



*Secrets to
Effective
Collection
of
Delinquent
Assessments*

&

*Available Legal
Remedies*

MULCAHY
**Community
Association
Cheat Sheet®**

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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A PROACTIVE APPROACH TO COLLECTING DELINQUENT ASSESSMENTS

With the downturn in the economy, many associations have been faced with trying to meet their association's budget while encountering a decrease in homeowners paying their assessments. It is estimated that 20-30% of homeowners are not paying assessments in a timely manner. A proactive approach to collection of delinquent assessments may mean fewer homeowners in arrears and the association in a stronger financial position.

SECRETS TO EFFECTIVE COLLECTION OF DELINQUENT ASSESSMENTS

1. OBTAIN INFORMATION ON OWNERS UPFRONT

Obtaining information from homeowners before they are in collection may greatly assist the association's ability to collect past due amounts in a more timely and efficient manner.

Our firm recommends the association obtain the following information from owners at the close of escrow: bank information (bank accounts, banking institution, etc.); employment; mortgage company; mailing address (if different from property address); Social Security Number; and EIN for non-individual. This can be accomplished by creating a form for this purpose.

Additionally, the association should update and retain an owner's information on an ongoing basis by keeping copies of an owner's checks when payments are made, noting place of employment and information regarding potential renters.

2. ACCURATE BOOKKEEPING

Accounting records should be accurate, easily available and reflect current charges and payments to avoid allegations of inaccuracies and potential liability. At anytime, particularly in litigation, it is very important for the association to be able to provide the homeowner or court with the status of account(s).

3. COLLECTION POLICIES/LATE FEES

The association should have collection policies in place to allow quick notification of owners regarding the association's delinquency policy and intended course of action. Having strong policies, which are enforced uniformly, encourages prompt payment. Late fees should be uniformly and strictly imposed and the late fee amount should be set high enough to encourage payment on time, but in a reasonable manner within the limits of the law (for planned communities, late fees cannot exceed \$15 or 10% of the assessment, whichever is greater). The association should also turn over delinquent accounts to its attorney without delay or exception if the owner breaches a payment plan or fails to respond. The association should consider providing flexibility to any policy in order to provide the board allowances to accept temporary payment plans for distressed owners or unforeseen circumstances.

4. COMMUNICATION WITH OWNERS

The association should use open and continuous communication with owners (i.e. newsletters and demand letters) regarding the need for timely payment of assessments and the procedures the association will follow in the event of non-payment of assessments.

5. TIMELY ACTION

Timeliness is the key to successful collections! If an assessment is 60-90 days past due, the association should record a notice of lien on the lot/unit. The longer delinquent accounts are unpaid, accruing additional charges, the harder it will be for the association to collect the delinquent balances. In addition, by allowing amounts to increase without action, the association gives its membership the impression that delinquencies will not be pursued and that there is little to no consequence for non-payment.

When accounts are turned over to the attorney, the association should provide the attorney all pertinent and complete information on file: name of owner, address, breakdown of charges and previous correspondence between owner and association. By providing this information up front the association will avoid additional delays while the attorney investigates. However, if the association does not have the information, the attorney may have tools to discover pertinent financial information.

After a file is forwarded to the attorney, the association should forward all correspondence to the attorney to handle and consult the attorney for payoff amounts. This will avoid delay, ensure accurate communication and guarantee pursuit of the total amount due and owing, including pending fees.

6. DUE DILIGENCE/CREDIT EVALUATIONS

Prior to pursuing collection, the association should run due diligence checks, including, but not limited to: ownership records (confirm record owner); Trustee Sale search; potential Bankruptcy filings; and recorded liens. The association may be able to avoid delay and encourage more timely collection of delinquencies by obtaining information up front instead of repeating collection steps.

In addition, although the association may not be obligated under law, if letters sent to an owner are returned to the association by the post office, the association should run an address search in order to determine any potentially new mailing addresses for the owner.

Finally, the association's attorney should also run a credit check against a delinquent owner to evaluate the value of and risks of collection. Having background information on the owner may assist the association in making informed and cost efficient decisions regarding collection.

7. UNDERSTANDING AVAILABLE LEGAL REMEDIES

Board members should have an understanding of and use legal remedies available to collect delinquent assessments (e.g., justice court action vs. foreclosure). Many associations may misunderstand the legal remedies available or do not want to incur additional fees to file a legal action. However, utilizing the association's legal remedies is often the most successful tool for the association to collect delinquencies.

PERSONAL JUDGMENT AGAINST THE OWNER JUSTICE COURT

The association's attorney files a lawsuit in justice court against the owner and obtains a judgment against the delinquent owner personally. With the judgment, the association can garnish the owner's wages, bank accounts or rent payments (from a tenant to the owner) or levy and execute on other real or personal property.

Benefits to obtaining a personal judgment in Justice Court:

1. It is a relatively fast means of obtaining a judgment for delinquent assessments (usually four to six months to obtain a judgment).
2. It is a cost efficient means of obtaining a judgment for delinquent assessments (the estimated cost is approximately \$700 - \$1,000 in attorneys' fees and court costs).

Disadvantages to obtaining a personal judgment:

1. The judgment may not be collectible if the individual has no assets.
2. If a debtor files for bankruptcy, there is a chance that the debtor will be discharged from the entire debt, and the proceedings or efforts to collect the debt will be halted due to the automatic stay of the bankruptcy.

FORECLOSE AN ASSESSMENT LIEN ON THE LOT/UNIT

Under Arizona law, associations can only foreclose if assessments are delinquent for a period of one (1) year or if the owner owes \$1,200 or more in assessments (whichever occurs first). Under this option, the association records a lien on the lot/unit and the association's attorney files a lawsuit to foreclose the lien. The association then obtains a judgment against the owner which orders a sheriff's sale of the lot and a deficiency judgment against the owner to the extent the sheriff's sale proceeds do not cover the judgment amount.

Benefits to foreclosure of an assessment lien:

1. Assuming that the foreclosure is successful, the delinquent owner no longer owns the property after the sheriff's sale and can be evicted after the statutory time period (30 days or 6 months, depending on whether the unit/lot is abandoned or not).
2. The delinquent owner may attempt to settle the lawsuit before the sheriff's sale if he/she has equity in the property.
3. If the property is sold to a third party at the sheriff's sale for an amount that exceeds the judgment, the association will recover the full amount owed to the association.

Disadvantages to foreclosure of an assessment lien:

1. The estimated legal fees and court costs for a foreclosure action are approximately \$1,500.00 to \$2,500.00.
2. It takes approximately six months to a year from the date of filing the lawsuit to the sheriff's sale of the lot.
3. If the delinquent owner files for bankruptcy, the foreclosure or sheriff's sale will be halted due to the automatic stay of the bankruptcy.
4. If the delinquent owner stops paying the mortgage, the first deed of trust could foreclose before the association and wipe out the association's lien.
5. If a delinquent owner pays the full amount owed to the association (as per the judgment) within 30 days or 6 months (depending on whether the unit/lot is abandoned or not) after the sheriff's sale, he/she can redeem the property and continue to live in the association.

Our firm strongly suggests that associations research the credit history, status of the first deed of trust and the financial condition of all delinquent owners prior to instituting legal action. By doing this, the board can make an informed decision as to which option to pursue.