



# Mulcahy Memo – April, 2019

Published for clients and friends of the Mulcahy Law Firm, P.C.

by Beth Mulcahy, Esq.



Dear Clients and Friends,

**Spring is here!** This is the most beautiful time of year in Arizona. I hope you get time to enjoy the glorious weather!

Over the past 22 years of representing community associations, I have found that this time of year is the best time to pursue owners for delinquencies. People will be receiving tax returns soon (if not already), and this is the perfect time to pursue collection of assessments. This month's article gives board members and managers the tools and secrets of effective collection (scroll down to read the article).

Our firm has three free educational classes scheduled for board members and managers in Chandler on a variety of community association law topics! For registration information or to view a full listing of our classes, please click [here](#).

As you know, the Arizona Legislature is currently in session and we need to keep close tabs on bills pertaining to community association law. While the legislature is in session, our firm prepares a weekly summary of these proposed bills and posts them to our website. For a listing and summary of the pending bills, please click [here](#).

## **Board Member Boot Camps**

**A reminder!** Our firm is now offering board member boot camps. Many of our clients are taking advantage of this personal education time with our firm to answer their questions and help their boards be more effective. Each program is offered at an hourly rate and covers a variety of topics, including board of director duties, compliance with Arizona and federal laws, potential pitfalls and Q&A. The boot camp can be held at a location chosen by the board or at our office. We can tailor the session to fit your board's desires as we understand that each board is unique and has different needs. For more information, please contact Beth Mulcahy, at 602.241.1093 or [bmulcahy@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com).

## **Free CCR review**

Did you know that Mulcahy Law Firm, P.C. offers a complimentary 15-minute review of an association's documents to determine the amendment procedure/requirements for each document and gives a brief summary of what should be amended and projected costs to amend the documents? If your board is interested in this complimentary document review, please contact Beth Mulcahy, Esq. at 602.241.1093 or [bmulcahy@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com).

Finally, don't forget to "like" and follow Mulcahy Law Firm, P.C. on [Facebook](#) so you don't miss any of our important updates on Arizona community association law.



Sincerely,  
Beth Mulcahy, Founder and Senior Partner  
Mulcahy Law Firm, P.C.



**Our Firm's Secrets to Effective Collection of Delinquent  
Assessments & Available Legal Remedies**  
*By: Beth Mulcahy, Esq.*

**A Proactive Approach to Collecting Delinquent Assessments**

For over 20 years, Mulcahy Law Firm, P.C. has successfully collected delinquent assessments from owners on behalf of the associations we represent. We are often asked what the "secret" to effectively assessment collection is. This cheat sheet shares our secrets. Please contact Beth Mulcahy, Esq., or anyone on the Mulcahy Law Firm, P.C. team if your association has owners who aren't paying assessments. Our firm will clean up these delinquencies and the owners will never get behind again!

**Secrets to Effective Collection of Delinquent Assessments**

**1. Obtain Owner Information Upfront**

Obtaining information from homeowners before they are in collection will assist the association's in collecting past due amounts. 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) email address, cellphone number, and home phone number. 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 changes in employment and information regarding potential renters.

**2. Accurate Bookkeeping**

Accounting records (owner's ledger) should be accurate, easily available and reflect current charges and payments to avoid allegations of inaccuracies and potential liability.

**3. Collection Policies/Late Fees**

The association should have a collection policy in place to allow quick notification of owners regarding the association's delinquency policy and intended course of action. 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).

#### **4. Communication with Owners**

The association should use open and continuous communication with owners (i.e. reminders in newsletters and at annual and regular board meetings) 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. If an owner owes the association more than \$600, the association should turn the owner's file over to the association's attorney to pursue collection of the debt. The longer the association waits to pursue the owner for the debt, the harder it will be for the association to collect the debt. 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**

The association's attorney should conduct a credit evaluation on a delinquent owner to evaluate the value of and risk of collection. Having background information on the owner may assist the association in making informed and cost-efficient decisions regarding collection. Prior to opening a file in our office and spending legal dollars, our firm conducts due diligence checks, including, but not limited to: ownership records (to confirm record owner); Trustee Sale search; potential Bankruptcy filings; and recorded liens. Our firm also does a complete online search for each owner to obtain information that may be helpful to collect the debt (Facebook, LinkedIn, Google, tax payment information on the assessor's office, research as to whether other creditors have judgments against this owner, research about the amount the owner owes on any mortgages on the property and the value of the property. This information helps our firm make good decisions on which files to pursue and the most efficient way to collect money from the owner.

#### **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) if the owner isn't responding to demand letters.

#### **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- 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 redemption 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 always researches 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.

To access our very popular cheat sheet on this topic, please follow the link below:

[Our Firm's Secrets to Effective Collection of Delinquent Assessments & Available Legal Remedies](#)

If you have questions and need answers on this topic, please contact Beth Mulcahy, Esq. at 602.241.1093 or [bmulcahy@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com).