



**AMENDED & RESTATED**

**COLLECTION POLICY FOR**

**DELINQUENT ASSESSMENTS**



**BEAR VALLEY SPRINGS ASSOCIATION**

**2017 - 2018**

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (p) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.**

EXHIBIT A

BEAR VALLEY SPRINGS ASSOCIATION

2016-2017 STATEMENT OF POLICIES AND PRACTICES FOR COLLECTION OF DELINQUENT ASSESSMENTS AND ENFORCEMENT OF LIENS

PLEASE READ THIS CAREFULLY

A regular annual assessment, levied as prescribed by Paragraph 12(b) of the Bear Valley Springs Association (BVSA) Covenants and Restrictions, is payable on July 1 of each year. The amount of the assessment is determined by the budget needs of the coming year as established by the Board of Directors. Notification of the amount is announced in the spring of each year and mailed to the designated owner(s) of record. The lifeblood of the association is the assessment.

Statements are sent to the designated owner(s) of record only in June of each year. **It is the owner's responsibility to notify the BVSA office in writing of any address or ownership changes.** Ownership changes must be evidenced in the form of a recorded deed or a currently effective policy of title insurance.

Payments may be made by VISA, Discover, MasterCard or American Express at the Association office. You can pay online at [www.bvsa.org](http://www.bvsa.org). If you pay by cash, please bring the exact amount into the office. We are not equipped to make change. Please be certain to get a receipt. If you pay by check **PLEASE WRITE YOUR CUSTOMER NUMBER, TRACT AND LOT NUMBER ON THE CHECK.** Should you wish to hand deliver your payment, please bring it into the BVSA office or drop it in the mail slot by the front door. (No cash in the drop slot, please). Once any delinquent account has been turned over to the Association's collection attorney, all payments must be made directly to the collection attorney, not the Association.

**\*\*\*NEW REQUIREMENT\*\*\*NEW REQUIREMENT\*\*\*NEW REQUIREMENT\*\*\*NEW REQUIREMENT\*\*\***

If you would like to pay your assessment by way of the 2-pay or 4-pay plan, your choice will be so indicated by payment of the applicable amount of \$763 for the 2-pay plan or \$384 for the 4-pay plan by no later than July 31, 2017. **IF YOU HAVE NOT REMITTED PAYMENT FOR THE 2-PAY PLAN OR THE 4-PAY PLAN ON OR BEFORE JULY 31, 2017, YOU WILL BE DEEMED TO HAVE SELECTED THE ONE LUMP-SUM PAYMENT OPTION OF \$1,436.00.**

The following calendar of proceedings and charges will be in effect for the 2017-2018 fiscal year:

- July 1<sup>st</sup>**            **\$1,436.00** Annual Assessment levied\*. Payable as **\$1,436.00** or **\$763.00** is payable per each payment under the two-payment plan which includes a \$45.00 service charge per payment. **\$384.00** is payable per each payment under the four-payment plan which includes a \$25.00 service charge per payment.
- July 31<sup>st</sup>**            Deadline for receipt of assessment, either **\$1,436.00** as single payment, or **\$763.00** under the two-payment plan, or **\$384.00** under the four-payment plan. **Any assessment not paid by this date is delinquent.**
- August 1<sup>st</sup>**            **\$1,579.60** includes late fee. Late fee of ten percent (10%) \$143.60 will be added on all accounts.  
Interest at the rate of 9% per year will commence on all accounts not having made either the full payment or the first payment of your chosen payment plan.

\* Full disclosure of BVSA Collection Policy has been set forth in the supplemental edition of the Bear Tracks.

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- August 31<sup>st</sup>**      **\$384.00** second payment is due under the four- payment plan which includes a \$25.00 service charge.  
**All second payments not received by this date are delinquent.**
- September 1<sup>st</sup>**      **\$419.90** includes late fee. Late fee of ten percent (10%) \$35.90 will be added on all accounts and interest at the rate of 9% per year will commence on all accounts not having made either the full payment or the first payment of your chosen payment plan.
- September 30<sup>th</sup>**      **\$384.00** third payment is due under the four- payment plan which includes a \$25.00 service charge.  
**All third payments not received by this date are delinquent.**
- October 1<sup>st</sup>**              **\$419.90** includes late fee. Late fee of ten percent (10%) \$35.90 will be added on all accounts and interest at the rate of 9% per year will commence on all accounts not having made either the full payment or the first payment of your chosen payment plan.
- October 31<sup>st</sup>**      **\$384.00** fourth payment is due under the four- payment plan which includes a \$25.00 service charge.  
**\$763.00** second payment is due under the two- payment plan which includes a \$45.00 service charge. This is the deadline for receipt of all final payments under both payment plans.  
**All final payments not paid by this date are delinquent.**
- November 1<sup>st</sup>**      **\$419.90** includes late fee. Late fee of ten percent (10%) \$35.90 will be added on all accounts.  
**\$834.80** includes late fee. Late fee of ten percent (10%) \$71.80 will be added on all accounts.  
Interest at the rate of 9% per year will commence on all accounts not having made either the full payment or the final payment of your chosen payment plan.

Members should be aware that once a lien is recorded with Kern County, the sale, transfer or refinance of the property is subject to the lien under the BVSA governing documents. Under Section 4525 of the Civil Code, owners are also required to advise prospective purchasers of assessments levied against the owner's lot which remain unpaid prior to any transfer of the lot.

**PLEASE NOTE:** As all property owners should be aware, the Association's general assessment is levied on an annual basis on the first day of each fiscal year (July 1). Lot line adjustments, parcel maps, lot or parcel mergers, or any other type of lot combination or consolidation accomplished after the beginning of a fiscal year shall not entitle the owner(s) to any refunds of the assessments levied on such lots.

## EXHIBIT B

### COLLECTION AND FULL PAY POLICY FOR ASSESSMENTS

- APPLICATION:** Payments received on delinquent assessments shall be applied to the Owner's account as follows: payment shall be applied to the principal owed first. Payments on principal shall be applied to the Owner's account by the "balance forward payment" method, i.e., in reverse order so that the oldest arrearages of the principal are retired first. Only after the principal owed is paid in full shall such payments be applied to interest, late charges, collection expenses, administration fees, attorneys' fees, or any other amount due to the Association which result in continued delinquencies.
- PAYMENT RECEIPTS / OVERNIGHT PAYMENT LOCATION:** Owners can request a receipt from the Association which shall indicate the date of payment and the person who received it. Any request for a receipt of payment must be submitted directly to the Association's business address (separately from any actual payment). Overnight payment of assessments may be sent/delivered to the following address:  
  
**BEAR VALLEY SPRINGS ASSOCIATION**  
**c/o General Manager**  
**29541 Rolling Oak Drive**  
**Tehachapi, CA 93561**
- LATE CHARGE:** All assessments shall be delinquent if not paid within **thirty (30) days** after they become due and will result in the imposition of a late charge of ten percent (10%) of the delinquent assessment, including any delinquency based on a failure to remit a payment due under an approved payment plan. Furthermore, the Association shall be entitled to recover any reasonable collections costs, including attorneys' fees, that the Association then incurs in its efforts to collect the delinquent sums.
- INTEREST:** If an assessment payment is not paid within **thirty (30) days** of its original due date, interest may be imposed on all sums due, including the delinquent assessment, collection costs, and late charges, at an annual percentage rate of nine percent (9%).
- SECONDARY ADDRESS:** Upon receipt of a written request by an Owner identifying a secondary address for the purposes of assessment collection notices, the Association shall send additional copies of any collection notices required by this Collection Policy to the secondary address provided. The Owner's notice of a secondary address must be in writing and mailed to the Association in a manner that shall indicate that the Association has received it. The Association shall only send notices to the indicated secondary address at the point in time the Association receives the written request.
- PAY OR LIEN LETTER:** If an assessment payment from the Owner is not paid within **forty (40) days** after its original due date (for example, if an Owner fails to pay an assessment which was due on July 1 and the failure to pay continues through August 9, then the regular assessment would not have been paid within 40 days after its original due date), a notice of delinquency (Pay or Lien Letter) shall be sent to the Owner by regular first-class mail and certified mail, return receipt requested. The Pay or Lien Letter shall provide at least 30 days' written notice to a delinquent Owner prior to recording an Assessment Lien and further provide an itemized statement of the charges owed, including a breakdown of: (a) the principal amount owed; (b) any late charges with the method of calculation used to determine such charges; (c) any attorneys' fees incurred; and (d) a description of collection practices, including the right of the association to the reasonable costs of collection. A copy of the Association's collection policy shall be attached to the Pay or Lien Letter.

7. **INTERNAL DISPUTE RESOLUTION PROCESS\***: The Association shall offer to meet and confer with a delinquent owner to resolve any dispute related to the total amount due from the delinquent Owner to the Association and/or the Association's Collection Policy ("Meet and Confer Offer"). The Association's Meet and Confer Offer shall either be placed within the Association's Pay or Lien Letter or in a separate written communication to the delinquent Owner. An Owner who wishes to accept the Meet and Confer Offer must do so by submitting his/her/it's written request to facilitate the meet and confer with the Association, which written request must be received by the Association within twenty (20) days of the date of the Meet and Confer Offer. The Association shall designate a prompt date and time for the meet and confer, at a location that shall either be the Association's principal office or another convenient location as designated by the Association. The Association shall designate a Board officer, along with its' CID Manager to participate in the meet and confer with the delinquent Owner. Prior to recording a lien for delinquent assessments, the Association shall participate in any meet and confer so accepted by the delinquent Owner, provided, however, that the Owner's acceptance of the Association's Meet and Confer Offer is made within twenty (20) days of the date of the Meet and Confer Offer.

8. **SHOW CAUSE HEARING:** Additionally, a delinquent Owner may be given a written notice (either in the Pay or Lien Letter or in a separate written document, as determined by the Board of Directors) of a hearing before the Board of Directors, wherein the Owner shall be invited to show good cause why (a) the Owner's voting privileges; and/or (b) the Owner's privileges for use of the common area/recreational facilities (hereinafter collectively "Membership Privileges") should not be suspended for non-payment of the delinquent assessment(s) ("Show Cause Hearing").

The notice and hearing procedures shall be in accordance with the following:

- a. Written notice shall be mailed to the Owner not less than ten (10) days prior to the date of such hearing by first class or certified mail at Owner's last known address as shown on the Association's records. The notice shall set forth the amount of delinquency owed by the Owner and the time, date and place on which the hearing shall be held;
- b. The Board of Directors shall provide an opportunity for the Owner to be heard, orally or in writing, at the Show Cause Hearing prior to making any determination on the suspension of any Membership Privileges;
- c. In the event, good cause is not shown and the Owner's account has not been brought current, then the Board may suspend any of the Owner's Membership Privileges. The Board shall hold the hearing in Executive Session; provided, however, if the Board is requested by a Member to have his/her matter be heard in an open Board meeting, then the matter must be heard in an open Board meeting, and not in Executive Session.
- d. After the Show Cause Hearing, the Board of Directors shall provide within fifteen (15) days written notice to the Owner of the suspension of any Membership Privileges.

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\* Pursuant to a 1994 California decision, *Park Place Estates Homeowners Association, Inc. v. Naber* (1994) 29 Cal.App. 4th 427, the appellate court held that homeowners have an independent obligation to pay monthly assessments and do not have a right to set off or withhold payments of assessments.

9. **ASSESSMENT LIEN:**

a. If the delinquent Owner does not bring his/her account current within the deadline set forth in the Pay or Lien Letter, the Board of Directors shall approve the recordation of an assessment lien against the delinquent Owner's property. The Board's decision to record the assessment lien shall be by a majority vote of a quorum of the Board members at an open Board meeting. The Board's action should refer to the Lot/parcel number of the property that is delinquent, rather than the name of the owner. The Assessment Lien shall be recorded in the County Recorder's Office itemizing all sums that are then delinquent, including the delinquent assessment(s), interest, late charges, collection costs and reasonable attorneys' fees. Recording this notice creates a lien, which is subject to foreclosure, against the delinquent Owner's property.

b. **At the same time, the Association shall advise the Association's collection agent/bank that it should accept no further monies from this delinquent Owner until the assessment lien has been 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 law firm. Any payments delivered to the collection agent shall be forwarded to the attorney's office; the attorney shall then release the lien if payment in full was made by the delinquent Owner. A charge of up to \$425.00 for attorneys' fees shall be charged to the Owner at this stage (pursuant to Civil Code § 5650(a)).

10. **PRE-FORECLOSURE ACTIONS:**

a. The Association shall make a written pre-foreclosure offer to meet and confer with the delinquent Owner, consistent with the process identified in paragraph 8 herein (except that the timeline for the delinquent Owner to accept a meet and confer would be thirty-five (35) days from the date of the Owner's receipt of this pre-foreclosure offer) or alternative dispute resolution consistent with Civil Code § 5925, et. seq. ("IDR/ADR Offer"). Owner shall have thirty-five (35) days from the date of the IDR/ADR Offer to decide whether or not Owner wishes to pursue dispute resolution or a particular type of alternative dispute resolution (except that binding arbitration is not available to any delinquent Owner if the Association intends to initiate a judicial foreclosure).

b. Prior to initiating foreclosure, the Board of Directors must, in executive session, approve the decision to proceed with foreclosure by a majority vote of a quorum of the Board of Directors. The Board shall record the Board's executive session decision in the minutes of the next meeting of the Board open to the members by referencing the lot/parcel number of the property that is delinquent.

c. The Board of Directors shall not proceed with any form of foreclosure unless and until the amount of delinquent assessments (exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney's fees or interest) equals or exceeds One Thousand Eight Hundred Dollars (\$1,800.00) or the assessments have been delinquent for more than twelve (12) months ("Threshold"). Once the Threshold has been met and all other requirements identified above have been completed, the Board may proceed with foreclosure of the assessment lien pursuant to the Association's governing documents and Civil Code § 1367. The procedure used shall be a private foreclosure, pursuant to Civil Code § 5700, et seq. and Civil Code § 5700. The foreclosure action shall include:

- i. **A Notice of Default and Election to Sell shall be recorded** at the County Recorder's Office and a ninety-day reinstatement period shall begin.
- ii. **A Title Report** shall be obtained from a title company at a cost of approximately \$350.00 and this shall also be charged to the delinquent Owner.
- iii. Furthermore, an additional \$300.00 attorneys' fees and costs shall be charged at this stage.

11. If the Association determines that the property is over-encumbered, or otherwise makes a determination that a lawsuit is appropriate, the Association shall file a personal lawsuit against the delinquent Owner to recover all delinquent assessments owing to the Association. If a lawsuit is necessary to collect the delinquent assessments from the Owner, all expenses, costs and attorneys' fees in connection with said lawsuit, including but not limited to pre- and post-judgment costs for filing fees, personal service, witness fees, interest, execution of judgment and/or writ fees shall be recovered from the Owner defendant.

12. If the delinquency is still not cured ninety (90) days after the Notice of Default and Election to Sell was recorded, the attorney shall proceed to record and publish the **Notice of Trustee's Sale**. This Notice must also be published three (3) times during a three-week period and posted in a public place. At this final stage, there shall be additional publication costs, as well as attorneys' fees of \$125.00. If a non-judicial foreclosure sale is completed by the Association against the delinquent Owner's property, the Owner shall have the right to redeem the property for a period of time up to and including ninety (90) days after the date of the Trustee's Sale.

13. When a delinquent Owner has paid in full all delinquent assessments and charges, the attorney shall prepare a Release of Lien which shall be recorded in the County Recorder's Office of Kern County, California within 21 days of receipt of the sums necessary to satisfy the delinquent amount and mail a copy of the lien release to the Owner of the residential Lot.

14. **PAYMENT PLAN STANDARDS:** The Association hereby establishes the following payment plan standards:

a. **Payment Within 60 Days:** If an Owner can bring himself/herself/itself current within sixty (60) days, inclusive of assessments which accrue within the sixty (60) days of the payment plan, the Association will forbear filing an Assessment Lien and the Owner will not incur the Assessment Lien costs if the payment plan is strictly followed. The payment plan shall include an administrative cost of \$75.00. By agreeing to the 60-day payment plan, the Owner further agrees that if he/she/it fails to make any of the payments identified in the payment plan, the Association shall have the right to file an Assessment Lien without recommencing the pre-lien or Pay or Lien Notice process.

b. **Payment Exceeding 60 Days:** In light of the length of time of this payment plan, payment plans exceeding sixty (60) days shall require that the Association record its Assessment Lien to establish itself as a secured creditor. The payment plan shall also include an administrative cost of \$100 or \$25.00 per month of each month of the plan, whichever is greater. All costs related to the recordation of the Assessment Lien shall be part of this payment plan. The payment plan would require payment of all delinquent assessments amortized over the length of the payment plan, along with all assessments which will accrue during the payment plan. The Association shall further require that the Owner sign a Forbearance Agreement which identifies his/her/its obligations of repayment consistent with the payment plan and further provides that if there is a default under the payment plan, the Association can proceed with the collection process as particularly identified within the Forbearance Agreement. Payment plans under this paragraph 14.b should normally not exceed six (6) months.

15. **REQUEST FOR PAYMENT PLAN:** An Owner may submit a written request to the Association for a payment plan consistent with either paragraph 14.a or 14.b above. An Owner can also submit a written request to meet with the Board to identify which payment plan the Owner chooses, as identified in paragraph 14 above. The Board is required to meet with the Owner in executive session within 45 days of the postmark of the request for the meeting, if the request is mailed within fifteen days of the date of the postmark of the Pay or Lien Notice. If there is no regularly scheduled board meeting within the 45-day timeline, the Board has designated the Assessment Dispute Resolution Committee to meet with the Owner.



16. **PARTIAL PAYMENTS:** Owners may make partial payments without a written payment plan as described in paragraph 14 above; provided, however, that any such partial payment shall:

- a. not stop any collection action;
- b. not invalidate any assessment lien already filed;
- c. not stop an already existing non-judicial foreclosure action;
- d. not obviate the obligation to pay all collection fees and costs inclusive of late charges, interest, management fees/bookkeeping fees, title charges, lien fees and costs, trustee's fees and/or attorney's fees; and
- e. further require (due to the additional bookkeeping and other administrative expenses incurred with a partial payment) that any Owner who submits a partial payment (without an approved payment plan as described in Paragraph 14 above) will incur an administrative expense of \$45.00 for each partial payment tendered and received by, or on behalf of, the Association.