

CHAPTER 3
SPECIAL ASSESSMENT LIEN REGULATION
REPLACED BY ENFORCEMENT REGULATION FOR
NON-MONETARY VIOLATIONS 11/2/2017

3.01 Purpose and Scope.

3.0101 Purpose. The purpose of this regulation is to provide the Association with the express authority to impose special assessment liens against the real property of those members who are delinquent in the payment of Association dues, fees and charges assessed for the exercise of Association privileges and use of Association facilities and services. The Association's Board of Directors ("Board") finds that the failure to timely pay such dues, fees and charges can create a cash flow problem for the Association and causes those members who remit timely payments of their obligations to bear a disproportionate share of the community's financial obligations.

3.0102 Scope. The scope of this chapter is limited to enforcement by lien of monetary delinquencies other than the failure to pay the regular annual assessments set forth in Article II, Section 3 [Paragraphs 23 et. seq.] of the Protective Covenant.

3.0103 Construction. Where a conflict exists between the provisions of this chapter and the provisions of any other chapter of the Code, the more stringent shall apply.

3.02 Authority to Enact. This regulation is authorized by and enacted pursuant to: (1) Section 1.09 of the Code, (2) Article II, Section 4 of the Bylaws and (3) California Civil Code section 1367.

3.03 Definitions.

3.0301 Association Fees. "Association Fees" means any fees, dues or charges including, but not limited to, all tennis and golf fees, dues and charges, assessed and imposed by the Association upon a Member for the exercise of Association privileges or the use of the Association facilities and services by such Member, his or her family and guests. For purposes of this regulation, "Association Fees" does not include the regular annual assessments described in Article II, Section 3 [Paragraphs 23 et. seq.] of the Protective Covenant.

3.0302 Member. "Member" means the person or entity which owes Association Fees to the Association.

3.04 Assessment Lien.

3.0401 Levy of Special Assessment Lien. After the Association complies with the due process requirements set forth in §3.05, the Board may cause a special assessment lien to be levied against any real property in which a Member has an interest, to reimburse the Association for delinquent Association Fees owed by the Member to the Association. Notwithstanding the

foregoing, the special assessment lien may be levied only against real property subject to the jurisdiction of the Protective Covenant. The lien shall be filed with the Recorder of San Diego County. A copy of the lien shall be sent by registered or certified mail, with postage prepaid, to all record owners of the Member's property at their last known address(es), no later than ten calendar days after recordation of the lien.

3.0402 Amount of Lien. The amount of the special assessment lien shall equal the sum of the following amounts: (1) the amount of the assessed Association Fees which are at least 15 days delinquent, (2) the Association's reasonable collection costs, (3) the Association's reasonable attorneys' fees, but in any event not in excess of 10 percent of the Association Fees described in clause (1) above, (4) a late charge equal to 10 percent of the Association Fees described in clause (1) above, and (5) interest at 12 percent per annum on the total of the above sums, commencing on the 30th day after the Association Fees first become due.

3.0403 Enforcement of Lien. The Association may enforce the special assessment lien in any manner provided by law, including (1) judicial sale and (2) nonjudicial sale by the Association. The Association shall not initiate any enforcement action until at least 30 days have expired following recordation of the lien. The Association is hereby authorized to act as trustee to enforce the special assessment lien by nonjudicial sale. The Association may at any time substitute another person or entity as trustee in connection with the nonjudicial sale of any real property, in accordance with the procedures of California Civil Code section 2934a. Any nonjudicial sale by the trustee shall be conducted in accordance with the provisions of California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale of mortgages and deeds of trust. The Association may bid on the Member's property at the sale and may thereafter hold, lease, encumber and sell the acquired property.

3.0404 Form and Content of Lien. The form and content of the notice of special assessment lien shall be substantially similar to the Notice of Delinquent Special Assessment Lien described in Exhibit A (see Appendix).

3.0405 Release of Lien. Upon full payment of the special assessment lien, including payment of all additional costs, trustee's fees, attorneys' fees and expenses incurred by the Association in connection with the judicial or nonjudicial foreclosure of the special assessment lien, the Association shall execute and record a release of its lien, in form and content substantially similar to the Notice of Satisfaction and Release of Delinquent Special Assessment Lien described in Exhibit B (see Appendix). The Association shall apply any of the Member's payments first to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest and collection expenses.

3.05 Due Process; Notice and Hearing. The Association manager shall not record the Notice of Delinquent Special Assessment Lien until after each of the following has occurred: (1) the Association Fees are past due; (2) the Association delivers a demand letter by certified mail, with postage prepaid, (and, at the Association's option, by personal delivery) to the Member at the

Member's address appearing on the books of the Association, notifying the Member of the Association's intention to impose a special assessment lien if the Association Fees are not paid; the letter shall contain (i) the fee and penalty procedures of the Association, (ii) an itemized statement of the current and potential charges owed by the property owner, including principal owed, any late charges and their method of calculation, and any attorney's fees and (iii) the collection practices used by the Association, including a statement that the Association is entitled to its reasonable costs of collection; the letter shall be substantially similar to the form letter described in Exhibit C (see Appendix); (3) the Board of Directors holds a hearing no earlier than 20 days after the above described letter is mailed (or delivered, in case of personal delivery); (4) the Member is provided an opportunity to be heard at the Board of Directors hearing; and (5) the Board of Directors calculates the total sum of the special assessment lien and adopts a resolution authorizing the Association manager to execute and record the Notice of Delinquent Special Assessment Lien in the sum determined by the Board of Directors. The Board of Directors may also establish such conditions as will, in its judgment, secure substantially the objectives of the requirements of this regulation and the Protective Covenant.

3.06 Nonexclusive Remedy. The remedy described herein to collect delinquent Association Fees is not exclusive. The Association may, concurrently or at other times, pursue all other remedies available at law against the Member including, but not limited to, a personal action against the Member, suspension of the Member's voting rights and either suspension or termination (or both) of the Member's membership in the Association's golf and tennis club, as applicable. Notwithstanding the foregoing, the Association shall not be entitled to recover a greater amount in damages than the Association could have gained by receipt of the Member's full, timely and complete performance of its obligations plus the Association's consequential damages, fees and costs as a result of the Member's actions.

3.07 Amended Date. This regulation was amended at §§3.0401, 3.0403, 3.0405, and 3.05 on January 15, 1998.



ENFORCEMENT REGULATION FOR NON-MONETARY VIOLATIONS

1. Purpose and Intent. The purpose of this regulation is to establish reasonable and clear enforcement procedures to address non-monetary violations of the Rancho Santa Fe Protective Covenant (the "Protective Covenant") and the Rules and Regulations (the "Rules") adopted by the Board of Directors (the "Board") of the Rancho Santa Fe Association (the "Association") within the authority granted to the Association by law and in the Protective Covenant, the Amended and Restated Articles of Incorporation of the Association (the "Articles"), the Amended & Restated Bylaws of the Association (the "Bylaws") and the Rules.
2. Scope of Enforcement Procedures. This regulation applies to all acts of Members (as defined in Article VI of the Articles) which the Association, acting through the Board or the Association staff, may find to be non-monetary violations of the Protective Covenant and the Rules in exercise of its discretion. In the interests of clarity, the failure to pay assessments, dues and other charges would be regarded as monetary violations, but the failure to meet obligations under agreements with the Association may be found to be non-monetary. In the interests of further clarity, this regulation does not apply to acts otherwise covered by the governing documents of the Rancho Santa Fe Golf Club or the Rancho Santa Fe Tennis Club.
3. Discovery and Informal Notice. After an alleged violation of the Protective Covenant or the Rules is observed or reported, Association staff may investigate the violation. Staff shall have the discretion to make a courtesy call or send a letter informing the Member of the violation and the need for compliance. If compliance does not occur within seven days of the call or letter, or if the nature of the violation requires more immediate action, the Manager or his or her designee may elect to serve a Notice of Violation pursuant to paragraph 4. below.
4. Notice of Violation. At any time, the Manager or his or her designee may provide the Member notice of the alleged violation, where curable, the desired remedy to comply with the Protective Covenant or the Rules and a specific date (the "Compliance Date") to effect compliance which is at least 14 days after the letter's date (a "Notice of Violation"). The Notice of Violation shall further inform the Member that failure to comply by the Compliance Date may result in the Board imposing discipline, including suspension of all membership rights, voting rights, the right to make use of recreational facilities, charging privileges and the like and fines according to a schedule published by the Board. Further, the Board may charge the Member for the costs of bringing the Member in to compliance, including attorney's fees and costs incurred, whether or not litigation is commenced. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records. Note: The 14-day cure period and Compliance Date discussed in this regulation will only apply to violations susceptible of being cured.
5. Stop Work Order. In addition to a Notice of Violation, if construction without a permit or in conflict with a permit has occurred, is ongoing or is threatened or prospective, or a Member shall fail to fulfill the Member's obligation under any agreement with the Association relating to such construction, a "stop work order" may be given by the Manager or his or her designee at any time to the Member and/or any Member's contractor by first-class mail, postage prepaid, to the last known address of the Member shown on the Association's records, personal delivery or posting on the Building Site (as defined in Article VI of the Articles).

6. Temporary Restraining Order. In cases where work does not stop immediately in response to a "stop work order" or another exigency so justifies such action, the Manager or his or her designee shall have the discretion, but shall not be required, on behalf of the Association to immediately seek a temporary restraining order or preliminary injunction. The Association may seek a temporary restraining order or preliminary injunction prior to the Compliance Date in any Notice of Violation.

7. Board Action. If compliance is not effected on or before the Compliance Date specified in a Notice of Violation or if a violation is not susceptible of being cured, the Board may consider at a hearing duly noticed as provided in this paragraph 7, any disciplinary actions specified in paragraph 4. above. The Association shall provide the Member not less than 15-days prior notice of a hearing to consider discipline and the reasons therefor. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records. The notice shall contain: the date, time, and place of the hearing; the nature of the alleged violation; the amount of the costs and expenses of the Association to the date of notice in attempting to obtain compliance, a statement to the effect that an additional amount may be levied for costs and expenses incurred by the Association after the date of notice and a copy of this regulation. The Member shall be provided an opportunity to be heard, orally or in writing, at such hearing. The notice of the ruling of the Board on the matter shall be provided to the Member not more than 15 days after the hearing and not less than five days after the hearing. Such notice shall be given by first-class mail, postage prepaid, sent to the last address of the Member shown on the Association's records, and the effective date of any suspension shall be the date the notice was provided to the Member.

8. Collection of Sums. All amounts due the Association pursuant to this regulation shall be paid within five days of notice of the ruling of the Board pursuant to paragraph 7. above. In the event that the Member does not timely submit payment, the Association may collect such amounts by all lawful means, including, but not limited to, suit in Superior Court. In the event of suit in Superior Court, the Association as prevailing party shall be entitled to its reasonable attorney fees and costs.

9. Nonexclusive Remedy. At any time before or after a Notice of Violation or a notice of a Board hearing pursuant to paragraph 7. above, the Board may pursue any and all other remedies at law or in equity.

10. Restoration of Membership Privileges. The Board may restore membership privileges suspended pursuant to this regulation by the following procedures:

10.1 Request for Restoration. The Member shall submit a written request to reinstate membership privileges to the Manager. The written request shall include a description of the violation and describe the steps the Member has taken to achieve compliance. The Member shall also remit all amounts owed by the Member to the Association with the written request.

10.2 Membership Restoration. An inspection shall be made by the Manager or his or her designee to verify compliance. When compliance is satisfied and all amounts owned by the Member to the Association are paid, the Manager shall submit a request for restoration to the Board, and if the Board decides that there is no reason to continue suspension of membership privileges, the Board shall direct the Manager to note the same in the file of the Member's respective Building Site(s) and deliver to the Member a written notice of restoration of membership privileges.