

CIVIL CODE

SECTION 1366-1367.6

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(c) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of an association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(d) The association shall provide notice by first-class mail to the owners of the separate interests of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

(e) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due, unless the declaration provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies the recovery of interest at a rate of a lesser amount, in which case the lesser rate of interest shall apply.

(f) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

1366.1. An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

1366.2. (a) In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board of directors of any association is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

(1) The name of the association as shown in the conditions, covenants, and restrictions or the current name of the association, if different.

(2) The name and address of a managing agent or treasurer of the association or other individual or entity authorized to receive assessments and fees imposed by the association.

(3) A daytime telephone number of the authorized party identified in paragraph (2) if a telephone number is available.

(4) A list of separate interests subject to assessment by the association, showing the assessor's parcel number or legal description, or both, of the separate interests.

(5) The recording information identifying the declaration or declarations of covenants, conditions, and restrictions governing the association.

(6) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), which fee shall be based upon the number of pages in the document and the recorder's per-page recording fee.

1366.4. (a) Except as provided in subdivision (b), notwithstanding any provision of this title or the governing documents to the contrary, an association shall not levy assessments on separate interests within the common interest development based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its governing documents, levied assessments on those separate interests based on their taxable value, as determined by the tax assessor of the county in which the separate interests are located.

(b) An association that is responsible for paying taxes on the separate interests within the common interest development may levy that portion of assessments on separate interests that is related to the payment of taxes based on the taxable value of the separate interest, as determined by the tax assessor.

1367. (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the assessments owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward that debt shall first be applied to the assessments owed, and only after the principal owed is paid in full shall the payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (e) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest

development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty 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 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.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) 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.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), 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. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) 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 pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986 and prior to January 1, 2003.

1367.1. (a) 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 Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point

boldface type, if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) 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.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by paragraph (3) of subdivision (c).

(5) 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 Article 5 (commencing with Section 1363.810) of Chapter 4.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 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 a judicial foreclosure.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), 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 fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) (A) Prior to recording a lien for delinquent assessments, an 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 5 (commencing with Section 1363.810) of Chapter 4.

(B) Prior to initiating a foreclosure for delinquent assessments, an association shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7. 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.

(2) For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any 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, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the

standards for payment plans, if any exist. 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, 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. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed. The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation. 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. 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 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.

(e) Except as indicated in subdivision (d), a monetary penalty

imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(f) A lien created pursuant to subdivision (d) 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.

(g) 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 created pursuant to subdivision (d), 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. 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. 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 (j) of Section 1367.1.

(2) The decision of the board to foreclose upon the separate interest of an owner as described in paragraph (3) of subdivision (c) of Section 1367.4.

(h) 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 pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the 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.

(j) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative 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. The owner's legal representative shall be the person whose name is shown as the owner of a separate interest in the association's records, unless another person has been previously designated by the owner as his or her legal representative in writing and mailed to the association in a manner that indicates that the association has received it.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association

shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

(1) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(m) This section only applies to liens recorded on or after January 1, 2003.

(n) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

1367.4. (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 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 Title 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 5 (commencing with Section 1363.810) of Chapter 4.

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

(c) An association that seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments secured by the lien that are more than 12 months delinquent, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) 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 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. 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.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members 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.

(3) 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.

(4) 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 paragraph.

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

assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.

1367.5. If it is determined through dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

1367.6. (a) If a dispute exists between the owner of a separate interest and the association regarding 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 the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (e) of Section 1366, and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure.

(b) Nothing in this section shall impede an association's ability to collect delinquent assessments as provided in Sections 1367.1 and 1367.4.
