

**HACIENDA CARMEL COMMUNITY ASSOCIATION SEMI-ANNUAL DISCLOSURE**

California Civil Code requires that a common interest development such as ours, managed by an "Association," provide all members with certain specific information regarding the management and operation of that association. The following is provided in conformance with this requirement.

**RECAP OF BUDGET FOR FISCAL YEAR 2011-2012****INCOME**

Basic Maint.	2,603,754
Carport Rentals	24,420
Other Rentals	3,600
Guest House	33,050
Health Center	12,000
Interest	7,500
Transfer Fees	18,000
Other	2,000
<b>TOTAL NET INCOME</b>	<b><u>\$2,704,324</u></b>

**EXPENSES**

Transfer to R&R	260,375
Dining Room	67,710
Grounds	360,019
Housekeeping	1,434
Maintenance	264,072
Admin. & Gen.	1,816,177
<b>TOTAL EXPENSES</b>	<b><u>\$2,769,787</u></b>

**NET - GAIN (LOSS)** **\$ - 65,463**

**THE BUDGET FOR FISCAL YEAR 2011-2012 REFLECTS NO INCREASE IN MAINTENANCE FEES.**

The Association uses fund accounting, which requires that funds, such as operating funds and funds designated for future major repairs and replacements, be classified separately for accounting and reporting purposes. The above budget for fiscal year 2011-2012 is for the operating fund, and is prepared using an accrual basis of accounting. (Detail of the operating fund budget for Fiscal Year 2011-2012 is available on the Association Bulletin Board. The cost of Earthquake Insurance was not figured into this budget.) The budget figures for the reserve fund are attached to this notice. The Reserve Fund summary is prepared using a modified straight line method.

## **NOTICE OF RIGHT TO SUBMIT SECONDARY ADDRESS:**

A member of an association may provide written notice of a secondary address by facsimile transmission or United States mail to the association. If a secondary address is provided, the association shall send any and all correspondence and legal notices required pursuant to this article to both the primary and the secondary address.

## **REPORT OF CERTIFIED PUBLIC ACCOUNTANTS**

In compliance with the California Corporations Code, Section §8321, Hacienda Carmel's annual report of Certified Public Accountants for the year ended April 30, 2011 is mailed to all members and is posted in the Bulletin Board Room. Additional copies of the report are available upon request from the Accounting Office.

## **PENDING LITIGATION**

There is currently **NO** litigation pending against the Association.

## **ALTERNATIVE DISPUTE RESOLUTION RIGHTS**

California law now requires any homeowners' association or an owner or member of a common interest development to comply with Civil Code §1354 prior to filing certain causes of action to enforce the declaration of protective restrictions or other governing documents. Section 1354 requires any party desiring to file a complaint to first serve upon the opposing party a "request for resolution" including a brief description of the dispute, a request for alternative dispute resolution, such as mediation or arbitration, and a notice that the party receiving the request for resolution is required to respond within 30 days of receipt of the request or it will be deemed rejected.

In any action to enforce the covenants and restrictions in the declaration, the prevailing party is allowed reasonable attorneys' fees and costs.

Failure by any member of the association to comply with the pre-filing requirements of §1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents.

## **NOTICE TO RIGHT OF BOARD MINUTES**

The minutes, or a summary of the minutes of any meeting of the Board of Directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. Copies of the minutes are currently distributed to all members of the association. Additionally, members are reminded they may attend meetings of the Board of Directors except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. Regular meetings of the Hacienda Carmel Board are normally scheduled the fourth Thursday of each month at 10:00 a.m. in the Casa Fiesta.

## **NOTICE OF ROOFING PROJECT IN PROGRESS:**

The association's project to re-roof all residential and common area buildings got underway in 2010 and will continue through the year 2020. A schedule of projected roofing dates is attached to this document. The association will be re-roofing the tar and gravel roofs with asphalt shingle. All owners having glassed in areas located in the roof overhang of the patio are advised that all overhangs will be sheathed over with regular roofing material. Members wishing to replace glass in the overhang will be required to pay the entire cost of new glass panels that meet current building code requirements. Members who do not wish to pay for new glass panels in their overhang will have the overhang sheathed and roofed over at no individual cost to them.

It should be noted that glass panels in the roof overhang are after-market improvements and were not part of the original structure. Those owners who purchased their units with the glass panels already installed, purchased an after market improvement which is not part of the common area. Because these panels encroach upon the common area, however, and are detrimental to the new roofs in their current state, the association will have no alternative but to remove them. New glass panels, if added by the individual member, will be constructed to current codes and will not be detrimental to the common area roofs.

## **DEFINITION OF ELECTRONIC TRANSMISSION BY THE CORPORATION**

Hacienda Carmel will mail all communications to members and residents by first class mail (those receiving mail at Hacienda Carmel will have the communications placed into their mail boxes). The association's minutes, budget, semi-annual disclosure, and some materials related to association elections (from time to time) are posted upon the association's web site which is available to all members and residents at [www.haciendacarmel.us](http://www.haciendacarmel.us).

## **HACIENDA CARMEL RENTAL LIMIT NOTICE**

In 1992-1993, the Declaration of Protective Restrictions was amended to include a **15% limit on rental units** at Hacienda Carmel. At the December 21, 2006 meeting of the Board, the Directors reviewed the Declaration and found that the wording allows for the "grandfathered units," which are those units which have been continually rented under the same ownership since March 2, 1993, to exist as rentals *outside* of the 15% rental pool. It has been determined that there are currently five "grandfathered" units. The Board determined to interpret the Declaration of Protective Restrictions Article III, Section 3, (c), (2) to hold the grandfathered rental units separate from the 15% rental pool. The five grandfathered units ***will not be replaced*** in the rental pool upon transfer of ownership of those units or upon occupancy by the current owner(s) of the units. This interpretation opened up eight (the count of grandfathered units at that time) additional rental spots and unit owners in the rental queue at that time were notified of such by the business office. **As of the date of this notice there are no additional available openings for rentals.** And although the rental pool is now full, this status is subject to change at any time. The rental queue is on a first-come-first-served basis and owners will be granted 45 days to find a renter before they are passed over for the next unit owner in the rental queue. As rental openings become available, the next owner on the queue is notified by Certified Mail of their opportunity to rent. Please contact the Hacienda Carmel business office to add your name to the rental queue.

Owners should note that no person shall reside in or occupy any unit in excess of **30 aggregate days in any 6 month period**, who has not first obtained written consent of the Association. (For persons under the age of 18, the restriction is for 2-weeks aggregate in a 6 month period.) Applications for occupancy are available at the front desk.

Please refer to your Declaration of Protective Restrictions for additional information. You are welcome to inquire into our rental status at any time by contacting Juli Jarvis in the Business Office at extension 7803.

## **NON-INTERFERENCE WITH ASSOCIATION VENDORS**

Any member seeking direct contact with association vendors (including legal counsel) shall do so only for their own personal reasons, and at their own expense. No member shall contact a vendor on behalf of the association, nor shall they interfere with the vendor in the course of their doing business with the association. Those with questions or comments regarding the performance of an association vendor, may contact the General Manager.

## **BUILDING ALTERATIONS**

The *Design Guidelines and Regulations for Condominiums at Hacienda Carmel* book, which is available at the Front Desk, was created in order to ensure that all improvements at Hacienda Carmel preserve a unified design theme throughout the community. It is the responsibility of each owner, architect, contractor or authorized agent of an owner to refer to this book when making alterations or additions to the condominiums or landscaping. Please ask for a copy at the Hacienda Carmel Front Desk. All such alterations or additions require approval of the Buildings and Grounds Committee before start of the project. Applications for committee approval are given to each new resident with their Membership Manual, and are also available at the Front Desk. Following is text which was extracted from the Governing Documents regarding alterations at Hacienda Carmel:

The process for alterations is detailed in the Amended and Restated Declaration of CC&Rs, Article 7. Painting or other alteration of the external appearance of a Unit is not permitted, except as noted below. With prior Buildings and Grounds Committee approval, and at the Owner's expense, the patio wall or a wood patio door, or front entrance door may be painted one of the Association approved colors for outside building surfaces. With prior Buildings and Grounds Committee approval, windows or patio doors may be replaced and the replacement must conform with the Hacienda Carmel Guidelines. Pre-painted or pre-finished replacement of patio doors or windows must conform to the Hacienda Carmel Guidelines and also require Buildings and Grounds Committee approval prior to installation. All such changes require a "Request for Change" form, which is available at the Front Desk, and should be submitted to the General Manager prior to approval by Buildings and Grounds.

For major remodel, internal structural changes, and additions the Owner will be required to use a licensed contractor with current insurance. A "Request for Change" form and plans should be submitted to the General Manager prior to Buildings and Grounds approval. All necessary permits should be obtained by the Owner and his contractor.

Replacement of carpets, cabinets, sinks and built-in appliances do not require approval unless the structure of the Unit is invaded. Please note, however, that the Association cannot provide maintenance support of other than 'standard issue' items.

## **SCOPE OF THE ASSOCIATION'S RESPONSIBILITY RE: MEDICAL & FINANCIAL MATTERS**

Hacienda Carmel Community Association functions to serve the members in a variety of ways. A careful review of the Ground Rules will be helpful in understanding how the Association is operated and what is expected of unit owners and lessees. It is important to note that the Association cannot be responsible for the personal or medical care of the unit owners. For that reason, it is requested that residents provide the association with information regarding individuals to be contacted in regard to medical and financial matters, so that in the event of a medical or other type of emergency the appropriate contacts can be made by staff.

## **SCHEDULE OF MONETARY PENALTIES**

All charges accruing to the owners or renters of individual units are due and payable upon presentation of the monthly or other appropriate statements. Thirty (30) days after any such charges have been presented, such charges shall become delinquent. On the tenth of the month following the delinquency of any charge, a twenty-five dollar (\$25) late fee will be charged for each month, and subsequently each month an additional twenty-five dollars (\$25) will be charged for any past-due balance. At any time after any general or special charge or assessment against a unit has become delinquent, the Association may record a Notice of Delinquency. Immediately after the recording of any Notice of Delinquency, it shall become a lien upon the unit for the amount of such charge and shall include interest, costs (including attorneys' fees) penalties, and collection costs, which have accrued thereon. Each lien established as outlined herein may be enforced by foreclosure. All delinquent charges will carry an interest rate of twelve percent (12%) per annum.

Charges include but are not limited to Cable TV, Carport, Dining Room, Local and Long Distance Phone charges. Assessments include the monthly maintenance charges and any special assessments levied by the Board of Directors as provided by DPR IV, 4.

Hacienda Carmel's monetary penalty policy, as regards the association's Ground Rules, reads as follows: "After hearing both sides of the issue, the hearing committee [appointed by the Board of Directors] shall formally recommend to the Board of Directors the imposition of a fine if justified by the facts adduced at the hearing, which will not be less than \$250.00, in accordance with Article VIII, Section 7 of the Bylaws of Hacienda Carmel Community Association. The Resident found guilty of violating the Ground Rule shall be given thirty (30) days in which to pay the fine, and failure to do so will result in a special charge secured by a lien, as provided in Article IV, Section 4(b) and (c) of the Bylaws. All costs relating to the filing of a lien as provided in this Ground Rule shall be borne by the offending party, which will include the costs of recording the lien and attorney's fees not to exceed \$50.00.

## **AUTHORITY TO BRING SMALL CLAIMS ACTIONS**

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.

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

## INSURANCE COVERAGE

**This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.**

**The association's workman's compensation policy covers Hacienda employees working on regularly scheduled association time only. Hiring of employees on their own time, whether they are regularly employed by the association or regularly employed elsewhere or independently may, in case of accident, expose the individual unit owner to some liability. A condominium homeowner's policy may address this issue. Again, association members should consult with their insurance agent for appropriate coverage. (Your accountant or tax preparer can further advise you about other regulations, such as social security requirements, regarding the hiring of domestic employees.)**

**The Board of Directors of Hacienda Carmel Community Association and the association insurance broker, Monterey Insurance Agencies, recommend you have a Condominium Owner's Policy to provide you with personal liability protection and property coverage for your personal belongings and that portion of your unit that is not covered by the master policy. You should also consider a flood policy for your personal property. Coverages vary from carrier to carrier so please check with your representative insurance agent.**

**Generally, the association's policy is to absorb the deductible on all insurances carried by the association, unless it is determined that the member's grossly negligent action caused the loss.**

**The following is a brief summary of the insurance coverage provided by the Association's master policy. Should you or your insurance agent need additional information, a comprehensive summary of all coverages is maintained in the Hacienda Carmel accounting office.**

**The Association's master policy provides the following:**

### **Property and Liability Coverage (excluding earthquake & flood)**

The Association maintains a property insurance policy with Travelers Insurance, which provides \$45 million in blanket building coverage, with a \$5,000 property deductible. The policy also covers Equipment Breakdown, \$725,000 in Business Personal Property, \$4.5 million Building Ordinance and Law, \$50,000 Back-up of Sewer and Drain (per occurrence), and Loss of Income (for actual loss sustained). An additional \$5 million excess (umbrella) liability policy is in force to protect the Association's sole interest through AIG, which is subject to a \$10,000 self-insured retention. The Travelers policy also includes our Crime/ Fidelity policy which covers \$800,000 in employee dishonesty, \$25,000 forgery, and \$25,000 theft, with a \$5,000 deductible.

Travelers Insurance also carries the association's General Aggregate (\$4 million), Liquor coverage (\$1 million liability aggregate) and Employees Benefits Liability, Directors and Offices insurance (\$2 million), and Premises Medical coverage of \$5,000. Commercial auto (comprehensive and collision (or just comprehensive on some of the older vehicles)- \$250/\$500 deductible) is provided by State Farm. Terrorism coverage is excluded from the property and liability package.

## **INSURANCE COVERAGE, continued**

Neither the Association's general or excess liability policy provides personal liability coverage for individual unit owners. The Association's property policy insures the entire physical structure of each building for current replacement costs, **except for the following items which are the responsibility of the residents:**

- \* All interior or finished surfaces of all ceilings, floors, and walls.
- \* All glass except for damage as a result of fire.
- \* All doors, fixtures, appliances, drapes, window coverings, wall-to-wall rugs (even over unfinished surfaces), hardwood floors and all other floor coverings.
- \* Any after market alterations and/or additions, even when such modifications encompass structural changes.
- \* All personal property.

### **Flood Insurance**

The Association, through Fidelity National Property, currently maintains property coverage for buildings and property of the Association. The aggregate amount is \$43,059,400, subject to a \$2,000 deductible per building (not per unit).

### **Bridge Insurance**

Through Lloyd's of London, the Association carries a policy on the Hacienda Carmel bridge, spanning the Carmel River, with a \$2,100,000 limit and a deductible (per event) equal to 10% of insured value. The policy insures against both flood and earthquake. Terrorism is not included.

### **Earthquake Insurance**

Earthquake Insurance is not carried by the association. Members may contact the California Earthquake Authority to purchase personal property and condominium assessment insurance for earthquake. Any premium and deductible on policies through the California Earthquake authority are the responsibility of the individual unit owner.

## **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 NONJUDICIAL 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 Section 1367.4 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 1366, 1367.1 and 1367.4 of the Civil Code).

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 areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 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 1367.1 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 1367.1 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 1367.1 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, he or she 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 (Sections 1367.1 and 1367.2 of the Civil Code):

Hacienda Carmel Community Association  
1000 Hacienda Carmel  
Carmel, CA 93923-7949

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 is not liable for charges interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

A new section 1367.6 was added to the Davis-Stirling Act to permit owners to pay under protest disputed charges levied by the association, including, but not limited to, assessments, fines, penalties, late fees, collection costs and monetary penalties imposed as a disciplinary measure, and then to pursue in action in Small Claims Court to determine the validity of the disputed charge or sum levied by the association. The association retains its right to record liens for delinquent regular and special assessments, and to foreclose those liens. The owner may pursue recovery of the payment under protest in a Small Claims action while also pursuing the internal dispute resolution procedure under Civil Code Section 1363.810. The owner may only dispute assessments, fines, penalties, late charges, collection costs and monetary penalties under the new statute if the amounts in dispute do not exceed the jurisdictional limit of the Small Claims Court (\$7,500 for an individual).

## **MEETINGS AND PAYMENT PLANS**

An owner of a separate interest that is not a time-share 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 exist. (Section 1367.1 of the Civil Code)

The Board of Directors 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 1367.1 of the Civil Code)

## ASSESSMENT COLLECTION POLICY

### **Notice to Members:**

This document sets forth the Association's policy regarding the collection of assessments pursuant to the Association's Declaration of Covenants, Conditions & Restrictions, its ByLaws, and California Civil Code sections 1363.05, 1365.1, 1365.2, 1366, 1367 and 1367.1, 1367.4, 1367.5.

### **1.0 Assessments in General**

The Association has a duty to levy regular and special assessments sufficient to perform its obligations under the governing documents and California law. The amount of the regular assessments for each classification of unit are determined at least once annually (normally at the time the annual budget is prepared) and are payable monthly. The Association shall distribute the written notice described in Civil Code section 1365.1 (b) to each member of the Association during the 60-day period immediately preceding the beginning of the Association's fiscal year.

### **2.0 Obligation to Pay Assessments**

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. Each assessment or charge is also a lien on the owner's property from and after the time the association causes a Notice of Delinquent Assessment (Lien) to be recorded with the County Recorder's Office of the County of Monterey, California.

### **3.0 Monetary Charge for Reimbursement to Association for Damage to Common Areas and Facilities**

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.

### **4.0 Monetary Penalty Imposed by the Association as a Disciplinary Measure**

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.

### **5.0 Notice of Assessments**

Not less than 30 days nor more than 60 days before any increase in the regular assessment or any special assessment becomes due, the association will give the owners notice of the assessment. Notice will be sent by first-class mail to addresses on the membership register as of the date of notice. The Board of Directors may elect from time to time to provide additional periodic statements of assessments and charges, but lack of such statements does not relieve the owners of the obligation to pay assessments.

## **ASSESSMENT COLLECTION POLICY, continued**

### **6.0 Designation of Agent**

The Board of Directors may designate an agent or agents to collect assessment payments and administer this Assessment Collection Policy. Such designated agent may be an officer of the association, manager, collection service, banking institution, law firm, attorney or other appropriate agent. A.S.A.P Collection Services at 331 Piercy Road, San Jose, CA 95138 (408) 363-9600 is one of the designated agents authorized to administer this policy. Designation of Agent does not qualify A.S.A.P as an agent to go to small claims court on behalf of the Association.

### **7.0 Association Cannot Voluntarily Assign or Pledge the Association's Right to Collect**

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 per the Covenants, Conditions and Restrictions (CCR's), 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 trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

### **8.0 Due Date/Delinquency Date of Assessments**

Unless otherwise specified by the Board or the governing documents, an assessment is due upon receipt of statement. Unpaid assessments are delinquent on the first of the calendar month following the issuance of a statement, and there will be a \$25 late fee applied to the member's account on the 15<sup>th</sup> of that following month. For instance, the fees for the month of February (which are billed to members on January 31<sup>st</sup>) are considered delinquent as of March 1<sup>st</sup>, and a late fee will be charged to account as of March 15<sup>th</sup>.

### **9.0 Late Charges and Interest on Delinquent Amounts**

Delinquent accounts become subject to the following additional charges as contained in Civil Code section 1366 and the governing documents: costs of collection including reasonable attorney's fees; a late charge of \$25 per month, and interest, at an annual interest rate not to exceed 12%, on all sums (including the delinquent assessment, collection fees and costs, and reasonable attorney's fees) commencing 30 days after the assessment becomes due; whether or not charged prior to collection. If it is determined the assessment was paid on time to the association the owner will not be liable to pay the charges, interest and costs of collection.

### **10. Collection Charges**

Any costs and fees incurred in setting up, processing and collecting delinquent amounts, including, without limitation, late charges, statement charges, monthly administrative charges, charges for preparation of delinquency notices or forward to collection charges, or request for a payment plan as well as the recordation of a lien or initiation of foreclosure proceedings, postage, copies, envelopes, labels, filing and recordation charges, delivery charges, and attorney's fees and costs, title searches, bankruptcy searches, pulling copies of grant deeds or property ownership history, address and or phone number verification searches, in addition to any charges necessary to collect a delinquent assessment shall become an additional charge against the owner and the owner's property and shall be subject to collection action pursuant to this Policy.

## **ASSESSMENT COLLECTION POLICY, continued**

### **11.0 Application of Payments**

Neither the association nor its designated agent has any obligation to accept partial payments on an assessment account. Unless stated otherwise in writing, partial payments accepted will be applied first to the oldest assessments owed, and, only after the assessments owed are paid in full will the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. Owners may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. Payments may be required to be made in certified funds, e.g. cashier's check or money order.

### **12.0 Initial Delinquency Notice**

Once an assessment, or any portion thereof, has become delinquent, the owner may receive an initial delinquency notice stating all amounts past due and any known collection charges imposed as of the date of the notice, which may be in the form of a letter, monthly statement, past due notice, or any other form of writing or notice from the association or its designated agent.

### **13.0 Notice of Intent to Record a Lien**

If an assessment account remains unpaid for 45 days after it is due, the Association or its designated agent shall, at least 30 days prior to recording a lien upon the separate interest of the owner of record, notify the owner in writing by certified mail all of the notice requirements pursuant to Civil Code Section 1367.1. Prior to recording a lien for delinquent assessments, the owner has the right to request to 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 of the Civil Code. A copy of the "Meet and Confer" procedure is attached to this collection policy as an ADDENDUM titled "Dispute Resolution, Meet and Confer, and ADR."

### **14.0 Recording a Lien**

At the expiration of 30 days following the Notice of Intent to Record a Lien, the Association or its designated agent will without further notice to the owner, record a lien against the owner's property. The notice of delinquent assessment shall be 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 days after recordation.

### **15.0 Association Lien Subordination**

A lien created pursuant to 14.0 Recording of Lien 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.

### **16.0 Recording of Release of Lien**

A release of lien will not be recorded until the entire balance of the owner's account is paid in full. All charges incurred in recording a Release of Lien, including reasonable attorney or agent fees and costs, will be charged to the account. 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.

### **17.0 Lien Recorded in Error**

If it is determined that a lien previously recorded against a 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.

## **ASSESSMENT COLLECTION POLICY, Foreclosure, continued**

### **18.0 Foreclosure**

Judicial or Non Judicial foreclosure proceedings may not begin 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 are more than 12 months delinquent. Prior to initiating a foreclosure for delinquent assessments, the association will 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 of Civil Code or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of the Civil Code. 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. A copy of the "Meet and Confer" procedure is attached to this collection policy as an Addendum titled "Dispute Resolution, Meet and Confer, and ADR."

### **19.0 Deed in Lieu of Foreclosure**

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 or prohibits an association from taking a deed in lieu of foreclosure.

### **20.0 Payment Plan Agreement**

An owner of a separate interest may submit a written request to meet with the Board of Directors to discuss a payment plan agreement to allow the owner to make periodic partial payments on the entire balance of the assessments that will accrue during the payment plan period. The association has no obligation to enter into such a payment agreement. If the association accepts an agreement with the owner it shall be reasonable, as determined by the Board in its sole discretion, and in accordance with the standards for payment plans, if any exist. The payment agreement shall be in writing and will include a provision that additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. Interest and administrative charges will accrue until the account is paid in full. The agreement will also include a provision that in the event of a default on the payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan. A lien will be recorded against the property to secure debt for the association. The owner will be charged for the additional collection fees and costs to administer the payment plan. Payment plan requests outside of the association's payment plan standards will require that the Board 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 13.0 Notice of Intent to Record a Lien 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.

### **21.0 Validation of Debt**

Unless an owner disputes the validity of the debt, or any portion thereof, within thirty (30) days after receipt of the notice pursuant to 13.0 Notice of Intent to Record a Lien, the debt will be assumed to be valid. Validation of the debt will be provided in writing, at no additional cost to the owner and will include 1) 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 2) the association's name and 3) the association's mailing address.

### **22.0 Disputes**

Federal law states that initial dispute can be either oral or in writing. State law requires disputes to be in writing. It is therefore recommended that all disputes be put in writing to avoid misunderstanding.

## **ASSESSMENT COLLECTION POLICY, Foreclosure, continued**

### **23.0 Dispute Resolution Procedure, Meet and Confer**

An owner has 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 of the Civil Code. A copy of the "Meet and Confer" procedure is attached to this collection policy as an Addendum titled "Dispute Resolution, Meet and Confer, and ADR."

### **24.0 ADR - Alternative Dispute Resolution**

An owner has the right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of the Civil Code 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 judicial foreclosure. A summary of the ADR - Alternative Dispute Resolution CC 1369.520 is attached as an Addendum to this policy titled "Dispute Resolution, Meet and Confer, and ADR."

### **25.0 Owner has Right to Request Meeting with Board**

An owner has the right to request a meeting with the Board. 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 13.0 Notice of Intent to Record a Lien, unless there is not 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.

### **26.0 Owner has Right to Review Association Records**

Owner has the right to review the association records, pursuant to Section 1365.2 of the Civil Code. Owner should contact the association's managing agent for the policies and procedures set forth to inspect the records.

### **27.0 Resolution of Assessment Dispute By Alternative Dispute Resolution – Civil Code Section 1366.3 – is repealed effective January 1, 2006**

### **28.0 Other Remedies**

The association reserves the right to avail itself of any other remedy permitted by law and the association's governing documents to collect assessments and related costs and charges, including but not limited to bringing an action in Small Claims or Superior Court. Such remedies may be taken in addition to, or in lieu of, any action already taken, and commencement of one remedy shall not prevent the association from electing at a later date to pursue another remedy.

### **29.0 Address of the Association and the Board of Directors**

Owners should respond in writing or make payments to the address as directed by the designated agent. For the purpose of both REGULAR PAYMENTS, OVERNIGHT PAYMENTS, and CORRESPONDENCE mail to: Hacienda Carmel Community Association, 1000 Hacienda Carmel, Carmel, California 93923. Should this address ever change, notification of the change will be in writing to the membership through normal day-to-day correspondence from the association. It is the owner's responsibility to note any changes for their records.

### **30.0 Returned Payments**

Payments returned for insufficient funds, closed account, stop payment or for any other reason will be charged back to the owners' account in addition to any administrative fee, bank fee or collection fees and costs incurred to handle the returned payment. The association reserves the right to require an alternative payment method, other than a personal check, if two payments are returned by the bank for any reason.

## **ASSESSMENT COLLECTION POLICY, Foreclosure, continued**

### **31.0 Sufficiency of Notice**

Except for notice that under California law must be sent by certified mail, notice is sufficient if either hand delivered or mailed first class, postage prepaid, to the owner at the address on the membership register at the time of notice. Notice is presumed received (3) days after notice was mailed.

### **32.0 Owner's Change of Address**

Owner is required to notify the association of any change in the owner's name or mailing address.

### **33.0 Void Provisions**

If any provision of this Policy is determined to be null and void, all other provisions of the Policy shall remain in full force and effect.

## **ADDENDUM TO ASSESSMENT COLLECTION POLICY DISPUTE RESOLUTION, MEET AND CONFER, AND ADR**

### **DISPUTE RESOLUTION, MEET AND CONFER PROCEDURE CC § 1363.850**

WHO MAY START: This procedure may be invoked by the Association or an Owner. Either party may make a written request to meet and confer to resolve a dispute. The Board shall designate a member of the Board to meet and confer.

WHO PARTICIPATES: When a written request for Dispute Resolution is received from an owner, the Association shall participate. If the Association makes a written request for an owner to participate, the owner may elect not to participate.

NON-PARTICIPATION BY THE OWNER: If the owner declines to participate, the Association may begin Alternative Dispute Resolution, pursuant to Civil Code §1369.520.

#### IF THE OWNER PARTICIPATES, THEN THE MEET AND CONFER TAKES PLACE:

A. Both parties shall meet and confer to resolve the dispute within forty-five (45) days of receipt of the written request by the other party.

B. The meeting shall take place promptly at a mutually convenient time and place. Each party shall explain their position and shall confer in good faith to resolve the dispute.

C. A resolution of the dispute agreed to by the parties shall be made in writing and dated and signed by the parties, including the Board designee on behalf of the Association.

D. A written decision shall be made by the designated Board Member and delivered or received by the owner within ten (10) days after the meet and confer.

E. If the owner participates, but the dispute is resolved other than by agreement of the owner, the owner shall have the right to appeal to the Association's Board of Directors.

IF BOTH PARTIES DO NOT AGREE: If after the meet and confer, the parties do not mutually agree, then a neutral third party shall resolve the dispute within forty-five(45) days. The neutral party shall make a written decision within ten (10) days after their meeting.

#### APPEAL:

A. If the owner disputes the resolution, an appeal must be taken to the Board of Directors within thirty (30) days of the date of the decision by the designated Board member.

B. If there is an appeal, the Board must hear the Appeal at its next regularly scheduled meeting in executive session, then issue a written decision within ten (10) days.

#### NO CONFLICT:

A. The resolution must not be in conflict with the law or the governing documents.

B. The agreement must be consistent with the authority granted to the Board of Directors or the Board must ratify the agreement.

C. The written agreement, which is dated and signed by the parties, will bind both parties and be judicially enforceable.

NO FEE: No fee will be charged to the owner during this process.

**ADR - ALTERNATIVE DISPUTE RESOLUTION CC § 1369.520 - [SUMMARY] As of January 1, 2006**

EXCEPTIONS: Reasonable exceptions may be made to the time deadlines, in the discretion of the Board. Any exceptions will be made on a case-by-case basis.

TIME: The maximum time to act on a request by the owner is forty-five (45) days. Initiation to termination of the dispute will take no more than one hundred eighty (180) days.

1. If an association, owner or member of an association seeks either:
  - A. Declaratory or injunctive relief; or
  - B. Declaratory or injunctive relief and a claim for \$5,000 or less, including association assessments, concerning the enforcement of the governing documents; the parties shall submit their dispute to Alternative Dispute Resolution (ADR), such as mediation or arbitration. A Request for Resolution (“Request”) begins the process and it shall include:
    - 1) A description of the dispute;
    - 2) A request for ADR
    - 3) Notice that the party receiving the Request is required to respond within thirty (30) days or the Request will be deemed rejected.
  - C. This does not apply to small claims action
2. A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.
3. If a Request is accepted, ADR shall be completed within ninety (90) days from the date of acceptance, or it can be extended by a written stipulation signed by both parties.

**“FAILURE OF A MEMBER OF THE ASSOCIATION TO COMPLY WITH THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS OF SECTION 1369.520 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHT TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS OR THE APPLICABLE LAW.”**

# Reserve Fund Disclosure and Study

California Civil Code Section 1365.2.5  
Assessment and Reserve Funding Disclosure Summary  
for Hacienda Carmel Community Association  
This form was completed for the 2011-2012 Fiscal Year

This form and the information herein is not intended to replace the opinions of legal, accounting, or other expert consultants. It is a tabulation of the results of the most recent reserve study calculations whose accuracy may vary as time progresses. ***The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.***

To prepare this disclosure summary, the preparer has relied on data, opinions, reports and statements presented to it by suppliers, vendors, contractors, consultants, reserve analysis study specialists, certified public accountants and/or other professionals and is relying upon this information, financial data and reports pursuant to California Corporations Code §7231 in providing the association membership and/or prospective purchasers the information contained in this Assessment Reserve Funding Disclosure Summary. Because the reserve analysis study is a projection, the estimated useful lives and costs of components will likely change over time depending on a variety of factors e.g. future inflation rates, levels of maintenance applied by future boards, unknown defects in materials that may lead to premature failures, and etc. As a result, some components may have longer lives while others may have premature failures. Some components may cost less at the time of replacement while others may cost more. It is recommended that the association annually update their reserve study to assure that the most recent information is included in their reserve analysis consistent with **Civil Code section 1365.5**. Based upon the annual review of the reserve study the Association could increase regular assessments to facilitate additional reserve funding and/or levy special assessments to fund additional reserves over the course of the next thirty (30) years.

The information contained within the reserve study includes estimates of replacement value and life expectancies of the components and includes assumptions regarding future events based on information supplied to the Association’s Board of Directors from said Professionals. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur subsequent to the date of this disclosure summary. Therefore the actual replacement cost and remaining life may vary from the reserve study estimates and the variation may be significant. Additionally, inflation and other economic events may impact the reserve study, particularly over a thirty (30) year period of time, which may impact the accuracy of the reserve study and the funds available to meet the association’s obligation for repair and/or replacement of major components during the next thirty (30) years. Furthermore, the occurrence of vandalism, severe weather conditions, earthquakes, floods or other acts of God cannot be accounted for and are excluded when assessing life expectancy of the components. The reserve study only includes items that the Association has a clear and express responsibility to maintain, pursuant to the Association’s CC&Rs.

1. The current assessment per ownership interest is \$72.33 per month (reserve portion only). Note: if assessments vary by the size or type of ownership interest, the assessment applicable to this unit may be found on the third page of this summary (page 21).
2. Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members;

Date assessment is due	Amount per ownership interest per year (If assessments are variable, see note immediately below)	Purpose of the assessment
none	\$	
	\$	
	Total: \$0	

Note: if assessments vary by the size or type of unit, the assessment applicable to this unit may be found on the third page of this disclosure (page 21).

3. Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for the repair and/or replacement of major components during the next 30 years? *(See the first 3 paragraphs of this form).*

Yes [X]      No [ ]

4. If the answer to Question 3 is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members *(See the first 3 paragraphs of this form).*

<i>Approximate date assessment will be due</i>	<i>Amount of ownership interest per year</i>
See component funding model projections, page 2-6	

5. All major components are included in the reserve study and are included in its calculations.

6. Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the estimated amount required in the reserve fund (Component Model) at the end of the current (2010-2011) fiscal year is \$2,645,315, based in whole or in part on the last reserve study or update prepared by Hacienda Carmel as of March 29, 2011. The projected reserve fund cash balance at the end of the current (2010-2011) fiscal year is \$1,140,000 (projected balance as of April 30, 2011), resulting in reserves being 43 percent fully funded at this date. If an alternate, but generally accepted, method of calculation is also used, the required amount is \$ *(alternative funding models are available to review upon request in the Hacienda Carmel business office.)* (See attached explanation).

7. Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.5 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five years is:

Fiscal Year ending	Estimated Component Model Reserve Balance
2010-2011	\$2,772,176
2011-2012	\$2,973,377
2012-2013	\$3,180,028
2013-2014	\$3,087,571
2014-2015	\$3,039,496

This leaves the reserves at 70 percent fully funded after 5 years.

Note:

(4b) For the purposes of preparing a summary pursuant to this section:

(1) “Estimated remaining useful life” means the reasonable time calculated to remain before a major component will require replacement.

(2) “Major component” has the meaning used in **Section 1365.5** of the Civil Code. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared, the assumed long-term before-tax interest rate earned on reserve funds was 3 percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was 3 percent per year.

*Hacienda Carmel Community Association  
Monthly Assessments per Classification of Unit  
Contributed to the Reserve Fund*

<b>Type of Unit</b>	<b>Total Per Unit</b>
Studio	\$ 46.95
1B/1B	62.45
2B/1B	71.95
2B/2B	81.00
King*	*contributions vary – somewhat more than 2bedroom/2bath

The *average* cost per unit (shown on the first page of this Reserve Fund Disclosure) takes into account the actual number of units of various size classifications that make up the entire association, including those king sized units which contribute more than \$81.00 per month.