

**SAMPLE
COMPLAINT**

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4 Attorneys for Plaintiff
5 (ASSOCIATION NAME)

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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF ORANGE, HARBOR JUSTICE CENTER, NEWPORT BEACH FACILITY

11 (HOMEOWNERS ASSOCIATION NAME), a)	CASE NO.
California nonprofit mutual benefit corporation,)	
12)	COMPLAINT TO FORECLOSE ASSESSMENT
13 Plaintiff,)	LIEN, ACCOUNTS STATED AND OPEN
14 vs.)	BOOK ACCOUNT
15 (DEFENDANT NAME), and DOES 1 through)	DEMAND UNDER \$10,000.00
100, inclusive,)	
16 Defendants.)	Date Action Filed: None Set
17)	Trial Date: None Set

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19 Plaintiff alleges:

20 **FIRST CAUSE OF ACTION**

21 **(For Account Stated)**

22 1. At all material times, Plaintiff was a **nonprofit mutual benefit corporation**, organized and
23 existing under the laws of the State of California and was a homeowners association established in a project
24 consisting of a planned development as defined by the Davis-Stirling Common Interest Development Act.

25 2. The true names and capacities, whether individual, corporate, associate or otherwise of
26 Defendants named herein as DOES 1 through 100, inclusive, are unknown to plaintiff, who therefore sues said
27 Defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names and capacities
28 when same have been ascertained.

1 3. At all times herein mentioned and material hereto, all of the Defendants were the agents, servants
2 and employees of their co-defendants, and were acting within the course and scope of their authority as such
3 agents, servants and employees and with the permission and consent of said named Defendants.

4 4. The real property, which is the subject of this lawsuit, is situated in the County in which the
5 above-entitled Court is located, in the State of California, and is more particularly described in Exhibit "A"
6 attached hereto and by this reference incorporated herein ("SUBJECT PROPERTY").

7 5. When Defendants acquired and accepted "SUBJECT PROPERTY", it was subject to all of the
8 terms and provisions of that certain Declaration of Covenants, Conditions and Restrictions which was recorded
9 on **(CC&R INFORMATION Recorded Date and Instrument No.)** ("DECLARATION"), and Defendants
10 entered into the purchase and acquisition of "SUBJECT PROPERTY" with both actual and constructive
11 knowledge of all of the provisions of the DECLARATION.

12 6. At all material times and in accordance with the terms and provisions of the DECLARATION,
13 Plaintiff was obligated to maintain, preserve and repair the commonly owned Lots, Parcels or areas and/or the
14 individually owned Lots, Parcels and/or portions thereof within the project.

15 7. The DECLARATION provides, among other things, for maintenance assessments to be paid
16 by Defendants to Plaintiff in the amounts set forth in the DECLARATION or established pursuant thereto, as
17 well as interest, costs, late charges and reasonable attorneys fees.

18 8. Within four (4) years past, in the County of **Orange**, State of California, an account was stated
19 in writing by and between Plaintiff and Defendants and on such statement a balance of **\$(Total Amount**
20 **Delinquent)** was found due to Plaintiff from Defendants.

21 9. Although demanded by Plaintiff from Defendants, neither all nor any part of the balance has
22 been paid.

23 10. There is now due and owing and unpaid from Defendants to Plaintiff the sum set forth in
24 paragraph 8 above, together with interest thereon at the rate provided for by Civil Code Section 1366.

25 11. Plaintiff has not consented to the breach of any of the terms or provisions of the
26 "DECLARATION" and the same have not been canceled or withdrawn, and each and every one thereof is, and
27 at all material times was, in force and effect.

28 12. This action is not subject to the provisions of Sections 1812.10 or 2984.4 of the California Civil

1 Code.

2 13. Plaintiff has provided all statutory notices to Defendants as required by the Davis-Stirling
3 Common Interest Development Act.

4 **SECOND CAUSE OF ACTION**

5 **(Open Book Account)**

6 14. Plaintiff refers to Paragraphs 1 through 13 of its First Cause of Action and incorporates the same
7 herein by reference as if set forth at length.

8 15. Within four (4) years past in the Justice Center set forth in paragraph 8 above, Defendants
9 became indebted to Plaintiff on an open book account for money due in the sum set forth in paragraph 8 above,
10 for services rendered by Plaintiff in accordance with the "DECLARATION".

11 16. Defendants have failed to pay for the maintenance assessments duly levied and presently owes
12 the amount set forth in paragraph 8 above, all of which is thirty (30) days past due as of **(31 days after notice**
13 **of intent was sent to the defendant).**

14 17. Neither the whole nor any part of the above sum has been paid although a demand has been
15 made. The principal amount owed for said indebtedness is for monthly maintenance assessments and is
16 accruing and increasing at the rate of **\$(Amount of Monthly Assessment)** per month plus interest thereon the
17 first day of each month, after the date mentioned above.

18 **THIRD CAUSE OF ACTION**

19 **(Foreclosure of Assessment Lien)**

20 18. Plaintiff refers to Paragraphs 14 through 17 of its Second Cause of Action and incorporates the
21 same herein by reference as if set forth at length.

22 19. The DECLARATION provides that all amounts set forth in the DECLARATION are and shall
23 be a lien upon SUBJECT PROPERTY and that such lien may be enforced by sale after failure of the owner to
24 pay said assessment in accordance with the terms of the DECLARATION, and such sale may be conducted
25 in any manner permitted by law.

26 20. Plaintiff has not consented to the breach of any of the terms and provisions of the
27 DECLARATION and the same have not been canceled or withdrawn and each and every one thereof is, and
28 at all material times was, in full force and effect.

1 21. Defendants have failed to pay the maintenance assessments and continue to fail and refuse to
2 do so although a demand has been made.

3 22. Plaintiff has duly recorded a Notice of Delinquent Assessment on or about **(Date Lien was**
4 **Recorded)**, in the Official Records of the County Recorder of said County.

5 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

6 **AS TO THE FIRST AND SECOND CAUSES OF ACTION**

7 (1) For the sum of \$(**Total Amount Delinquent**), plus additional maintenance assessments, late
8 charges and interest as provided for in the Davis-Stirling Common Interest Development Act and as they accrue
9 through the time of judgment;

10 **AS TO THE THIRD CAUSE OF ACTION**

11 (2) That it be decreed that the statutory assessment lien herein referred to be foreclosed and that the
12 usual decree may be made for the sale of the SUBJECT PROPERTY by the Marshal and/or Sheriff of the
13 County in which this Court is located, in the State of California, according to law and the practice of this Court;
14 that the proceeds of said sale be applied to the payment of the Sheriff and/or Marshal's expenses of said sale
15 and the next to the amount due Plaintiff, and that the balance remaining, if any, be paid over to the Defendants;
16 Defendants, and all persons claiming under them, be foreclosed of all equity or redemption or interest in said
17 SUBJECT PROPERTY or any part thereof:

18 (3) Plaintiff shall recover from Defendants personally, any deficiency between the sale price and
19 the total amount due Plaintiff from Defendants, together with the expenses of sale should such a deficiency
20 exist;

21 (4) Plaintiff or any other party to this suit may become a purchaser at said sale and that the Marshal
22 and/or Sheriff execute a Deed to said purchaser and that said purchaser be let into possession of the premises
23 on production of the Sheriff and/or Marshal's Deed therefor;

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1 **AS TO ALL CAUSES OF ACTION**

- 2 (5) For cost of suit incurred herein;
- 3 (6) For Plaintiff's attorneys fees according to proof.
- 4 (7) For such other relief as the Court may deem just and proper.
- 5

6 DATED: _____

FELDSOTT & LEE

8 BY _____
9 **(ATTORNEY INFORMATION)**
10 **ATTORNEY FOR ASSOCIATION**