



## UNDERSTANDING THE COLLECTION PROCESS FOR COMMUNITY ASSOCIATIONS

BY: MULCAHY LAW FIRM, P.C.

### 1. PRE-LITIGATION

Almost every community association has problems in 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.

| DEMAND LETTER PROCESS AND LIEN PROCESS  |          |
|---|----------|
| Collection Step Description   | Fee      |
| Ownership verification and confirmation, bankruptcy evaluation, trustee's sale check, lien status verification, credit check and evaluation       | \$37.00  |
| Initial Demand Letter   | \$129.50 |
| Second Demand Letter (not required but often found to be effective)   | \$92.50  |
| Notice and Claim of Lien  | \$129.50 |
| Payment Agreement and Payment Agreement Letter (if Owner contacts our office and requests a payment plan which meets the guidelines of the Board) | \$129.50 |

\* Fees listed above do not include costs

### 2. LITIGATION

If pre-litigation 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 an assessment lien on the lot/unit.

#### A. Justice Court (seeking a personal judgment)

Under this option, the association may file a legal action (a lawsuit) in Justice Court in order to obtain a personal judgment against the delinquent owner. Justice Court cases should be utilized for monetary cases that do not exceed \$10,000.00. However, Justice Courts cannot rule on real property issues (e.g. injunctive relief, foreclosure).

Once the association obtains a judgment, the association can garnish the owner's wages, bank accounts, rent payments (from a tenant to an investor) or levy and execute on other real or personal property. There are several benefits to obtaining a personal judgment in Justice Court. First, it is a relatively fast means of obtaining a judgment for delinquent assessments (usually four to six months to obtain a judgment). Second, it is a cost efficient means of obtaining a

judgment for delinquent assessments (the estimated cost is between \$750.00 and \$1,000.00 in attorney's fees and court costs).

However, there are a few disadvantages to obtaining a personal judgment. First, the judgment may not be collectible if the individual has no assets. Second, if a debtor files for bankruptcy, there is a chance that the debtor will be discharged from the entire debt. Further, the proceedings or efforts to collect the debt will be halted due to the automatic stay of the bankruptcy.

### **Justice Court Lawsuit *Basic Procedure*:**

#### If Defendant does not file an Answer:

1. File lawsuit in the proper jurisdiction
2. Service of Process
3. Wait for Answer deadline (typically, the defendant shall have 20 calendar days from the date he/she is served with the complaint to file an answer)
4. If no Answer, file Defaults
5. Wait for Default deadline (defendant has 10 judicial days of the filing of the application for defaults to make a responsive pleading or otherwise defend the lawsuit)
6. If no response, file proposed form of Judgment
7. Record Judgment in County Recorder's Office and pursue collection of Judgment

#### If Defendant files an Answer:

1. File lawsuit in the proper jurisdiction
2. Service of Process
3. Wait for Answer deadline (typically, the defendant shall have 20 calendar days from the date he/she is served with the complaint to file an answer)
4. If defendant files an Answer, the Court will Schedule a Pre-Trial/Mediation for parties to consider settle options. Defendant may also file a counter-claim
  - a. Under Civil Rules of Procedure, each party must disclose to the other the evidence and witness testimony that will be presented in trial. A disclosure statement MUST be sent to all parties within 40 days of the filing of the Answer unless otherwise ordered by the Court
5. If no settlement is reached at the Pre-Trial/Mediation, Court shall schedule a Trial
6. At Trial, parties will produce evidence and testimony and Judge will issue a ruling
7. If Judgment is obtained, record Judgment in County Recorder's Office and pursue collection of Judgment

#### Stipulated Judgment

At anytime during the Justice Court Lawsuit procedure, prior to the judgment being filed, both parties can agree to a payment schedule to payoff the debt. Our office requires debtors that want to enter into a payment plan to enter into a Stipulation to Judgment. A Stipulation to Judgment is a payment agreement signed by the debtor and association that is filed with the Court. If the Stipulated Judgment is breached due to the debtor's failure to comply with the payment plan, the association will automatically have a Judgment for the unpaid balance against the debtor. The

association will not have to go back to Court and may immediately proceed forward with the execution of the Judgment.

| <b>JUSTICE COURT LAWSUIT PROCESS<br/>AND JUDGMENT LIEN PROCESS</b>   |            |
|--|------------|
| <b>Collection Step Description</b>   | <b>Fee</b> |
| Ownership verification and confirmation, bankruptcy evaluation, trustee's sale check, lien status verification, credit check and evaluation (conducted only if necessary)  | \$55.50    |
| Justice Court Summons and Complaint  | \$370.00   |
| Application for Default  | \$74.00    |
| Default Judgment and Attorney Fees/Costs Application   | \$259.00   |
| Judgment Lien (preparation of judgment to be recorded with County Recorder's Office to act as a Judgment Lien)   | \$74.00    |
| Stipulation to Judgment/Covenant Not to Execute  | \$259.00   |
| * Fees listed above do not include costs<br>* Fees do not include charges necessary if debtor files an Answer to lawsuit or requests a payment plan through a stipulation to judgment<br>* Fees do not include dismissal or satisfaction of lawsuit/judgment |            |

## **B. Superior Court**

### ***i. Personal Judgment***

If the amount owed to the association exceeds \$10,000.00, the association may file a lawsuit in order to seek a personal judgment against the delinquent owner in Superior Court. In addition, the association may seek personal judgment as an additional claim in suits pursuing foreclosure or injunctive relief.

### ***ii. Foreclosure***

The association may file a lawsuit in order to seek foreclose of the association's lien on the lot/unit. An association has the right to lien a lot/unit for unpaid assessments, late fees, attorney fees and collection costs. Under Arizona law, associations can only foreclose if assessments (only) 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 then files a lawsuit to foreclose the lien. The judgment the association shall seek shall order a sheriff's sale of the lot/unit and a deficiency judgment against the owner to the extent the sheriff's sale proceeds do not cover the judgment amount.

There are several benefits to the foreclosure option. First, the delinquent owner must leave the property after the sheriff's sale. Second, the delinquent owner may attempt to settle the lawsuit before the sheriff's sale if he/she has equity in the property. Finally, 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.

However, there are also a few disadvantages to this option. First, the estimated legal fees and court costs for a foreclosure action are approximately \$2,000.00 to \$2,500.00. Second, it takes approximately six months to a year from the date of filing the lawsuit to the sheriff's sale of the lot/unit. Third, if the delinquent owner files for bankruptcy, the foreclosure or sheriff's sale will be halted due to the automatic stay of the bankruptcy. Fourth, 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. Finally, if a delinquent owner (of a property that is not abandoned) pays the full amount owed to the association within six months after the sheriff's sale, he/she can redeem the property.

I strongly suggest 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. In doing this, the board can make an informed decision as to which option to pursue.

### **Foreclosure Lawsuit *Basic Procedure:***

#### If Defendant does not file an Answer:

1. File lawsuit in the proper jurisdiction
2. Service of Process
3. Wait for Answer deadline (typically, the defendant shall have 20 calendar days from the date he/she is served with the complaint to file an answer)
4. If no Answer, file Defaults
5. Wait for Default deadline (defendant has 10 judicial days of the filing of the application for defaults to make a responsive pleading or otherwise defend the lawsuit)
6. If no response, schedule a Default Hearing
7. At the Default Hearing, the Judge is presented the proposed form of Judgment for execution
8. Record Judgment in County Recorder's Office
9. Present the Sheriff's Office with a certified copy of the Judgment with a Writ requesting that a Sheriff's Sale be scheduled.
10. Sheriff's Office schedules and notices a Sheriff's Sale for the property (to be conducted at the Sheriff's Office by an auction process).

#### If Defendant files an Answer:

1. File lawsuit in the proper jurisdiction
2. Service of Process
3. Wait for Answer deadline (typically, the defendant shall have 20 calendar days from the date he/she is served with the complaint to file an answer)
4. If defendant files an Answer, the matter will proceed forward through the litigation process.

| <b>FORECLOSURE PROCESS</b>   |             |
|--|-------------|
| <b>Collection Step Description</b>   | <b>Fee</b>  |
| Litigation Guarantee: The litigation guarantee is a report obtained to provide information on any judgments, liens, etc. against the owner of the property or the property itself (this is a cost, not an attorney fee).                                     | \$300.00    |
| Foreclosure Lawsuit, Notice of Lis Pendens, and Certificate of Compulsory Arbitration  | \$647.50    |
| Application for Default  | \$74.00     |
| Notice of Default Hearing (the association is required to file a Notice of Default Hearing to notify all parties of the time, date, and location of the hearing)   | \$74.00     |
| Default Judgment and Attorney Fees/Costs Application   | \$259.00    |
| Attendance at Default Hearing  | Hourly Rate |
| Judgment Lien (preparation of judgment to be recorded with County Recorder's Office to act as a Judgment Lien)   | \$74.00     |
| Writ of Special Execution  | \$259.00    |
| * Fees listed above do not include costs<br>* Fees do not include charges necessary if debtor files an Answer to lawsuit or requests a payment plan through a stipulation to judgment<br>* Fees do not include dismissal or satisfaction of lawsuit/judgment |             |

### *iii. Injunctive Relief*

Temporary Restraining Order/Mandatory Permanent Injunction: The association may file an equitable claim for relief, requesting an order for injunction which will require a person to cease from taking action or require a person to take action. An alternative is to obtain a temporary restraining order ("TRO") against the owner regarding the violation. A TRO is issued by the court under emergency conditions and is designed to preserve the status quo until a court can afford the parties time to argue the merits of the case.

### 3. POST-JUDGMENT

Upon obtaining a judgment against an Owner, the association has several options on enforcement of the judgment against the Owner. If the judgment is a personal judgment, the association may seek garnishment, execution against personal assets and/or notice a judgment debtor's exam hearing. If the judgment is a foreclosure judgment, the association may notice a Sheriff's Sale through the Sheriff's Department. Moreover, if the judgment is for injunctive relief, if the Owner has failed to comply with court order, the association may notice an Order to Show Cause hearing and demand the owner be found in Contempt of Court.

#### **A. Writs of Garnishment**

Upon obtaining a judgment against the debtor, the association may file a garnishment against an debtors' wages, bank accounts and/or rental income.

***Wage Garnishment:*** Writ of Garnishment of earnings can be issued after you make a formal written demand for payment of the judgment amount.

***Bank Garnishment/Rent Garnishment:*** Writ of Garnishment of non-earnings can be issued to garnish other assets, such as a bank account or other income property.

**B. Writ of Execution**

Upon obtaining a judgment against the debtor, the association may file “garnishment” of a debtor’s assets (e.g. car, jewelry, office equipment). A Writ of Execution empowers the Constable to levy on non-exempt personal property of value. However, the association should seriously consider the value of the assets and whether they are secured by a loan/etc. before proceeding forward with said execution.

**C. Judgment Debtor Exam/Supplemental Proceedings**

Upon obtaining a judgment against the debtor, the association may obtain financial information about a debtor (delinquent owner) by noticing a Judgment Debtors Exam Hearing. Once filed and *personally* served against the Debtor, the hearing shall have the effect of the Court ordering the debtor to appear at the hearing and provide the association financial information such as: social security number, employment, bank accounts or other assets. If the debtor fails to appear, the association may obtain a Civil Arrest Warrant against the debtor.

**D. Sheriff’s Sale**

Upon entry of a foreclosure lawsuit, the association (through our office) shall present a Writ of Special Execution, signed by the Clerk of the Court, commanding the Sheriff to sell the property at foreclosure sale. The Sheriff’s Office handles scheduling the sale date and the requisite public notice of the Sheriff’s Sale. The Sheriff’s Sale is conducted in an auction format with the opening bid as the amount owed to the association. The Sheriff’s Office charges an up-front fee to conduct the sale as well as a commission based from the judgment amount owed by the debtor.

**E. Order to Show Cause Hearing**

Upon entry of an injunctive relief order/judgment, if the owner fails to comply with the terms of the Court’s Order, the association may notice an “Order to Show Cause” hearing. Once filed and *personally* served against the Owner, the hearing shall have the effect of the Court ordering the debtor to appear at the hearing and provide the association with the basis for non-conformance with the injunctive relief order/judgment. Our office typically requests the Court to issue sanctions for the owner’s non-compliance (including, but not limited to additional court issued fines/penalties and potential jail time).

| <b>Post Judgment Collection Process<br/>and Garnishment Process</b>  |                |
|--|----------------|
| <b>Collection Step Description</b>   | <b>Cost</b>    |
| Post-Judgment Demand Letter  | \$92.50        |
| Employment Verification (for wage garnishment)   | Free of Charge |
| Tenant Verification (for rent garnishment)   | Free of Charge |
| Bank Verification (for bank account garnishment)   | Free of Charge |
| Wage Garnishment   | \$259.00       |
| Rent Garnishment   | \$259.00       |
| Bank Garnishment   | \$259.00       |
| Judgment Debtor Hearing (this may require an appearance before the Court by legal counsel which shall be billed at the attorney's hourly rate) | \$259.00       |
| * Fees listed above do not include costs   |                |
| * Fees do not include charges necessary if debtor or garnishee files a Request for Hearing regarding the related garnishment                   |                |
| * Fees do not include dismissal, quash or satisfaction of lawsuit/garnishment/judgment   |                |

If a debtor contacts our office at any time during the collection process, we are glad to work with the debtor to avoid additional fees from being incurred and in order to work towards obtaining payment of the debt owed in full. At times, this may require placing a file on hold in order to permit the Owner time to remit payment in full (e.g. during a payment plan time allowance).

Should a debtor file for bankruptcy, all collection steps will be halted.

Should Mulcahy discover a Trustee's Sale is scheduled for a property, Mulcahy shall contact the association to obtain permission to either place a hold on the collection steps being taken or to obtain authority proceed forward with said collection steps.