

ASSESSMENT COLLECTIONS THROUGH COUNTY COURT LAWSUITS

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ASSESSMENT COLLECTIONS THROUGH COUNTY COURT LAWSUITS

Association Collection Duties

The Association and the Board of Directors have duties to collect assessments due the owner association.

Typical Collection Tools of Associations

Most owner associations use the following collection tools:

1. A Collection Policy (collection policies are required under Senate Bill 05-100)
2. Late Charges
3. Interest charges
4. Other fees (if allowed under the governing documents or, in a proper case, the agreement between the association and the managing agent or management company)
5. Delinquency reporting from the managing agent or management company to the association (provided at or in advance of periodic board meetings)
6. Letters from the management to the delinquent owner
7. Additional notice of lien recording with the Clerk and Recorder
8. Demand letters from the association's attorneys
9. Collection phone calls from the association's attorneys
10. Status reports from the association's attorneys to the association and the association's management company
11. County Court lawsuit (for breach of the owner's agreement to pay assessments)
12. Enforcement of court ordered judgment through interrogatories, garnishments and contempt citations

Additional Collection Tools

In addition to these remedies, the following are sometimes used:

1. Suspension of voting rights (notice and hearing may be required)
2. Suspension of rights to use recreational amenities or common elements (notice and hearing may be required)
3. Utility shut offs (notice and hearing may be required and consultation with the owner association's legal counsel is recommended [Note: some municipalities preclude utility shut offs as a collection remedy])
4. Assignment (sale) of sums due the association.

Additional collection remedies that owner associations should consider are the following:

1. Judicial foreclosure of the assessment lien
2. Receivership
3. The association foreclosure option should be evaluated regularly and used aggressively. To evaluate the association's foreclosure option, owner associations and their boards and managers should understand the judicial foreclosure process. For more on receivership as a collection remedy, see our separate article on this subject.

This article reviews the County Court collections, the most common remedy used by associations to collect assessments when an owner's delinquent account is referred to the association's attorneys.

Initial Collection Steps Taken by the Association's Attorneys

1. **Case Intake.** Referrals are sent to our office via mail, fax or email requesting that we open a file and send a demand letter and/or record a Notice of Assessment Lien. Case intake is provided at no charge.
2. **Ownership/Records Checking.** After case intake and opening a file, we check the county assessor's records to confirm ownership. We also check bankruptcy records to determine if a bankruptcy has been filed. And, we check Public Trustee foreclosure records to determine whether a first lien or other lender has started a foreclosure, what the current status of that foreclosure is and what our course of action should be. If a case has a previous judgment entered, a flat fee is charged for post-judgment collection. Our records checks are provided at no charge.
3. **Demand Letter/Phone Calls to the Owner.** We prepare and send a demand letter based on the ledger received from the association, and call the owner (if contact information is provided). By contacting the owner, we seek to negotiate a possible payment plan. The demand letter allows the owner 30 days to either pay the account in full, contact our office to make payment arrangements, or dispute the debt in writing. If our office is provided with contact information for the owner, we don't wait for the owner to call us, we call them.

If the owner disputes the debt, information is collected and a letter is sent to the owner verifying the debt. This is normally done by sending an account ledger and any letters or documentation that the management company has of the amounts due, along with a copy of the Declaration and any Collection Policy that we have been provided.

4. **Notice of Assessment Lien.** Along with our demand letter, we prepare and record a Notice of Assessment Lien, if this notice has not already been prepared and recorded. If either the association or management company receives payment directly that would pay

the account in full, the association or management company, as appropriate, should notify us and we will then release the Notice of Assessment Lien.

5. **Payment Plans (after Demand Letter and Prior to Suit).** When we contact owners prior to serving them with a lawsuit, they have the option of paying the matter in full or entering into a repayment agreement. Any arrangement requiring more than three months to repay will be filed with the Court as a stipulated agreement. The advantage of a stipulation is that in the event of default, the association will have the immediate right to seek judgment against the homeowner. We then monitor the payment plan with the owner. If a payment plan is agreed to by the owner, a letter is sent to the owner setting forth those arrangements in writing. The letter our firm uses seeks the owner's signature and acknowledgement. Our form of letter includes terms that if the owner fails to make the payments as agreed, the association can proceed with collection. We then monitor the payment plan with the owner.

County Court Lawsuits.

Upon expiration of the 30-day demand letter, if we do not have payment or a payment plan in place, we request an updated ledger, we review the ledger and again check that there is no foreclosure action against the property and that the owner has not filed bankruptcy. With those records on foreclosure and bankruptcy checked, we then prepare a County Court lawsuit. A Summons and a Complaint are prepared and sent out for personal service upon the owners. We will periodically follow up on our process servers to see how they are doing in obtaining "service." Once service is obtained, the owner has a specific court date (referred to as the "return date") by which to defend and file an Answer, or again contact our office to make payment arrangements. After service is obtained, we file the case and "appear" in Court on the scheduled return date. If the owner fails to appear, fails to contact our office to make payment arrangements, or fails to file an Answer, a default judgment is sought by our office and entered by the Court against the owner.

If an Answer is filed on a case, a pre-trial conference is scheduled in some counties. In other counties, a Notice to Set Trial is filed and a trial to the court is scheduled. If the case goes to trial, witnesses and exhibits are prepared, and the case is heard by a judge or magistrate. If a judgment is entered, our office proceeds with the post-judgment collection process.

Upon entry of default judgment or entry of judgment after trial, we send out Interrogatories for service upon the owner. Interrogatories are a list of questions for the owner to complete which include information on bank accounts, job information, social security numbers, and any other information that may assist in locating assets that may be used to collect on the judgment. We also then obtain a credit report on the owner (which we cannot do prior to obtaining a judgment) to obtain employment and possible bank account information. This information is used for wage and bank garnishments, which are the primary sources to collect on a judgment.

If the owner is served with the Interrogatories and fails to respond to the Interrogatories, we file a Contempt Citation with the Court. A Contempt Citation is issued by the Court ordering the owner to appear in Court at a specific time and advise the Court why they failed to answer the Interrogatories. If the owner fails to appear at that time, and further fails to answer the Interrogatories, the Court will issue a Bench Warrant for their arrest.

Stipulation to Make Payments (after suit is filed).

If payment in full from an owner cannot be obtained, yet, the owner desires to pay over time, within a time frame acceptable to the association, we prepare a Stipulation to Make Payments. Our fees for this service are based upon the length of the Stipulation and are included in the Stipulation. Any correspondence to the owner regarding default is charged at a flat fee per letter. The Stipulation, once signed, is filed with the Court.

Written Payoffs.

If an owner desires to pay off a judgment, we obtain an updated ledger, review attorney fees, and calculate and prepare a written payoff to the association or its agent. A payoff letter, where the property has been foreclosed, is calculated with a 6-month super lien and amounts incurred from expiration of redemption. Fees for this service are billed on a flat fee basis but vary depending on whether there has been a foreclosure and if a rush payoff is required.

Effective Collection from Owners Through County Court Lawsuits

The ‘squeaky wheel gets the oil’ is an adage that is proven time and time again in County Court collections of association assessments.

County Courts and their simpler procedures allow a relatively speedy remedy for the collection of assessments. When the association’s attorneys are experienced in County Court collections and diligently pursue the process, the ‘oil is applied’ and associations recover the sums due.

To be effective, owner associations and their attorneys must be proactive and aggressive.

For the best collection results, owner associations and management should have an effective collection policy, implement it and consult with knowledgeable and aggressive owner association attorneys when payments are not forth coming from owners.