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March 20, 2003

Judy Farrah
2397 Grassy Spring Place
Las Vegas NV 89135

via fax (562-9863) and U.S. Mail

Dear Judy:

I have reviewed reviewed SB325, section 51. The proposal states ....cost of collecting assessments at a rate established by the association not to exceed (1) $20 on an outstanding balance less than $200, (2) $50 on an outstanding greater that is $200 but less than $500, (3)$100 on an outstanding balance that is $500 but less than $1,000, (4) $250 on an outstanding balance that is $1,000 and (5) $500 if the outstanding balance is greater than $500.00. Cost of collecting is partially defined as any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery. The term does not include costs incurred by an association during a civil action (lawsuit) to enforce payment of assessments. With the "exception" to the definition of "cost of collection", the proposal gives the green light to associations to spend unlimited sums of money in pursuing delinquent owners in court. The exception also obligates a delinquent owner to pay for attorney's fees and court costs, potentially thousands of dollars.

This proposal is dangerous to associations in many ways.

1) This proposal will drive companies that specialized in "no cost to the association assessment collection" out of business. Most collection actions for delinquent assessments are for amounts due between $250 and $1,000.00. Under the proposal, the most a collection agency could charge would be $50 and $100 respectively. What the proposal does not consider, among other things, in the price recommendation is the out-of-pocket cost to enforce a lien. *The cost to record a document is $14.00. The cost to send out a letter first class and certified mail is approximately $4.00. A title insurance policy from a title company, costs between $250.00 and $350.00.* The proposal does not consider the cost of overhead, the cost of having an employee conduct basic due diligence as required, at a minimum, under the Fair Debt Collection Practices Act, general compliance costs and the cost of basic notification to the owner of the pending collection agency. The proposal does not consider the cost incurred by a licensed collection agency to conduct business. A licensed collection agency must pay a yearly agency fee. A licensed collection agency must carry a bond, NRS §649.105. The cost of carrying just the minimum bond liability amount is in excess of $1,200 per year. Many collection agencies also carry E&O insurance or professional liability insurance, all at additional costs. A tiered pricing structure, as recommended, serves no practical purpose. What the proposal does not

realize is that the cost and risk to a collection agency to collect $50 in past due assessments is the same in trying to collect $5,000.00 in past due assessments. A collection agency that performs this type of work is always prone to lawsuits. The risk is considerable in a collection agency setting. Penalties for violation of the Fair Debt Collection Practices Act can be significant, 15 USC 1692k §813. It only seems proper that the risk (lawsuits) be analyzed with the benefit (charging reasonable fees.) The fee structure, as proposed, will force assessment collection agencies out of business.

2) If an association cannot retain a company to conduct its assessment collection duties, the association will most likely have no option but to become less diligent in its assessment collection activities, thereby allowing delinquencies to increase. Many collection agencies provide "no-cost" to the association assessment collection. In other words, the costs of collection is a burden, and rightfully so, on the delinquent owner, not the association and not to rule abiding owners. If there are no companies to provide such a service, the only option to an association is pursue a delinquent owner in court or, because of financial limitations, not engage in active past due assessment collection. In court, there is no guarantee of success. Also, there are considerable attorney's fees. If this is the only option to an association, cash strapped associations may determine that costly court assessment collection is not a viable option. With such an economic situation, association's will lack money to fund reserves, pay for common areas, pay for insurance. With this proposal, an association will see property values decrease, maintenance fall by the wayside, and an unwillingness for lenders to make loans in such cash strapped and underserved areas.

3) The proposal encourages homeowners associations to file lawsuits. It appears to be the intent of the proposal to limit the costs incurred by a delinquent homeowner. However, this proposal encourages those associations who can afford to retain lawyer, to file a lawsuit against the delinquent owner. As most insurance will not cover such a lawsuit, the cost of collection (attorney's fees and court costs) will be born by those owners paying assessment on a timely basis. Also, the cost to a delinquent owner will be significant as the delinquent owner will most likely retain an attorney to defend the lawsuit. Why would the government be encouraging lawsuits to be funded by rule abiding owners? I am a rule abiding assessment paying owner in a beautiful homeowners association. I want my assessment money spent on maintaining and improving my home and association. I do not want my assessment money spent on attorneys trying to collect from rule ignoring homeowners, especially when there are collection companies available to do it at no cost to my association. Also, SB325 could potentially result in literally thousands of additional lawsuits being filed every month, in local courts.

4) Who is the legislature trying to protect? A delinquent owner is provided ample notice before a collection action commences. It is customary that if a delinquent owner is 1-2 months late, the only penalty is a minimal late fee, perhaps $20 or $30. In other words, collection fees and costs are assessed against an owner only after the association and management company have exhausted all other collection efforts such

as letters and phone calls. Most collection agencies' initial charge is approximately $75.00. That means an owner will often have the opportunity to resolve the delinquency with collection fees and costs of under $100.00. It is by the inaction of a delinquent owner that results in collection fees and costs increasing. The proposal in essence provides those individuals, especially those in cash strapped association, who do not want to pay assessments, a refuge to not pay assessments.

5) Most lawsuits are settled out of court for pennies on the dollar. Under this proposal, the only assessment collection option available to an association would be a civil lawsuit. After all, no collection company will be available to associations under the price structure recommended. Under this proposal, a theoretical civil action against a delinquent owner would proceed as follows. Owner is delinquent $500 in assessments. The association cuts a check to its attorney's for $3,500.00 (retainer) to commence a civil action against the owner. The case possibly goes to trial. The delinquent owner pays all the delinquencies ($500) and reimburses the association $3,500 in attorney's fees. **In reality**, the scenario would be something like this: Owner is delinquent for $500 in assessments. The association writes a check to an attorney for $3,500.00, money that could be used funding reserves or refreshing landscaping. The delinquent owner then cross-complains (sues) the association for some alleged breach of its (association) duty. A battle ensues costing more money on both sides. 1 year later, both sides settle. Each agrees be responsible for his own attorneys fees. Meanwhile, the association is out the $500 in original assessments, an additional year of assessments, plus $3,500.00 in attorney's fees. The delinquent owner is released from his assessment obligation, has no responsibility for the association's attorney's fees, and the cost to collect, and, in essence, is a burden born by the rule abiding, assessment paying homeowners. There is absolutely no semblance of fairness to the rule abiding, assessment paying homeowner. Is this truly what the legislature intends?

6) Recommendations. It is the intent of the legislature to establish a comfort zone with respect to assessment collection and the fees and costs incurred therein. However, it is irresponsible of the legislature to financially paralyze an association in pursuing such an objective. I suggest the legislature consider the following when trying to achieve such a comfort zone; **A)** The most common sense approach would be to allow the market place to decide what the cost of collection will be. There are a number of assessment collection agencies in the state. They compete for association business. Allow the marketplace to determine the price. If an owner feels the fees are too high, he or she can always file a complaint with the collection agency's state licensing division, the Financial Institutions Division. The division may then conduct the proper investigation. **B)** Look at the real cost to collect past due assessments. Consider the following, 1) Overhead 2) Insurance 3) Compliance costs 4) Risk to lawsuits 5) Recording, filing, costs 6) Postage costs and 7) Title insurance costs. **C)** Some states, such as California, have limited the costs and established time lines in attempts to establish such a comfort zone. A number of years ago California limited the amount a company may charge with the preparation and recording of a lien to $425.00, California Civil Code §1366.3(a)(4). The restriction is irrespective of the delinquency amount. There is talk about increasing this sum for 2004. California

Civil Code §2924(c)(d) restricts the amount of foreclosure fees, not costs, just fees, that a trustee (collection agent) can charge. Said amount is limited to $300 of the first $150,000 in principal. California has established a 30-day "stay" between the time a lien is recorded and the time foreclosure proceedings may commence.

7) Final analysis. The proposed fee structure would force "no cost to the association" assessment collection companies out of business. The existence of such companies is vital to the financial viability of associations, especially those cash strapped association. This office collected in excess of $3.8 million for associations in 2002, all at no cost to the association. Can you imagine if $3.8 million worth of lawsuits were filed in state courts, with any individual claim, or delinquent account, averaging $500.00? The burden on our legal system would be staggering. SB325 encourages lawsuits. The only benefactor under such a proposal would be the attorneys. As an aside, attorneys would be encouraged to prolong lawsuits as payment to attorneys under such a proposal would not be the customary contingency, but an hourly billing. Those suffering from such a proposal would be those delinquent owners responsible for limitless attorney's fees *and* those rule abiding owners who would be funding the lawsuits. The other loser in such a scenario would be the association who, instead of spending money to maintain and enhance property values, would be spending funds trying to collect assessment. The associations unable to fund lawsuits against delinquent owners would find properties falling into disrepair and property values decreasing. Simply put, SB325 will not accomplish that for which it is intended.

I trust this information will be useful in addressing SB325. Please do not hesitate to call should you have any questions or would like additional information.

Sincerely,

David Stone

Encl.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in a base amount that does not exceed three hundred dollars ($300) if the unpaid principal sum secured is one hundred fifty thousand dollars ($150,000) or less, or two hundred fifty dollars ($250) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business

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is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

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

Added Stats 1985 ch 874 § 14. Amended Stats 1987 ch 596 § 1; Stats 1990 ch 1517 § 4 (AB 3689), operative July 1, 1991; Stats 1991 ch 355 § 2 (AB 871), ch 412 § 2 (AB 623); Stats 1992 ch 1250 § 2 (AB 790), effective September 29, 1992. Amended Stats 2000 ch 125 § 1 (AB 1859).

§ 1366.1. Excessive assessments

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

Added Stats 1986 ch 548 § 1. Amended Stats 1992 ch 1332 § 2 (SB 1750).

§ 1366.3. Alternative dispute resolution

(a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars ($425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

Added Stats 1996 ch 1101 § 3 (AB 1317).

§ 1367. Lien for delinquent assessments

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

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's