

DECISION PAPER



April 22, 2017

Issue: Pending Suspension of Membership Rights and Authorization to Record Lien

Background:

At the April Board meeting, our delinquent account policy prescribes those members who have failed to bring their assessment accounts current face suspension of their membership rights. That policy also calls for the recording of assessment liens against their Tahoe Donner properties, should their accounts remain delinquent after May 1, 2017. These actions are not only set forth in our policy and governing documents, but are authorized by state law.

Members who still owed the regular assessment as of March were advised of this pending action. They were also given notice of their right to address the Board with regard to this contemplated action, and that their opportunity to do so would be at the April 22, 2017 Special Board meeting. Suspensions imposed at the April 22, 2017 Special Board meeting, after considering any presentations offered by members, will take effect on May 1, 2017. Along with suspending the members' ability to access the amenities as property owners, this will also disallow them from participating in the 2017 Director Election, either as a voter or as a candidate.

Under the current Civil Code, the Board is required to specifically authorize the recording of assessment liens against members' properties, and that this responsibility cannot be delegated. Therefore, along with the proposed suspension of membership rights, the Board is being called upon to authorize the recording of such a lien if members remain delinquent with regard to the 2011 Regular Assessment as of the time when liens are being recorded (after May 1, 2017). It has been the practice of the Association to not record a lien if the amount of the delinquency does not exceed \$185.

Because the code now requires that the Board specifically authorize the lien recording, accompanying this memo, please find a listing of those properties for which liens are indicated under our documents, policy and state law (to be recorded after May 1, 2017 if the delinquency is not brought current within that time). Out of courtesy to the affected members, the listing is by Unit/Lot number (customer number), which reflects the specific property involved.

Recommendation:

Staff recommends that:

The Board consider any presentations made by members whose rights are subject to suspension and properties subject to lien recording in imposing these penalties;

Unless the Board finds it appropriate to not proceed with such, to suspend the membership rights (voting rights, the right to seek a seat on the Board, and the right to access the amenities as a

DECISION PAPER



member) to be effective as of May 1, 2017 regardless of the amount of the delinquency until such time as the delinquency is cured;

To authorize the recording of an assessment lien after May 1, 2017, against those properties for which the delinquent amount is owed, if the amount of the delinquency exceeds \$185 and remains unpaid as of the time recording is to take place.

Prepared By: Megan Rodman

Reveiwed By: Elections Committee

Board Meeting Date: April 22, 2017

General Manager Approval to Place on the Agenda: _____ **Date:** _____

April 2017

VIA CERTIFIED & FIRST CLASS MAIL

**NOTICE OF PENDING SUSPENSION OF MEMBERSHIP RIGHTS AND
OF INTENT TO RECORD ASSESSMENT LIEN DUE TO UNPAID ASSESSMENT(S)**

Dear Property Owner:

Enclosed please find an itemized statement of your assessment account with the Association. The statement indicates the amounts owed for assessments, penalties and interest, as reflected in our records. As a property owner, you do have the right to inspect these records, pursuant to Section 8333 of the Corporations Code. You will not be liable to pay penalties, interest, or any costs of collection if it is determined that the assessment(s) was (were) paid on time to the Association. Included with this letter is the Association's statement of its policies and procedures with respect to delinquent assessment accounts. It explains how penalties and interest are calculated and how any payments received are applied.

If delinquent amounts remain unpaid for your Tahoe Donner property, please take note that pursuant to the provisions of the Association's Governing Documents, the Board of Directors is expected to take action to summarily suspend your membership rights, as described below, on **Saturday, April 22, 2017**. This suspension of rights will become **effective on Monday, May 1, 2017** if any outstanding amounts remain unpaid on that date, and will remain in effect until your account is current.

You are entitled to a hearing regarding this pending suspension at least five days prior to the effective date noted above. If you desire such a hearing, the Board will consider your reasons as to why this suspension is inappropriate at its April 22, 2017 Special Board of Directors meeting. Your presentation may be in writing or in person, and your written request for a hearing must **be received by Monday, April 17, 2017**.

During suspension, a member may not: (1) Vote in, or give a quorum proxy for, the annual election of Directors, or any other matter put to the members for a vote; (2) Seek election to or serve on the Board of Directors; or (3) Access the amenities (the recreational facilities) as a member. **With regard to the annual election of Directors, to be completed at the annual membership meeting on June 25, 2017, the "record date" for the qualification of members to participate therein has been established as May 1, 2017. A member whose rights are suspended as of the established record date will not be entitled to vote even if payment is made prior to the election.**

Further, state law requires that this notice be given before the Association may record an assessment lien against your property. The recording of such a lien to protect the Association's

[OVER, PLEASE]

interest in unpaid assessments is authorized by both the Association's Governing Documents and state law.

If the debt remains unpaid, the Association is also authorized to foreclose the lien and sell your property at public auction to recover the amounts owed. State law also provides that you may dispute this debt by submitting to the Board of Directors a written explanation of the reasons for your dispute. If the explanation is mailed within 15 days of the postmark of this notice, the Board must respond in writing within 15 days of the postmark of the explanation. Further, you may submit a written request to meet privately with the Board to discuss a payment plan for this debt. If such a request is mailed within 15 days of the postmark of this notice, the Board shall meet with you within 45 days of the postmark of the request.

As you can see from our delinquent assessment procedures, you will be charged \$185 when the lien is recorded. Also, if a foreclosure or other collection action is initiated, all costs associated with those activities, including attorneys' fees, will become your responsibility. Please be aware that those costs can be substantial.

This notice is to advise you that, on May 1, 2017, or within a reasonable time thereafter, the Association intends to record an assessment lien against your property, and to charge your account a \$185 Lien Fee, unless all amounts owed are paid prior to such date.

IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION

Should you have any questions, please contact MEMBERSHIP ACCOUNTING at (530) 587-9417. If you have since paid your account in full, thank you and please disregard this notice.

Sincerely,

Robb Etnyre,
General Manager
Tahoe Donner Association

TAHOE DONNER ASSOCIATION
Statement of Policies and Procedures
Regarding Delinquent Assessment Accounts

The Annual Property Owner Assessment is due January 1, and becomes delinquent March 2, of the year of that Annual Assessment. Special Individual Assessments (Architectural Standards, Covenants and Forestry Assessments, Fines and Inspection Fees) are due thirty (30) days after invoicing and delinquent fifteen (15) days thereafter. Delinquent accounts are subject to the following schedule of procedures and charges. (The actions indicated below will not be taken until at least the date specified, but may occur at a later date due to scheduling considerations.)

ANNUAL ASSESSMENT

- March 1:** DELINQUENCY FEE (10 PERCENT OF ASSESSMENT BALANCE) is charged to the account; also, interest equal to the maximum allowed by law (currently 12 percent per annum) begins to accrue on the delinquent assessment balance.
- April 1:** Notice of pending suspension of membership rights (eligibility for candidacy to serve as a director, to vote in any election, to access the amenities as a member) for failure to pay the assessment and of the member's right to a prior hearing thereon, and notice of intent to record a lien against the member's property to secure amounts owed, is sent to Owner(s) of Record via certified mail.
- April 15:** Assessment Lien recorded against property; LIEN FEE OF \$185 is charged to the account. If requested, hearing on pending suspension of membership rights must be completed at least five days prior to the suspension's effective date.
- April 20:** Approximate effective date of suspension of membership rights, which shall remain in effect until the account is brought current.
- May 1:** Interest begins accruing on Delinquency Fee.
- June 15:** Delinquent accounts become subject to all appropriate collections/legal recourses, including FORECLOSURE of the assessment lien, to recover amounts owed. All costs and fees related to such actions, including attorneys' fees, become the property owner's obligation.
- July 1:** Interest begins accruing on Lien Fee.

SPECIAL INDIVIDUAL ASSESSMENT(S)

**Days After
Invoicing**

- 60:** DELINQUENCY FEE (10 PERCENT OF ASSESSMENT BALANCE) is charged to the account; also, interest equal to the maximum allowed by law (currently 12 percent per annum) begins to accrue on the delinquent assessment balance.
- 90:** Notice of pending suspension of membership rights (eligibility for candidacy to serve as a director, to vote in any election, to access the amenities as a member) for failure to pay the assessment and of the member's right to a prior hearing thereon, and, if applicable, notice of intent to record a lien against the member's property to secure amounts owed, is sent to Owner(s) of Record via certified mail.
- 105:** If applicable, Assessment Lien recorded against property; LIEN FEE OF \$185 is charged to the account. If requested, hearing on pending suspension of membership rights must be completed at least five days prior to the suspension's effective date.
- 110:** Approximate effective date of suspension of membership rights, which shall remain in effect until the account is brought current.

120: Interest begins accruing on Delinquency Fee.

165: Delinquent accounts become subject to all appropriate collections/legal recourses, including FORECLOSURE of the assessment lien, to recover amounts owed. All costs and fees related to such actions, including attorneys' fees, become the property owner's obligation.

180: If applicable, interest begins accruing on Lien Fee.

Timeliness of payments in relation to the imposition of penalties, etc., in accordance with this schedule shall be determined by:

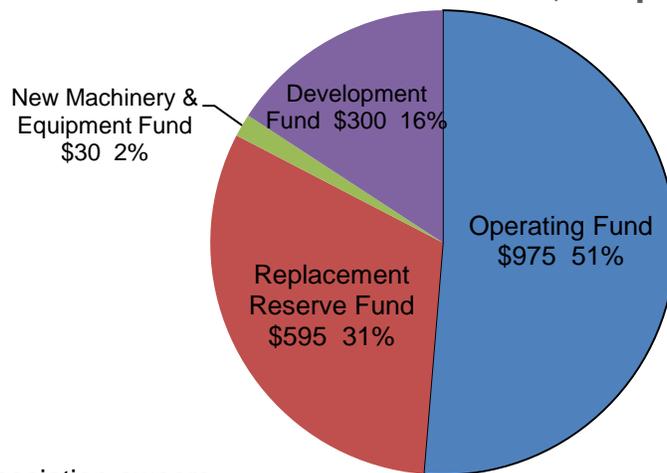
Actual date of **RECEIPT** of hand-delivered payments.

Official U.S. Postal Service postmark date appearing on the envelope in which a payment is received through the mail (private postage meter dates are ignored).

It is the Association's policy to apply payments received as follows: First, to the oldest unpaid Assessment. Second, to the Interest and Penalties (Delinquency Fee, Lien Fee, costs of collection, etc.) related to that oldest unpaid Assessment. Next, to the second-oldest Assessment, followed by the Interest and Penalties related to that second-oldest Assessment. This sequence continues until the most recent Assessment is paid, the Interest and Penalties related to that most recent Assessment are then paid.

Tahoe Donner Association

2017 Annual Assessment \$1,900 per Property



November 15, 2016

Dear Tahoe Donner Association owners,

Over the last few months, the board of directors worked with management and the finance committee to develop the 2017 annual budget. The budget was approved by the board on October 7, 2016. This follows a Finance Committee approval recommendation and several open meetings where many financial and economic factors were discussed and analyzed. The end result of this process, which directly impacts each owner, was the establishment of our 2017 annual assessment at \$1,900 per property, no increase over 2016. This mailing contains your 2017 assessment invoice, due January 1, 2017. Please refer to the enclosed invoice for important details regarding payment.

As illustrated above, the assessment consists of an **Operating Fund** portion and three **Capital Fund** portions.

The **Operating Fund** covers the annual net operating cost of running our association, and provides us with our amenities, customer services, and association administration. The Operating Fund revenue requirement is \$17.3 million, with budgeted operating revenues funding 64% and annual assessment revenue funding the remaining 36%. For 2017 the Operating Fund portion of the assessment amount has been decreased by \$99 (9%) to \$975. This decrease in assessment is driven primarily by record operating revenues in summer 2015 and 2016, and record winter 2015/2016 operating revenues increasing the budgeted operating revenue assumptions for 2017. On the expense side the increased regulatory costs involving Federal health insurance requirements, Federal overtime law changes, and an increase in the California minimum wage amount to a \$67 per owner cost impact, which was fortunately more than offset by the operating revenue growth. *Bottom Line:* A \$99 decrease for the operations portion of the assessment driven by 19 consecutive months of record operating revenues, partially offset by regulatory cost pressures, meanwhile maintaining a consistent level of service satisfying increasing participation by our members.

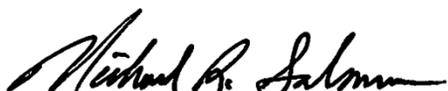
The 2017/2018 recreation fee of \$270, reflects no increase over the current year.

The **Capital Fund** allows the association to maintain our current assets (replacement reserve), purchase new assets to meet new needs (new machinery and equipment), and provide capital to expand and/or replace aging infrastructure (development). Failure to adequately fund these components ultimately impacts the overall value of our association and the value of each individual owner's property. With this fiduciary responsibility in mind, the Board increased the contribution to the Replacement Reserve by \$49 and Development by \$50 for 2017. These increases conservatively keep the Association financially healthy and protect our Association's aging assets. *Bottom Line:* The capital fund portion of the assessment increased \$99 and amounts to \$925 per property (49% of the assessment).

As you enjoy our numerous recreational opportunities, we trust that you continue to see the increasing value of your ownership reflected in this year's annual assessment. The diversity of the association is reflected in the complexity of our annual budget. The comprehensive 2017 budget report will be provided in the December 2016 issue of Tahoe Donner News, our official communication medium. You may view this report and other financial information at www.tahoedonner.com.

Sincerely,


Stephen M. Miller
Treasurer


Michael R. Salmon
Director of Finance & Accounting