



Collecting Delinquent Assessments

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CC&R Enforcement

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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COLLECTING DELINQUENT ASSESSMENTS

Almost every community association has problems collecting unpaid assessments. Most associations start the collection process by sending late notices, imposing late fees and recording a notice of lien on the lot/unit. However, if these efforts are unsuccessful, the association may want to consider taking legal action to enforce its rights. Under most association CC&Rs, the board has two options to collect delinquent assessments: (1) obtain a personal judgment against the owner or (2) foreclose the assessment lien on the lot/unit.

PERSONAL JUDGMENT AGAINST THE OWNER—JUSTICE COURT

To obtain a personal judgment against the delinquent owner, the association's attorney files a lawsuit in justice court against that 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 an investor) 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—SUPERIOR COURT

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.

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.

SECRETS FOR COLLECTING DELINQUENT ASSESSMENTS

1. Adopt and strictly enforce a collection procedure/policy;
2. If an assessment is 60-90 days past due, record a notice of lien on the lot/unit;
3. If the association documents provide, suspend lot/unit owner's privileges (e.g., voting rights or use of common area amenities);
4. Request that all lot/unit owners complete an owner information sheet including owner name(s), employment, mortgage company and bank account number(s);
5. Understand and use legal remedies available to collect

- delinquent assessments (e.g., justice court action vs. foreclosure);
6. Use open and continuous communication (e.g., newsletters, demand letters, etc.) with owners regarding the need for timely payments of assessments and procedures the association will follow in the event of non-payment of assessments;
 7. Make copies of all delinquent lot/unit owners' checks (this information can be useful for future garnishments);
 8. Immediately consult with an attorney if an owner files bankruptcy or if a lot/unit is scheduled for a trustee's sale; and
 9. Once a collection file has been turned over to an attorney, allow the attorney to handle all communications with the debtor.

ENFORCEMENT OF CC&Rs

One of the larger problems in community associations is obtaining owner compliance with association documents. Set forth below are some suggestions for enforcing CC&Rs:

Courtesy Reminder Letter: The board or management company mails a courtesy letter or posts a notice on the property noting the violation and giving the owner a certain period of time to correct the violation. This letter, in most cases, results in the owner addressing the problem immediately.

Formal Violation Letter: In the event the violation is not corrected in a timely manner, the next step is for the board, management company or association attorney to send a formal violation letter threatening fines against the owner. Under Arizona law, after notice (the violation letter) and an opportunity to be heard (response letter from or appearance by the violator at a board meeting), an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules and regulations of the association.

Fines: Associations can enforce payment of these fines by:

1. Filing a lawsuit against the owner;
2. Obtaining a judgment against the owner; and
3. Recording the judgment with the county recorder's office.

After the judgment is recorded, the association will have a lien that is effective upon conveyance (or paid at the time of the sale of the lot/unit). In addition, associations may proceed with collection of the judgment through traditional collection means, such as a bank, wage or rent garnishment. Associations no longer have the right to record a notice of lien for unpaid fines and penalties, interest, late charges on fines and other fees and charges.

"Self-help" Option: Some association documents also allow the association to correct a violation on a lot/unit, at the owner's cost, if the owner fails to correct a violation in a timely manner (this is often referred to as "self help"). If association documents allow the use of "self help", it is important that the association specifically follow the procedures outlined in the association's documents prior to entering the lot/unit to rectify the violation.

Litigation: If litigation is the only alternative for an association to correct a violation, an association has the right to file an

equitable claim for relief with Superior Court, requesting an order for injunction. In most cases, the judge will order that the violating owner cease from taking action or require the owner to take action and the association will be awarded its attorneys' fees and costs for filing the lawsuit.

Certified Letter Response by Owner: It is important to note that under Arizona law, if an owner sends a written response by certified mail to the association within 21 calendar days after notice to the owner by the association of a violation regarding the condition of their property, the association may not proceed forward with any action to enforce the association's documents (including fines, self-help and or lawsuit) until the association responds in writing within 10 business days to the owner with the following information:

1. The provision of the association's document(s) that has allegedly been violated;
2. Date of the violation or the date the violation was observed;
3. First and last name of the person(s) who observed the violation; and
4. Process the lot/unit owner must follow to contest the notice.
5. The following statement: "You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to A.R.S. 32-2199.01 (this was formerly handled by the Department of Fire, Building and Life Safety)."

Once the association provides this information to the owner, the association may proceed with any action to enforce the association's documents (including fines, self-help and litigation).

Deed Enforcement, Fine and Notification Policies: Associations should adopt a deed enforcement policy and notify residents of this policy. This policy should outline the steps the association will take to address a violation (such as reminder notices, demand letters, fines and penalties, self-help, referral to an attorney, corrective action, filing of a lawsuit, etc.), as well as any fines which may/shall result as the continuation of the violation. Associations should also consider placing reminders in the association's newsletters or mailings to the owners regarding common violations (such as parking violations) and request that all owners comply by a certain date.