

# **Delinquent Assessment Collection Agreement Non-Judicial Foreclosures**

## **Terms and Conditions**

**(Revised 2-1-2024)**

Following are the Terms and Conditions of the Agreement to Collect Delinquent Assessments ("Agreement"). By agreeing to these Terms and Conditions, the Association ("HOA") hereby appoints and authorizes Pacific Association Collections, ("PAC") to act as its agent for the purpose of collecting delinquent assessments from a homeowner or homeowners ( Owner ) on behalf of HOA. HOA hereby understands and agrees that this Agreement gives authority to PAC to attempt collection of delinquent assessments from Owners, subject to the levy of assessments by HOA. HOA further understands that PAC's collection procedures may include but are not limited to sending attorney letters, letters offering to participate in dispute resolution, payment plans, and other matters relating to collection. and if directed, preparing, executing and recording, on HOA's behalf, an Assessment Lien ("Lien"), and/or a Notice of Default ("NOD"), and/or a Notice of Sale ("NOS") and/or and any other documents permitted or required under California law.

The assessment collection process is complex. There are several statutory requirements. These Terms and Conditions outline most but not all of those requirements. It is absolutely important that the HOA board read and understand these Terms and Conditions.

It is important to provide PAC with accurate and up-to-date accounting information regarding the delinquent Owner's account. PAC will not be responsible for accounting errors and possible invalidation of required notices by reason of any mistakes in the HOA's accounting. HOA represents and warrants that the assessments have been levied in accordance with HOA's governing documents, collection policy and state statutes. HOA further represents and warrants that it has applied all payments first to the assessments owed and only thereafter to the fees and costs of collection, attorneys fees, late charges and interest. Notwithstanding the foregoing, to ensure that the delinquent Owner only pays what is due and owing to HOA, once the matter is referred to PAC, neither HOA nor HOA's managing agent and/or management company will deposit any payment received from Owner, and will immediately notify and forward all payments received from Owner to PAC. Any payments received by PAC will first be applied to delinquent assessments. If payments are sufficient to pay the assessments in full or below the legal thresholds (51,800.00 or at least 12 months delinquent), then the collection account will be closed and the HOA will be invoiced for any and all collection fees and costs incurred to that point in the collection process.

The California Court of Appeal has held that partial payments made by homeowners, during the collection process or otherwise, must be accepted by the HOA and applied to delinquent assessments first. If PAC's acceptance of such payment pays off the Owner's delinquent assessments only, then, even though the delinquent Owner remains liable to the HOA for interest, late fees and costs of collection, PAC will have no choice but to close the collection matter and bill the HOA for PAC's fees and costs.

### **Board Resolution to Lien**

HOA understands that for PAC to record a Lien, a majority of the HOA's Board of Directors must vote and approve the recording of a Lien against Owner's property at a duly held open meeting of the Board of Directors and record the votes of such decision in the minutes of such meeting as required by California law. HOA will provide written confirmation that such a vote has occurred and the results of said vote by providing PAC a copy of a resolution and/or a copy of the minutes of the board meeting where the vote was taken. No Lien can or will be recorded until confirmation of the resolution or minutes has been received by PAC.

### **IDR/ADR**

Upon receipt of a demand from Owner, or such Owner's agent by HOA or its managing agent, for HOA to participate in Internal Dispute Resolution ("IDR"), or Alternative Dispute Resolution ("ADR"). HOA agrees that HOA or HOA's managing agent will notify PAC in writing no later than two (2) business days after the request for IDR or ADR is received. If no demand for IDR or ADR is made, HOA and/or its managing agent shall confirm in writing that no demand has been made prior to the recordation of a Lien, or that any IDR or ADR request has been complied with by HOA.

### **Settlement/Release**

If HOA engages in IDR or ADR, HOA agrees that if a settlement is reached, PAC shall be paid all of PAC's fees incurred by HOA no later than fourteen (14) days after the date of the settlement. HOA agrees that if Owner executes a release in favor of HOA, HOA will require that PAC be included as a released party. Failure to include PAC as HOA's agent in the release will trigger, without limitation, PAC's full right of indemnification by HOA, which includes all rights to PAC's attorneys fees and costs.

### **Secondary Address**

If Owner gives notice to HOA or its managing agent of a secondary address for purposes of receiving notices, HOA or its managing agent shall no later than two (2) business days after the notice is received, provide PAC with the secondary address.

### **Owner's Attorney**

If Owner informs or has informed HOA and/or its managing agent that Owner is represented by an attorney, HOA shall no later than two (2) business days after the notice is received, notify PAC of such notice and shall provide the name(s) and address(s) of such attorney.

### **Initiation of Foreclosure: \$1,800 or 12 Months Delinquent**

It is understood and agreed that PAC will not initiate a foreclosure sale until Owner's delinquent assessments, as verified by HOA or its authorized representative: (a) are in an amount of One Thousand Eight Hundred Dollars (51,800) or more, (not including any accelerated assessments, late charges, fees and costs of collection, attorneys fees, or interest); or (b) have been delinquent for more than twelve (12) months. It is expressly understood that the required acceptance of partial payments can and will affect the dates upon which a foreclosure sale will occur.

### **Initiation of Foreclosure: Board Resolution to Initiate Foreclosure — Fees and Costs**

It is expressly understood and agreed that a decision to initiate foreclosure of a Lien shall be made by a majority vote of HOA's Board of Directors in an executive session meeting, and that the Board of Directors must record the votes in the minutes of the next open meeting of the Board of Directors. Thereafter, HOA or its managing agent shall notify PAC in writing of its decision to initiate a foreclosure of the Lien and provide a copy of the board's Resolution to Initiate a Foreclosure and/or a copy of the minutes wherein the resolution/vote was recorded. Failure of the board to initiate foreclosure will result in PAC closing its collection file and shall give rise to the HOA's obligation to pay PAC's fees and costs.

### **Service of board's Resolution to Initiate Foreclosure**

PAC will arrange for notice of the board's Resolution to Initiate Foreclosure to be delivered to Owner in the manner required by California law. HOA understands and agrees that PAC cannot commence a foreclosure action until notice of the decision to initiate foreclosure has been delivered to Owner in accordance with California law.

### **Payment Plans**

PAC encourages HOA to consider reasonable payment plans proposed by the delinquent Owner. PAC generally does not recommend that an HOA reduce the amount that is owed, waive any fees or costs, or accept a payment plan that is longer than twenty-four months in duration. Payment plan arrangements can be renewed for reasonable periods of time. Acceptance of payments during the collection process may subject HOA to pay collection fees and costs to PAC, if payments are sufficient to pay the delinquent assessments in full or bring the Owner's delinquent assessments below the legal thresholds (51,800.00 or at least 12 months delinquent). PAC requests that, as part of any payment plan arrangement, the HOA require that the Owner waive the requirement that monies received from an Owner in payment of their assessments be first allocated to delinquent assessments (principal) and then to any costs or collection fees, etc. Owners may pay the assessments but then refuse to pay the fees and costs that are remaining unpaid, leaving the HOA with limited remedies for collection (and an obligation to pay PAC its fees and costs that have been incurred). At HOA's direction, HOA authorizes PAC to submit twelve (12) month payment plans to all delinquent Owners who do not dispute the debt to the HOA. PAC will provide the Owner with a payment plan agreement that covers these points, and by agreeing to these terms

and conditions, HOA instructs PAC to require that the Owner agree to the terms of PAC's standard payment plan agreement, terms, and conditions.

HOA acknowledges that the Court of Appeal has held that an Owner may make partial payments, which must be accepted by the HOA even though such payment(s) are not pursuant to the terms of a payment plan agreement.

### **Fees and Costs**

See Attached Fee Schedule. HOA has reviewed PAC's current Collection Fee Schedule which is attached as Exhibit A. HOA understands that PAC's Fee Schedule is subject to change. HOA understands that the Fee Schedule may not list all fees and costs that PAC can or will charge as part of the collection process. All fees and costs will be charged to the delinquent Owner subject to the terms of this Agreement. HOA authorizes PAC to collect all fees and costs as part of the assessment collection process and to pay itself those fees and/or costs then due and owing for services rendered from the proceeds of collection received, subject to applicable law, from the Owner or from a third party through foreclosure.

As part of this Agreement, HOA confirms that PAC is instructed to and authorized to collect the managing agent's fees and costs of collection, as agreed to between HOA and the managing agent, if applicable.

Client shall be required to pay all attorneys fees and costs immediately upon the first of the following events to occur:

1. The Owner makes full or partial payment;
2. The property that has been liened is foreclosed upon by the HOA or any lender;
3. The Owner files for bankruptcy protection; or
4. The HOA terminates this Agreement.

### **Payment Processing**

All payments received by PAC for the payment of delinquent assessments and related fees and costs shall be deposited by PAC into a trust account to be maintained for the benefit of HOA. These funds will be paid to HOA within five (5) business days of clearance of funds by PAC's bank. Payments of \$2,500 or more will be held for fourteen (14) days to allow funds to clear the bank, except when such payment constitutes Owner's final "assessment only" payments on its delinquency to HOA. In such case, PAC shall hold sums, and release same to the HOA, when PAC's outstanding fees and costs are paid to HOA. If a partial payment is accepted pursuant to a payment plan, or other payment arrangement to which the delinquent Owner has waived the provisions of Civil Code § 5655 regarding the application of payments, HOA agrees that such funds will be allocated fifty percent (50%) to the delinquent assessments and fifty percent (50%) to the collection fees and costs until the fees and costs are paid in full. Thereafter, HOA will receive 100% of the funds collected. PAC is authorized to pay PAC's fees and costs directly from the collected funds at the same time the HOA's share of the funds is disbursed to HOA.

### **Consultation**

If a legal issue arises which impacts PAC's ability to proceed with the collection of a delinquent account for any reason, including the HOA's acceptance of funds directly from the Owner, PAC is authorized to consult with legal counsel of its choice ("Law Firm") at Law Firm's regular hourly rates. If Law Firm deems necessary, it will contact the HOA board in writing regarding HOA's options or the reasons why PAC cannot proceed with the collection process. These services will be charged to HOA by Law Firm at Law Firm's customary billing rate. HOA is, thereafter, free to utilize the services of Law Firm.

### **Cooperation**

In an effort to meet timelines prescribed by the California Civil Code, PAC will make two (2) written attempts to contact HOA for instructions for a response to any PAC request for information or action. Thereafter, HOA will be invoiced for PAC's fees and costs on files PAC has held in abeyance as a result of HOA's failure to respond, and the file will be closed.

## **No Representations or Warranties**

PAC makes no representations or warranties regarding the successful results of the collection process. HOA and its managing agent have read these Terms and Conditions and understand their contents. HOA understands and agrees that PAC contracts with and relies on outside agents and/or vendors for information or services during the collection process. HOA agrees that PAC shall not be liable for the errors or omissions of its vendors. PAC is not a law firm. It is a fictitious business name for Michael T. Chulak Corporation.

## **Indemnification and Hold Harmless Agreement**

For matters other than the HOA's non-payment of PAC's invoice(s), upon presentation to the HOA, if at any time, PAC is named as a party in a lawsuit or other proceeding involving the collection matter that is the subject of this Agreement, HOA expressly and unequivocally agrees that all attorney fees and costs incurred by PAC, its officers, directors, attorneys and employees, in defense of such a lawsuit or proceeding, shall be borne by HOA. HOA agrees to indemnify PAC and hold PAC, its agents, officers, attorneys, directors and employees harmless from any claims, obligations, causes of action, losses, damages, costs, expenses, judgment or liability of any nature, whatsoever. HOA expressly agrees to indemnify and accept the responsibility for all of the expenses and costs incurred by PAC in defending itself in any such lawsuit, together with any loss, liability, or judgment suffered as a result of same. If there is no conflict of interest, HOA shall be entitled to use its own attorney to defend PAC in such a lawsuit. If HOA tenders the defense of any lawsuit to its insurance carrier and said carrier denies coverage to PAC, HOA shall still be obligated to indemnify, defend, and hold harmless PAC, its officers, directors, agents and employees.

## **Mediation/Arbitration**

HOA expressly agrees that any dispute arising out of this Agreement or the services provided by PAC shall first be submitted to mediation as a condition precedent to proceeding with arbitration. If the dispute cannot be resolved by mediation, any dispute arising out of this Agreement shall be resolved by binding arbitration pursuant to the terms of Judicial Arbitration Mediation Services (JAMS), or ADR, Inc. services. The party initiating the mediation/arbitration will be entitled to select the mediation/arbitration service. The mediation/arbitration service will appoint the mediator and, thereafter, the arbitrator. The parties will share equally the costs of mediation and/or arbitration. The prevailing party shall be entitled to recover its costs and attorney fees, including the mediation and/or arbitration fees and costs, from the losing party. The arbitration award may be entered as a judgment in any court of competent jurisdiction. This mediation and arbitration provision applies only to disputes between HOA and PAC and expressly does not provide a right of mediation or arbitration to any third party, including, without limitation, an Owner subject to the collection process. For matters arising out of HOA's non-payment of PAC's invoices, upon presentation, no mediation or arbitration is required, and PAC may bring an action in a court of law. with the prevailing party in any such lawsuit being entitled to reasonable attorney fees and costs incurred in any such action.

## **Entire Agreement**

This Agreement constitutes the entire understanding between PAC and HOA, and cannot be modified, changed or any provision waived, except by a writing signed by both parties.

By agreeing to these Terms and Conditions, HOA represents that the information provided to PAC is true and correct and it authorizes PAC to commence collection, including non-judicial foreclosure proceedings, under the Terms and Conditions set forth above. The individual making this Agreement on behalf of HOA is either a member of the Board of Directors or its authorized agent and certifies that the Board of Directors authorized that he/she enter into this Agreement on behalf of HOA.

## **Identification of Owner**

This Agreement shall apply to call collection accounts submitted to PAC.

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Agreed to this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
Association

By: \_\_\_\_\_  
Director

By: \_\_\_\_\_  
Director

By: \_\_\_\_\_  
Director