

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 many or all of 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 company 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. Judicial foreclosure of the assessment lien
2. Receivership
3. Assignment (sale of sums due)
4. Suspension of voting rights (notice and hearing may be required)
5. Suspension of rights to use recreational amenities or common elements (notice and hearing may be required)

6. Utility shut-offs (notice and hearing may be required and are strongly recommended. And, consultation with the owner association's legal counsel is recommended. [Note: some municipalities preclude utility shut-offs as a collection remedy]

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 and consult with their association attorneys. For more on receivership as a collection remedy, see our separate article on this subject.

County Court Collections Process

This article reviews the county court collections process, 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 Before Filing a County Court Lawsuit

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. Additionally, 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, we will pursue appropriate post-judgment remedies in an effort to collect the judgment. Our initial 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 contact is made with an owner 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. Alternatively, if the debt can be satisfied in less than three months, 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 owner. 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 or settlement 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.

It can frequently take 2-4 months for a trial to occur from the date the owner files an Answer.

Once a judgment is entered, our office proceeds with the post-judgment collection process. This begins with Interrogatories we seek to have served 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 will assist in locating assets that may be used to collect on the judgment.

We also 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 provide the answers in the time allowed, 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. This Contempt Citation is then sought to be served on the owner. 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 (prior to judgment)

If a lawsuit is filed and 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 for the owner, where the owner agrees to make payments. The Stipulation, once signed, is filed with the Court. In the event of default, the association will have the immediate right to ask that judgment be entered against the owner for the amounts due at that time.

Post-Judgment Stipulations

Once judgment is entered against an owner they may still negotiate a mutually agreeable payment arrangement. The principal advantage of a post judgment stipulation to the association is that, in the event of default, the association can seek to have the earlier judgment amended.

Written Payoffs/Super Lien 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.

Effective Collection from Owners Through County Court Lawsuits

The ‘squeaky wheel gets the grease’ 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 ‘grease is applied’ and associations recover the sums due.

To be effective, owner associations and their attorneys must communicate, 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.