

AMENDED IN ASSEMBLY JUNE 6, 2012

AMENDED IN SENATE APRIL 12, 2011

**SENATE BILL**

**No. 561**

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**Introduced by Senator Corbett**

February 17, 2011

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An act to ~~amend Sections 1367.1 and 1367.4 of the Civil Code, relating to common interest developments~~ *add and repeal Section 13023.5 of the Penal Code, relating to Internet crime statistics.*

LEGISLATIVE COUNSEL'S DIGEST

SB 561, as amended, Corbett. ~~Common interest developments: delinquent assessments.~~ *Internet crimes: data collection.*

*Existing law requires specified local entities, including district attorneys and sheriffs, to install and maintain records needed for the correct reporting of statistical data and to report that data to the Attorney General at those times, and in a manner, prescribed by the Attorney General.*

*This bill would, until January 1, 2015, authorize the Alameda County District Attorney's Office and the Los Angeles County Sheriff's Department to collect statistical data on arrests or prosecutions involving private information gathered from the Internet that was used in furtherance of a crime within each participating entity's jurisdiction. The bill would require, if the data is collected, the publication of the data in a prescribed manner on or before July 1, 2013, and January 1, 2014.*

*This bill would make legislative findings and declarations as to the necessity of a special statute for the Alameda County District Attorney and the Los Angeles County Sheriff's Department.*

~~The Davis-Stirling Common Interest Development Act provides for the establishment and regulation of common interest developments. Existing law authorizes an association to levy regular and special assessments, and, if an assessment is delinquent, authorizes the association to recover reasonable costs and attorney's fees incurred in collecting the assessment in accordance with certain requirements.~~

~~This bill would prohibit an association from assigning or pledging the association's right to collect payments or assessments to a 3rd party, or to contract with a 3rd party to collect delinquent payments or assessments, unless the 3rd party agrees to comply with the same requirements imposed on the association. The bill would specify that a waiver by an owner of his or her rights and a waiver by an association of the association's responsibilities under the act is void as contrary to public policy, and would prohibit a foreclosure proceeding from being initiated or proceeding if it is based on an agreement that is void. The bill would prohibit a 3rd party from acting as a trustee in a foreclosure proceeding. The bill would make a related statement of legislative intent.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13023.5 is added to the Penal Code, to  
2     read:

3     13023.5. (a) *The Alameda County District Attorney's Office*  
4     *and the Los Angeles County Sheriff's Department may collect*  
5     *statistical data on arrests or prosecutions involving private*  
6     *information gathered from the Internet that was used in furtherance*  
7     *of a crime within each participating entity's jurisdiction. The*  
8     *information may be gathered in a manner that the participating*  
9     *entity deems appropriate and may focus the statistical data on*  
10    *crimes the victim of which is a minor.*

11    (b) *If an entity in subdivision (a) collects the statistical data,*  
12    *that entity shall publish the information or post the information*  
13    *on the entity's Internet Web site in two installments. The first*  
14    *installment shall be published on or before July 1, 2013, and shall*  
15    *be comprised of all information collected prior to that date. The*  
16    *second installment, which shall be comprised of all information*  
17    *collected on or after July 1, 2013, shall be published on or before*  
18    *January 1, 2014.*

1 (c) *This section shall remain in effect only until January 1, 2015,*  
2 *and as of that date is repealed, unless a later enacted statute, that*  
3 *is enacted before January 1, 2015, deletes or extends that date.*

4 SEC. 2. *The Legislature finds and declares that a special law*  
5 *is necessary and that a general law cannot be made applicable*  
6 *within the meaning of Section 16 of Article IV of the California*  
7 *Constitution because of the unique need to establish a pilot*  
8 *program in the named counties to determine, on a smaller scale,*  
9 *the efficacy of the program and the usefulness of the data collected.*

10 SECTION 1. (a) ~~The Legislature finds and declares all of the~~  
11 ~~following:~~

12 (1) ~~The Davis-Stirling Common Interest Development Act was~~  
13 ~~enacted to provide protections to homeowners that have purchased~~  
14 ~~residences in common interest developments:~~

15 (2) ~~There are over 41,000 common interest developments in the~~  
16 ~~state that range in size from 3 to 27,000 units. Common interest~~  
17 ~~developments make up over four million total housing units which~~  
18 ~~represents approximately 25 percent of the state's housing stock.~~  
19 ~~In the 1990s, over 60 percent of all residential construction starts~~  
20 ~~in the state were common interest developments, and the American~~  
21 ~~Association of Retired Persons estimates there are 11 million~~  
22 ~~households in the nation in common interest developments:~~

23 (3) ~~The Davis-Stirling Common Interest Development Act~~  
24 ~~establishes procedures to be followed by homeowners' associations~~  
25 ~~in the collection of delinquencies of regular and special~~  
26 ~~assessments:~~

27 (4) ~~To collect these delinquencies, many associations contract~~  
28 ~~with third parties who require the homeowner to enter into payment~~  
29 ~~plans that prevent the association from accepting any payments~~  
30 ~~from the homeowner. In turn, the third-party debt collectors contact~~  
31 ~~homeowners and convince them to waive their rights to the~~  
32 ~~protections provided by the Davis-Stirling Common Interest~~  
33 ~~Development Act, including the right to have all payments first~~  
34 ~~applied to the assessments owed:~~

35 (5) ~~By waiving these rights, many homeowners are coerced into~~  
36 ~~payment plans that require the payment to be first applied to costs~~  
37 ~~of collection, attorney's fees, late charges, and interest, all of which~~  
38 ~~continue to accrue each month, without lowering the underlying~~  
39 ~~assessment that serves as the basis for computing these charges,~~  
40 ~~and forcing the homeowner to sink deeper into debt. These payment~~

1 plans make it extremely difficult, if not impossible, for a  
2 homeowner who is making partial payments on an outstanding  
3 balance to pay off a delinquent assessment in its entirety within  
4 12 months. After 12 months, state law allows foreclosure on  
5 homeowners who have not paid off delinquent assessments in their  
6 entirety.

7 (6) As a result, many homeowners are losing their homes in  
8 foreclosure proceedings. A recent study of five northern California  
9 counties (Alameda, Contra Costa, San Mateo, Santa Clara, and  
10 Sacramento) found that homeowners' associations filed about one  
11 of every eight foreclosures in those counties. The median amount  
12 owed in foreclosures not filed by homeowners' associations was  
13 approximately \$190,000. In sharp contrast, the median amount  
14 owed in foreclosures by homeowners' associations was only  
15 \$2,557, including costs of collection, such as attorney fees. The  
16 underlying debts, not including collection costs, late fees, and  
17 attorney costs, were in general a small fraction of the underlying  
18 debt, sometimes less than \$200. Pursuing a foreclosure in such a  
19 situation is not only an unsound business practice, but also  
20 financially and personally devastating to the homeowner.

21 (7) The Legislature has established procedures that are designed  
22 to protect homeowners from losing their homes for such small  
23 debts, including the requirements that any payments by the  
24 homeowners be applied first to any outstanding assessments. When  
25 third-party debt collectors force homeowners to waive these  
26 statutory protections, they destroy the protections put in place to  
27 protect homeowners, contravening legislative intent.

28 (8) The Legislature recognizes that while foreclosure is  
29 devastating to any homeowner, it has a doubly devastating impact  
30 on the elderly because it is the rare senior who can reenter the  
31 workforce and make enough money to replace a home lost through  
32 foreclosure. The loss of a home through foreclosure also means  
33 the loss of equity which, once lost, can almost never be recaptured.

34 (9) The National Law Center on Homelessness and Poverty has  
35 reported a dramatic increase in the percentage of heavy users of  
36 emergency shelters who are individuals older than 50 years of age,  
37 from 30.6 percent in 2008 to 40.5 percent in 2009.

38 (b) It is the intent of the Legislature, by enacting this act, to  
39 clarify and guarantee that the requirements of the Davis-Stirling  
40 Common Interest Development Act, with respect to the collection

1 of delinquencies, shall apply to the collection of any delinquent  
2 assessments and fees of the homeowners' association, regardless  
3 of whether the homeowners' association collects the delinquent  
4 assessment or assigns the job of collecting delinquent assessments  
5 and fees to a third party. It is also the intent of the Legislature to  
6 clarify that only a homeowners' association, and not a third party  
7 collecting delinquent fees or assessments owed to the homeowners'  
8 association on behalf of the association, may enforce or foreclose  
9 a lien based upon delinquent assessments.

10 SEC. 2. Section 1367.1 of the Civil Code is amended to read:

11 1367.1. (a) A regular or special assessment and any late  
12 charges, reasonable fees and costs of collection, reasonable  
13 attorney's fees, if any, and interest, if any, as determined in  
14 accordance with Section 1366, shall be a debt of the owner of the  
15 separate interest at the time the assessment or other sums are levied.  
16 At least 30 days prior to recording a lien upon the separate interest  
17 of the owner of record to collect a debt that is past due under this  
18 subdivision, the association shall notify the owner of record in  
19 writing by certified mail of the following:

20 (1) A general description of the collection and lien enforcement  
21 procedures of the association and the method of calculation of the  
22 amount, a statement that the owner of the separate interest has the  
23 right to inspect the association records, pursuant to Section 8333  
24 of the Corporations Code, and the following statement in 14-point  
25 boldface type, if printed, or in capital letters, if typed:  
26 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS  
27 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND  
28 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT  
29 COURT ACTION."

30 (2) An itemized statement of the charges owed by the owner,  
31 including items on the statement which indicate the amount of any  
32 delinquent assessments, the fees and reasonable costs of collection,  
33 reasonable attorney's fees, any late charges, and interest, if any.

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

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

39 (5) The right to dispute the assessment debt by submitting a  
40 written request for dispute resolution to the association pursuant

1 to the association's "meet and confer" program required in Article  
2 5 (commencing with Section 1363.810) of Chapter 4.

3 ~~(6) The right to request alternative dispute resolution with a  
4 neutral third party pursuant to Article 2 (commencing with Section  
5 1369.510) of Chapter 7 before the association may initiate  
6 foreclosure against the owner's separate interest, except that  
7 binding arbitration shall not be available if the association intends  
8 to initiate a judicial foreclosure.~~

9 ~~(b) Any payments made by the owner of a separate interest  
10 toward the debt set forth, as required in subdivision (a), shall first  
11 be applied to the assessments owed, and, only after the assessments  
12 owed are paid in full shall the payments be applied to the fees and  
13 costs of collection, attorney's fees, late charges, or interest. When  
14 an owner makes a payment, the owner may request a receipt and  
15 the association shall provide it. The receipt shall indicate the date  
16 of payment and the person who received it. The association shall  
17 provide a mailing address for overnight payment of assessments.~~

18 ~~(e) (1) (A) Prior to recording a lien for delinquent assessments,  
19 an association shall offer the owner and, if so requested by the  
20 owner, participate in dispute resolution pursuant to the association's  
21 "meet and confer" program required in Article 5 (commencing  
22 with Section 1363.810) of Chapter 4.~~

23 ~~(B) Prior to initiating a foreclosure for delinquent assessments,  
24 an association shall offer the owner and, if so requested by the  
25 owner, shall participate in dispute resolution pursuant to the  
26 association's "meet and confer" program required in Article 5  
27 (commencing with Section 1363.810) of Chapter 4 or alternative  
28 dispute resolution with a neutral third party pursuant to Article 2  
29 (commencing with Section 1369.510) of Chapter 7. The decision  
30 to pursue dispute resolution or a particular type of alternative  
31 dispute resolution shall be the choice of the owner, except that  
32 binding arbitration shall not be available if the association intends  
33 to initiate a judicial foreclosure.~~

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

1 ~~(3) An owner, other than an owner of any interest that is~~  
2 ~~described in Section 11212 of the Business and Professions Code~~  
3 ~~that is not otherwise exempt from this section pursuant to~~  
4 ~~subdivision (a) of Section 11211.7, may submit a written request~~  
5 ~~to meet with the board to discuss a payment plan for the debt~~  
6 ~~noticed pursuant to subdivision (a). The association shall provide~~  
7 ~~the owners the standards for payment plans, if any exist. The board~~  
8 ~~shall meet with the owner in executive session within 45 days of~~  
9 ~~the postmark of the request, if the request is mailed within 15 days~~  
10 ~~of the date of the postmark of the notice, unless there is no regularly~~  
11 ~~scheduled board meeting within that period, in which case the~~  
12 ~~board may designate a committee of one or more members to meet~~  
13 ~~with the owner. Payment plans may incorporate any assessments~~  
14 ~~that accrue during the payment plan period. Payment plans shall~~  
15 ~~not impede an association's ability to record a lien on the owner's~~  
16 ~~separate interest to secure payment of delinquent assessments.~~  
17 ~~Additional late fees shall not accrue during the payment plan period~~  
18 ~~if the owner is in compliance with the terms of the payment plan.~~  
19 ~~In the event of a default on any payment plan, the association may~~  
20 ~~resume its efforts to collect the delinquent assessments from the~~  
21 ~~time prior to entering into the payment plan.~~

22 ~~(d) The amount of the assessment, plus any costs of collection,~~  
23 ~~late charges, and interest assessed in accordance with Section 1366,~~  
24 ~~shall be a lien on the owner's separate interest in the common~~  
25 ~~interest development from and after the time the association causes~~  
26 ~~to be recorded with the county recorder of the county in which the~~  
27 ~~separate interest is located, a notice of delinquent assessment,~~  
28 ~~which shall state the amount of the assessment and other sums~~  
29 ~~imposed in accordance with Section 1366, a legal description of~~  
30 ~~the owner's separate interest in the common interest development~~  
31 ~~against which the assessment and other sums are levied, and the~~  
32 ~~name of the record owner of the separate interest in the common~~  
33 ~~interest development against which the lien is imposed. The~~  
34 ~~itemized statement of the charges owed by the owner described in~~  
35 ~~paragraph (2) of subdivision (a) shall be recorded together with~~  
36 ~~the notice of delinquent assessment. In order for the lien to be~~  
37 ~~enforced by nonjudicial foreclosure as provided in subdivision (g),~~  
38 ~~the notice of delinquent assessment shall state the name and address~~  
39 ~~of the trustee authorized by the association to enforce the lien by~~  
40 ~~sale. The notice of delinquent assessment shall be signed by the~~

1 person designated in the declaration or by the association for that  
2 purpose, or if no one is designated, by the president of the  
3 association. A copy of the recorded notice of delinquent assessment  
4 shall be mailed by certified mail to every person whose name is  
5 shown as an owner of the separate interest in the association's  
6 records, and the notice shall be mailed no later than 10 calendar  
7 days after recordation. Within 21 days of the payment of the sums  
8 specified in the notice of delinquent assessment, the association  
9 shall record or cause to be recorded in the office of the county  
10 recorder in which the notice of delinquent assessment is recorded  
11 a lien release or notice of rescission and provide the owner of the  
12 separate interest a copy of the lien release or notice that the  
13 delinquent assessment has been satisfied. A monetary charge  
14 imposed by the association as a means of reimbursing the  
15 association for costs incurred by the association in the repair of  
16 damage to common areas and facilities for which the member or  
17 the member's guests or tenants were responsible may become a  
18 lien against the member's separate interest enforceable by the sale  
19 of the interest under Sections 2924, 2924b, and 2924c, provided  
20 the authority to impose a lien is set forth in the governing  
21 documents. It is the intent of the Legislature not to contravene  
22 Section 2792.26 of Title 10 of the California Code of Regulations,  
23 as that section appeared on January 1, 1996, for associations of  
24 subdivisions that are being sold under authority of a subdivision  
25 public report, pursuant to Part 2 (commencing with Section 11000)  
26 of Division 4 of the Business and Professions Code.

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

34 (f) A lien created pursuant to subdivision (d) shall be prior to  
35 all other liens recorded subsequent to the notice of assessment,  
36 except that the declaration may provide for the subordination  
37 thereof to any other liens and encumbrances.

38 (g) (1) An association may not voluntarily assign or pledge the  
39 association's right to enforce or foreclose a lien to a third party,  
40 except when the assignment or pledge is made to a financial

1 institution or lender chartered or licensed under federal or state  
2 law, when acting within the scope of that charter or license, as  
3 security for a loan obtained by the association.

4 (2) An association shall not voluntarily assign or pledge the  
5 association's right to collect payment or assessments to a third  
6 party. An association may contract with a third party to collect  
7 delinquent payments or assessments only if the third party agrees  
8 in writing to collect payments or assessments on behalf of the  
9 association in the manner set forth in this chapter, including, but  
10 not limited to, the requirement that the application of homeowner  
11 payments shall first be applied to outstanding assessments prior  
12 to being applied to any other fees or costs.

13 (3) Any agreement that purports to confer a right on a third party  
14 to collect assessments, fees, or payments, or to enforce or foreclose  
15 a lien in a manner inconsistent with the provisions of this chapter  
16 is void as contrary to public policy. However, this section does  
17 not restrict the right or ability of an association to assign any unpaid  
18 obligations of a former member to a third party for purposes of  
19 collection.

20 (4) Subject to the limitations of this subdivision, after the  
21 expiration of 30 days following the recording of a lien created  
22 pursuant to subdivision (d), the lien may be enforced by the  
23 association or by a financial institution or lender chartered or  
24 licensed under state or federal law in any manner permitted by  
25 law, including sale by the court, sale by the trustee designated in  
26 the notice of delinquent assessment, or sale by a trustee substituted  
27 pursuant to Section 2934a. Any sale by the trustee shall be  
28 conducted in accordance with Sections 2924, 2924b, and 2924c  
29 applicable to the exercise of powers of sale in mortgages and deeds  
30 of trust. The fees of a trustee may not exceed the amounts  
31 prescribed in Sections 2924c and 2924d, plus the actual cost of  
32 service for either of the following:

33 (A) The notice of default pursuant to subdivision (j) of Section  
34 1367.1.

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

38 (5) A third party that has contracted with an association to  
39 collect assessments, fees, or payments, or to enforce or foreclose  
40 a lien shall not act as trustee in foreclosure proceedings.

1 ~~(h) Nothing in this section or in subdivision (a) of Section 726~~  
2 ~~of the Code of Civil Procedure prohibits actions against the owner~~  
3 ~~of a separate interest to recover sums for which a lien is created~~  
4 ~~pursuant to this section or prohibits an association from taking a~~  
5 ~~deed in lieu of foreclosure.~~

6 ~~(i) If it is determined that a lien previously recorded against the~~  
7 ~~separate interest was recorded in error, the party who recorded the~~  
8 ~~lien shall, within 21 calendar days, record or cause to be recorded~~  
9 ~~in the office of the county recorder in which the notice of~~  
10 ~~delinquent assessment is recorded a lien release or notice of~~  
11 ~~rescission and provide the owner of the separate interest with a~~  
12 ~~declaration that the lien filing or recording was in error and a copy~~  
13 ~~of the lien release or notice of rescission.~~

14 ~~(j) In addition to the requirements of Section 2924, a notice of~~  
15 ~~default shall be served by the association on the owner's legal~~  
16 ~~representative in accordance with the manner of service of~~  
17 ~~summons in Article 3 (commencing with Section 415.10) of~~  
18 ~~Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The~~  
19 ~~owner's legal representative shall be the person whose name is~~  
20 ~~shown as the owner of a separate interest in the association's~~  
21 ~~records, unless another person has been previously designated by~~  
22 ~~the owner as his or her legal representative in writing and mailed~~  
23 ~~to the association in a manner that indicates that the association~~  
24 ~~has received it.~~

25 ~~(k) Upon receipt of a written request by an owner identifying a~~  
26 ~~secondary address for purposes of collection notices, the~~  
27 ~~association shall send additional copies of any notices required by~~  
28 ~~this section to the secondary address provided. The association~~  
29 ~~shall notify owners of their right to submit secondary addresses to~~  
30 ~~the association, at the time the association issues the pro forma~~  
31 ~~operating budget pursuant to Section 1365. The owner's request~~  
32 ~~shall be in writing and shall be mailed to the association in a~~  
33 ~~manner that shall indicate the association has received it. The~~  
34 ~~owner may identify or change a secondary address at any time,~~  
35 ~~provided that, if a secondary address is identified or changed during~~  
36 ~~the collection process, the association shall only be required to~~  
37 ~~send notices to the indicated secondary address from the point the~~  
38 ~~association receives the request.~~

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

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

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

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

11 SEC. 3. Section 1367.4 of the Civil Code is amended to read:

12 1367.4. ~~(a) Notwithstanding any law or any provisions of the~~  
13 ~~governing documents to the contrary, this section shall apply to~~  
14 ~~debts for assessments that arise on and after January 1, 2006.~~

15 ~~(b) An association that seeks to collect delinquent regular or~~  
16 ~~special assessments of an amount less than one thousand eight~~  
17 ~~hundred dollars (\$1,800), not including any accelerated~~  
18 ~~assessments, late charges, fees and costs of collection, attorney's~~  
19 ~~fees, or interest, may not collect that debt through judicial or~~  
20 ~~nonjudicial foreclosure, but may attempt to collect or secure that~~  
21 ~~debt in any of the following ways:~~

22 ~~(1) By a civil action in small claims court, pursuant to Chapter~~  
23 ~~5.5 (commencing with Section 116.110) of Title 1 of the Code of~~  
24 ~~Civil Procedure. An association that chooses to proceed by an~~  
25 ~~action in small claims court, and prevails, may enforce the~~  
26 ~~judgment as permitted under Article 8 (commencing with Section~~  
27 ~~116.810) of Title 1 of the Code of Civil Procedure. The amount~~  
28 ~~that may be recovered in small claims court to collect upon a debt~~  
29 ~~for delinquent assessments may not exceed the jurisdictional limits~~  
30 ~~of the small claims court and shall be the sum of the following:~~

31 ~~(A) The amount owed as of the date of filing the complaint in~~  
32 ~~the small claims court proceeding.~~

33 ~~(B) In the discretion of the court, an additional amount to that~~  
34 ~~described in subparagraph (A) equal to the amount owed for the~~  
35 ~~period from the date the complaint is filed until satisfaction of the~~  
36 ~~judgment, which total amount may include accruing unpaid~~  
37 ~~assessments and any reasonable late charges, fees and costs of~~  
38 ~~collection, attorney's fees, and interest, up to the jurisdictional~~  
39 ~~limits of the small claims court.~~

1     ~~(2) By recording a lien on the owner's separate interest upon~~  
2     ~~which the association may not foreclose until the amount of the~~  
3     ~~delinquent assessments secured by the lien, exclusive of any~~  
4     ~~accelerated assessments, late charges, fees and costs of collection,~~  
5     ~~attorney's fees, or interest, equals or exceeds one thousand eight~~  
6     ~~hundred dollars (\$1,800) or the assessments secured by the lien~~  
7     ~~are more than 12 months delinquent. An association that chooses~~  
8     ~~to record a lien under these provisions, prior to recording the lien,~~  
9     ~~shall offer the owner and, if so requested by the owner, participate~~  
10    ~~in dispute resolution as set forth in Article 5 (commencing with~~  
11    ~~Section 1363.810) of Chapter 4.~~

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

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

21    ~~(1) Prior to initiating a foreclosure on an owner's separate~~  
22    ~~interest, the association shall offer the owner and, if so requested~~  
23    ~~by the owner, participate in dispute resolution pursuant to the~~  
24    ~~association's "meet and confer" program required in Article 5~~  
25    ~~(commencing with Section 1363.810) of Chapter 4 or alternative~~  
26    ~~dispute resolution as set forth in Article 2 (commencing with~~  
27    ~~Section 1369.510) of Chapter 7. The decision to pursue dispute~~  
28    ~~resolution or a particular type of alternative dispute resolution shall~~  
29    ~~be the choice of the owner, except that binding arbitration shall~~  
30    ~~not be available if the association intends to initiate a judicial~~  
31    ~~foreclosure.~~

32    ~~(2) The decision to initiate foreclosure of a lien for delinquent~~  
33    ~~assessments that has been validly recorded shall be made only by~~  
34    ~~the board of directors of the association and may not be delegated~~  
35    ~~to an agent of the association. The board shall approve the decision~~  
36    ~~by a majority vote of the board members in an executive session.~~  
37    ~~The board shall record the vote in the minutes of the next meeting~~  
38    ~~of the board open to all members. The board shall maintain the~~  
39    ~~confidentiality of the owner or owners of the separate interest by~~  
40    ~~identifying the matter in the minutes by the parcel number of the~~

1 property, rather than the name of the owner or owners. A board  
2 vote to approve foreclosure of a lien shall take place at least 30  
3 days prior to any public sale.

4 ~~(3) The board shall provide notice by personal service in  
5 accordance with the manner of service of summons in Article 3  
6 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part  
7 2 of the Code of Civil Procedure to an owner of a separate interest  
8 who occupies the separate interest or to the owner's legal  
9 representative, if the board votes to foreclose upon the separate  
10 interest. The board shall provide written notice to an owner of a  
11 separate interest who does not occupy the separate interest by  
12 first-class mail, postage prepaid, at the most current address shown  
13 on the books of the association. In the absence of written  
14 notification by the owner to the association, the address of the  
15 owner's separate interest may be treated as the owner's mailing  
16 address.~~

17 ~~(4) A nonjudicial foreclosure by an association to collect upon  
18 a debt for delinquent assessments shall be subject to a right of  
19 redemption. The redemption period within which the separate  
20 interest may be redeemed from a foreclosure sale under this  
21 paragraph ends 90 days after the sale. In addition to the  
22 requirements of Section 2924f, a notice of sale in connection with  
23 an association's foreclosure of a separate interest in a common  
24 interest development shall include a statement that the property is  
25 being sold subject to the right of redemption created in this  
26 paragraph.~~

27 ~~(d) The limitation on foreclosure of assessment liens for amounts  
28 under the stated minimum in this section does not apply to  
29 assessments owed by owners of separate interests in timeshare  
30 estates, as defined in subdivision (x) of Section 11112 of the  
31 Business and Professions Code, or to assessments owed by  
32 developers.~~

33 ~~(e) Any waiver by a homeowner of his or her rights, and any  
34 waiver by an association of its responsibilities under this chapter  
35 is void as contrary to public policy.~~

36 ~~(f) Any debt collector, agent, or third party acting to collect  
37 payments or assessments on behalf of an association shall be  
38 subject to all of the provisions of this chapter regarding collecting  
39 delinquent assessments, costs, and fees, including, but not limited  
40 to, the application of payments and the enforcement of liens.~~

- 1     ~~(g) A foreclosure proceeding shall not be initiated or proceed~~
- 2     ~~against an owner if it is based on an agreement that is void pursuant~~
- 3     ~~to any provision of this chapter.~~

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