), exceeds One Thousand Eight Hundred Dollars (\$1,800), or any unpaid assessments are more than twelve (12) months delinquent, then, subject to specified conditions, the Mutual may initiate foreclosure proceedings to collect the amounts owed. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale or judicial foreclosure.

### **Foreclosure on Monetary Penalties**

Monetary penalties imposed by the Mutual as a means of reimbursing the Mutual for costs incurred by the Mutual in the repair of damage to common area and/or community facilities caused by a Member or the Member's guest or tenant may become a lien against the Member's separate interest enforceable by the sale of the interest. Civil Code section 5725, subd. (a).

However, monetary penalties imposed by the Mutual as a disciplinary measure for failure of a member to comply with the governing documents, except for the late payments, may not be characterized nor treated in the governing documents as an assessment that may become a lien against the Member's separate interest enforceable by the sale of the interest. Civil Code section 5725(b).

### **Right to Dispute the Delinquency**

A Member may dispute a debt by submitting a written request for dispute resolution to the Mutual as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the California Civil Code. In addition, the Mutual may not initiate 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 Member in writing. Binding arbitration shall not be available if the Mutual intends to initiate a judicial foreclosure.

A Member will not be liable for charges, interest, and costs of collection if it is established that the assessment was paid properly on time. (Civil Code Section 5685).

### **Internal Dispute Resolution (IDR) // Alternative Dispute Resolution (ADR)**

The delinquent Member has the right to dispute the assessment debt by submitting a written request for dispute resolution to the Mutual pursuant to the Mutual's "meet and confer" program, as set forth in Civil Code sections 5900-5920;

The delinquent Member may exercise his or her right to participate in Alternative Dispute Resolution (ADR) with a neutral third party under Civil Code sections 5925-5965 before the Mutual may initiate foreclosure against the Member, except that binding arbitration shall not be available if the Mutual intends to initiate a judicial foreclosure action.

### **Payment Plan Requests**

Any Member who is unable to timely pay regular or special assessments is entitled to make a written request for a payment plan to the Mutual's Board. A Member may also request to meet with the Board in executive session to discuss a payment plan if the payment plan request is mailed within fifteen (15) days of the postmark date of the Pre-Lien Demand Letter. The Mutual's Board will consider payment plan requests on a case-by-case basis, and is under no obligation to grant payment plan requests. Payment plans may incorporate any assessments and related charges that accrue during the payment plan period. Payment plans will not impede the Mutual's ability to record a lien on the Member's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Member is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Mutual may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

### **Secondary Address**

Members have a right to identify in writing to the Mutual a secondary address for purposes of collection notices delivered pursuant to this Policy Statement, and upon receipt of a written request from a Member identifying a secondary address, the Mutual must send additional notices to this secondary address.

### **No Right of Offset**

There is no right of offset. A Member may not withhold assessments owed to the Mutual on the alleged grounds that the Member would be entitled to recover money or damages from the Mutual based on some grievance or other obligation.

### **Returned Checks**

The Mutual may charge the Member a twenty-five dollar (\$25.00) fee for the first check tendered to the Mutual that is returned unpaid by the Member's bank, and thereafter, the Mutual may charge a thirty-five dollar (\$35.00) fee for any subsequent check that is returned based on insufficient funds. If a Member's check cannot be negotiated for any reason, then the Mutual may also seek to recover damages of the greater of (a) one hundred dollars (\$100.00); or (b) three (3) times the amount of the check up to fifteen hundred dollars (\$1,500.00) in accordance with California Civil Code section 1719.

### **Charges and Fees Subject to Change**

All charges and fees set forth in this Policy Statement are subject to change upon thirty (30) days prior written notice.

### **Overnight Payments**

The mailing address for overnight payment of assessments is as follows:

Laguna Woods Mutual No. Fifty  
Attn: Assessment Payments  
24351 El Toro Road  
Laguna Woods, CA 92637

### **Rights Reserved by Mutual**

Although the matters set forth above summarize the policies and practices ordinarily employed to collect delinquent monthly assessments, the Mutual reserves the right to employ other or additional policies and practices as may be necessary or appropriate as authorized by law when the uniqueness of the circumstances or habitualness of the delinquency so requires.

### **Statement Required by Civil Code Section 5965**

Civil Code section 5965 requires the Mutual to include the following statement in this Policy Statement:

“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 your right to sue the association or another Member of the association regarding enforcement of the governing documents or the applicable law.”

### **Attachments**

The following attachments are included in this packet:

- The Notice of Assessments and Foreclosure required by Civil Code section 5730 is contained in Attachment “A” to this Policy.
- The disclosures required by the State Rosenthal Fair Debt Collection Practices Act and Federal Fair Debt Collection Practices Act are contained in Attachment “B” to this Policy.

### **ATTACHMENT “A” NOTICE OF ASSESSMENTS AND FORECLOSURE**

*The following notice is provided pursuant to Civil Code Section 5730:*

#### **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 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, 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.

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 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).

#### **ATTACHMENT "B"** **FAIR DEBT COLLECTION PRACTICES ACTS**

*The following Disclosure is made pursuant to Civil Code Section 1812.700-1812.703*

The State Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).

**RESOLUTION 50-18-80**

**Revision to Collection and Lien Enforcement Rules**

**WHEREAS**, Section 5310 of the California Civil Code requires that homeowner associations have a specific policy relating to collection of delinquent assessment accounts and enforcement of liens placed upon such delinquent properties; and

**NOW THEREFORE BE IT RESOLVED**, September 20, 2018, that the Board of Directors of this Corporation hereby approves the attached revisions the Collection and Lien Enforcement Rules for Assessment Delinquencies, effective January 1, 2019; and

**RESOLVED FURTHER**, that the officers and agents of this Corporation are hereby authorized on behalf of the Corporation to carry out the purpose of this resolution.