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**CIVIL CODE - CIV**

**DIVISION 4. GENERAL PROVISIONS [3274 - 9566]** ( *Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.*  )

**PART 5. Common Interest Developments [4000 - 6150]** ( *Part 5 added by Stats. 2012, Ch. 180, Sec. 2.*  )

**CHAPTER 8. Assessments and Assessment Collection [5600 - 5740]** ( *Chapter 8 added by Stats. 2012, Ch. 180, Sec. 2.*  )

**ARTICLE 3. Assessment Collection [5700 - 5740]** ( *Article 3 added by Stats. 2012, Ch. 180, Sec. 2.*  )

**5700.** (a) Except as otherwise provided in this article, after the expiration of 30 days following the recording of a lien created pursuant to Section 5675, 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 Section 2934a.

(b) Nothing in Article 2 (commencing with Section 5650) 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 pursuant to Article 2 (commencing with Section 5650) or prohibits an association from taking a deed in lieu of foreclosure.

(*Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.*)

**5705.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10 or alternative dispute resolution as set forth in Article 3 (commencing with Section 5925) of Chapter 10. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(c) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(d) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

(*Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.*)

**5710.** (a) Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.

(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association's records or, if that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. An owner may designate a legal representative in a writing that is mailed to the association in a manner that indicates that the association has received it.

(c) The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus the cost of service for either of the following:

(1) The notice of default pursuant to subdivision (b).

(2) The decision of the board to foreclose upon the separate interest of an owner as described in subdivision (d) of Section 5705.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5715.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Section 2924f, a notice of sale in connection with an association's foreclosure of a separate interest in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in this section.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5720.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose 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 secured by the lien 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 Article 2 (commencing with Section 5900) of Chapter 10.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to any of the following:

(1) Assessments secured by a lien that are more than 12 months delinquent.

(2) Assessments owed by owners of separate interests in time-share estates, as defined in subdivision (x) of Section 11212 of the Business and Professions Code.

(3) Assessments owed by the developer.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5725.** (a) 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 area and 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 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(b) A monetary penalty imposed by the association 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 under Sections 2924, 2924b, and 2924c.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5730.** (a) The annual policy statement, prepared pursuant to Section 5310, shall include the following notice, in at least 12-point type:

#### "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. (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5735.** (a) 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.

(b) Nothing in subdivision (a) restricts the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5740.** (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*