

Skyview Willowbrook Association for Road Maintenance
SWARM BILLING POLICY

Rev: February 13, 2014

[Policy_Billing.doc]

A policy is simply a concise statement of SWARM board decisions, codified such that it stands on its own without the need to review historical minutes to determine a legacy position. It is intended to be a 'living document.'

The following shall be used in concert with (and not supersede) the association's By-laws and Articles. Additional authority for this document (and SWARM), comes from the **Mendocino Superior Court ruling #61093** and the **California Civil Code, sections 1365-67 (now 4000 et. Seq).**

1. Rates

- Rates were developed and solidified by the 1992 Superior Court action, with the formulae summarized within the 'Working Directives' and 'Final Judgment' documents. This included a base amount billed to all property owners, as well as a mileage surcharge billed that varied whether the property was occupied or not ('resident' classification).
- Rates are typically adjusted annually based on the **Federal Consumer Price Index** (inclusive of food and energy).
- It is up to the Board to **determine these rates periodically** based upon the needs of maintenance and improvement, insurance and associated costs and the establishment of reserves for emergencies. In determining rates (or the need for a special assessment), it is imperative that we understand that our **obligation is to maintain roads equitably**. [CCC 1365-66, Bylaws 4.03, Carter Letter of Opinion (11/2011)]
- All property owners within the Skyview-Willowbrook development are considered members and **all members are billed for a share of the services** provided by SWARM [In Accordance With (IAW) Bylaws, section 4.01].

2. Accounts

- Accounts were assigned at the creation of each parcel within the development, typically tracking an APN.
- Any property owner that splits their property (e.g.. tax splits with the County resulting in assignment of additional APNs) will have **additional SWARM accounts created to coincide with each additional APN** [IAW Bylaws, 1.06].

3. Resident / Non-Resident Status

- 'Resident' is defined as a property that is **used on a regular basis** (2 or more times a week, averaged), regardless if the listed property owner actually resides there.
- Periodically, **questionnaires** will be sent to those properties that are currently considered 'non-resident' to ascertain if the status has changed. If it has, the

accountant will be notified of the status change and the Association's Member List will be updated.

4. Billing

- Billing will be prepared for mailing, generally in **January**, typically with an annual newsletter included. When there is a past-due amount, this will be added to any new billing, along with the appropriate interest (**5% per 6 months, 10% annually**).
- Past-due billing will be prepared and mailed in **July**, with the semi-annual interest accrued added.
- Should a member incur a cost to the community by a required action or expenditure of SWARM, **that cost will be billed to the member responsible for such expenditures**. Such charges will be submitted to the accountant for inclusion against that account, and a letter of notice shall be sent to the member responsible.
- SWARM reserves the right to **surcharge members for extraordinary usage** of the road interests.

5. Delinquent Accounts

- When an account is past due for a period of **6 months** (1 billing cycle), the member **shall be notified** that their rights have been suspended, including the right to **vote** and their right to **voice** issues at meetings [IAW Bylaws, section 3.01 and Articles, section VIb]. This notification shall be written such that it *encourages the member to work out payments to the association*; and will be included in the billing. {See Attachment 1 }
- A '**delinquency list**' will be maintained for the Association. This list will include the name of the person the notice was sent to, the date, the balance owed at the time of the notice as well as further actions, including efforts by the property owner to make partial payments to prevent liens being filed against those making an effort. This list will also record the placement of a lien, when no response is received from the owner, as prescribed below. This list will be kept with the Association's records and made known to all future Boards.

The following steps are optional. Since we are a common interest development, a lien exists by default and all accounts fall under the law of 'book accounts' (ref. statute of limitations). It is recommended that at a minimum, a notice is sent, by registered mail, of the delinquency (and amount owed) to ensure proper notification and address.

- When an account is past due for a period of **12 months**, a notice of imminent lien filing will be sent to the property owner by certified mail, giving them **30 days** to respond. {See Attachment 2 }
- If no suitable response is received, **a lien will be filed** and placed against the property in question [IAW Bylaws, section 4.08,9 and Articles, section IVa]. A lien serves to retain our position as a creditor in the face of bankruptcies, property sales, etc. and should not be considered an aggressive action.

- When SWARM is forced to place (or remove) a lien on a property, **all associated costs incurred will be added to the amount owed** by the owner, including filing fees, attorney fees, service fees, etc. [IAW Bylaws, section 4.09,10].
- The delinquent Property Owner will be turned over to a professional **Collections Agency** if they not responded to the above actions AND they are **delinquent 5 years** or an **aggregate amount of \$1800**, where further actions [IAW Bylaws, section 4.10 and Ca. Civil Code 1367, etc], including foreclosure of the lien, may be taken as appropriate. This is due to the complexities of the laws for this stage.
- In all cases, the amount owed will continue to carry forward with each billing cycle, with the accumulation of additional dues assessed, as well as interest on past-due amounts and any fees assessed for the processing of delinquency actions. **The placement of a lien does not remove the account balance existent to that date from any subsequent billing or actions.**
- The reality is, a stubbornly delinquent account may not be successfully collected until the property is sold or changes hands. To ensure that delinquent accounts are collected upon transfer, it is advisable to **periodically send out letters to the local Title Companies** reminding them of their need to check with SWARM whenever a property transition is occurring.
- If the property gets transferred without resolution, the existing lien (against the previous owner) will be ‘released’ and a new **lien will be filed against the new owners**, ASAP. This is done since 1) the debt is for property access and 2) it is the new owners and the Title Company that have the information necessary (forwarding address, etc.) to pursue the previous owner.

6. Bankruptcy

- In the case that a property owner files for bankruptcy, one needs to be aware that a ‘stay’ is often called for against prospective creditors. This means that **normal billings cannot be sent to the owner during the stay’s period**. Such billings should be held onto until after the bankruptcy stay is lifted.
- When a bankruptcy notice is received, it is important that a **‘Proof of Claim’ (BC10) be filed**, regardless that the notice says it is not required. The Proof of Claim, including a copy of the filed lien on the property, notifies the judge of the monies owed to the association and places us in the queue of creditors. It is also advisable to send a representative to the **‘Meeting of Creditors’** in order to assess the issues underlying the bankruptcy.
- Regardless of the filing of a Proof of Claim and the attendance at a Meeting of Creditors, the reality is that **the Association may collect little or no part of the accumulated debt if a lien has not been filed**.
- Technically, a (Chapter 7) bankruptcy **does not eliminate the obligation of the property owner to continue making payments** to the Association (if they intend to retain ownership of the property), **nor does it eliminate a prior-recorded lien** on the property.
- It is also highly unlikely that a bankruptcy (or, similarly, a foreclosure) will dissolve the road fee obligations since the **Association’s fees are linked to the**

property (not the owner) through the property's deed; and that access to that property is through the roads held in common. A bankruptcy **may negate the difference of the amount between the filed lien and what is currently owed** however.

- Once out of bankruptcy, normal billing resumes, as do the procedures outlined within Delinquent Accounts above.

7. Liens & Judgments

- Active liens are kept in a folder of similar name and are tracked via an on-going list of lien status.
- When a debt is paid to satisfy an active lien, it will be released and the liens (original and release) filed in the 'inactive' folder and the lien status list updated.
- Judgments will be monitored to ensure if a payment or obligation is missed, it is properly noted and dealt with.
- When a judgment has been satisfied, it will be filed in the 'inactive' folder.

Three attachments follow.

This document was developed and approved by the Board of Directors of SWARM,
(date): June 10, 2009.

Updates:

- 12/2010-01/2011 -- added proper court judgment reference and lawsuit actions.
- 06/2011 – added bankruptcy section and changed 'lien list' to 'delinquency list' to better follow current procedure.
- 11/2011 – updated bankruptcy section to reflect teachings from recent case and revised rate setting section based on attorney letter of opinion.
- 05/2012 – updated accounts
- 01/2013 – added section on liens and judgments.
- 02/13/14 – noted Davis-Stirling numbering change.

Attachment 1. [example for delinquency, inclusion in July billing]

SWARM
PO Box 869
Willits, CA 95490
www.sherwoodgates.org

Date

Member Name
Member Street
Member Town, Zip

Ref. Parcel #(s)

Dear Member;

You are past-due in the payment of your Willowbrook-Skyview Road Maintenance (SWARM) assessments.

Such assessments are covered by California Civil Code 1365-67 and are prescribed by the easement attached to your property's deed. This is further reinforced by the Mendocino County Superior Court Final Judgment dated June 1, 1992 (#61093).

By the governing Bylaws and Articles of the Willowbrook-Skyview corporation (aka SWARM, of which you are a deeded member), the following steps form the remedy:

1. Your voting and representation rights in SWARM are hereby voided until your accounts are brought up to date. We urge you to contact us to make arrangements for payment. *If you are experiencing financial hardship, we will work with you to set up a payment plan.*
2. If you have not contacted us and made arrangements to bring your account up to date within 6 months, you will be served notice of an impending placement of a lien on your property for payment of the assessments owed. You will have 30 days to respond.
3. If a response is not received by the end of 30 days, action will be taken to place a lien on your property. The lien amount will include your assessments owed, interest accrued, as well as any costs borne by SWARM (filing, serving and legal fees).

Please note that a lien on your property *may* impact your ability to borrow money as well as to sell the property.

It would be wise to contact SWARM *immediately*, in writing, to work out a payment schedule to avoid further actions that may potentially encumber your property.

Thank you;
SWARM

Attachment 2. [example for delinquency, inclusion in January billing]

SWARM
PO Box 869
Willits, CA 95490
www.sherwoodgates.org

Date

Member Name
Member Street
Member Town, Zip

Ref. Parcel #(s)

Dear Member;

You are past-due in the payment of your Willowbrook-Skyview Road Maintenance (SWARM) assessments.

A notice was sent to you 6 months ago of this impending action, requesting you to contact us to work out payment arrangements. We received no response.

You are hereby given 30 day notice of the filing of a lien against your property for the amounts listed on the attached bill.

Note that a lien on your property *may* impact your ability to borrow money as well as to sell the property.

It would be wise to contact SWARM *immediately*, in writing, to work out a payment schedule to avoid lien actions that may potentially encumber your property.

Thank you;
SWARM

Attachment 3. [example for billing back member-induced legal fees]

SWARM
PO Box 869
Willits, CA 95490
www.sherwoodgates.org

Date

Member Name
Member Street
Member Town, Zip

Ref. Parcel #(s)

Subj: Billing of Legal Expenditures involved in Pursuit of Delinquent Association Dues.

Member Name;

In accordance with SWARM Bylaws, any and all costs related to the pursuit of delinquent dues or legal defense will be billed back to the responsible property owner.

Specific Bylaw sections are 4.02 (e) and 4.10 (last sentence). Equivalent California Civil Code sections (the basis for SWARM Bylaws) include 1366 (e)(1,3).

As a result of your lawsuits (in reaction to the Association's pursuit of delinquent dues and the subsequent liens), the Association was liable for the first \$1000 as their deductible for legal counsel. Your next bill will reflect these additional charges.

You have been so notified.

SWARM