



## CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Wood, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.991.6949 | f 480.991.7040

javier@carpenterhazlewood.com | www.carpenterhazlewood.com

# A GUIDE TO ASSOCIATION COLLECTIONS

## COLLECTIONS IN GENERAL

All collection fees and costs incurred as a result of our work are always sought against the Owner(s) for the purpose of reimbursing the Association. Boards also receive, at no additional charge, a detailed monthly status report summarizing delinquencies and any Board decisions that need to be made prior to the firm moving forward on the account. If a matter becomes contested, any motion practice and/or hearings are billed on an hourly basis.

## INTRODUCTION

Most associations have both a statutory right (Arizona law) and contractual right (under the "CC&R's" or Declaration) to hold a delinquent owner personally responsible for the debt as well as hold the property responsible for the debt via the association's lien.

Owner's are personally responsible for the debt that arises during their period of ownership. A personal lawsuit seeking to obtain a money judgment against the owner(s) is filed in the justice court. Delinquent owner's are responsible for the collection fees and costs. The judgment obtained is for a monetary amount and is enforceable against the owner's personal assets.

A typical means of enforcing this type of judgment is by garnishing the owner's wages or bank assets.

Likewise, Arizona law and most declarations provide that the property is responsible for the debt through the association's automatic contractual and/or statutory lien.

## DEMAND LETTERS AND PAYMENT AGREEMENTS

The vast majority of collection accounts we handle every year are resolved through simply sending a demand letter and/or payment agreement – generally within one to six months at a total cost of \$100.00 to \$250.00. **Our policy is to get the initial demand letter out within 24 hours of receipt of the request or the cost of the demand letter is FREE.**

Personal money judgments are obtained against the owner personally with no action on the lien. These lawsuits can be filed in Justice Court (\$10,000 jurisdictional limit) and are generally less expensive than foreclosure, particularly in default situations.

Most Owners fail to contest these suits, and in such cases, judgment can be obtained within three months. The judgment appears on the owner's credit report and can also be recorded, creating a judgment lien on real property.

## POST-JUDGMENT ENFORCEMENT

We send a post-judgment/pre-garnishment demand letter explaining to the judgment debtor(s) that we will proceed with additional collection steps unless the judgment is paid or a payment agreement is reached within a short time period. **This can occur whether we have obtained the judgment, or the Association has obtained the judgment itself in small claims court first.**

In our experience, the most effective methods to collect on a money judgment are (1) wage garnishment and (2) bank account garnishment.

If we have been able to obtain employment information through our own investigation or outside investigators, wage garnishments continue from pay period to pay period until the judgment is satisfied, at the rate of up to 25 percent (25%) of net earnings.

If we have been able to obtain employment information through our own investigation or outside investigators, wage garnishments continue from pay period to pay period until the judgment is satisfied, at the rate of up to 25 percent (25%) of net earnings. Bank account garnishments are effective as of the day the writ is served on the bank.

If we do not have employment information or bank account information, we may retain a private investigator or schedule a debtor's examination requiring the judgment debtors to appear at the Court, at a certain date and time, with their wage and banking information. If they do not appear, the court will issue a civil arrest warrant.

If the debtor owns multiple properties, we can also attempt to satisfy the judgment by requesting that the Sheriff's Office sell the property through a Writ of General Execution.

## THE LIEN

The association's lien grants the association an interest in the property. The lien consists of the

three most recent year's worth of assessments

and related charges. Certain categories of charges such as violation fines, interest, non-collection related attorney's fees and costs and/or any other charges may not be collectable through the lien. An association may be able to include these charges in the lien, if the Declaration provides the charges are part of the contractual assessment lien. This determination requires a review of the specific language contained in the Declaration. To the best of our knowledge, this matter has not yet been litigated in Arizona.

The law provides that the association has an automatic lien against the property, meaning that the association is not legally obligated to record a physical lien with the County Recorder. Nevertheless, many associations recognize that continuing to record a lien is a relatively inexpensive and practical means of gaining an owner's attention as well as placing parties with a junior interest in the property on notice of the association's interest.

The association's lien on a delinquent property is typically extinguished via a pay-off in connection with a re-finance or sale of the property (unless the parties failed to coordinate the pay-off with the association for example, in connection with a re-sale disclosure statement request).

The association's lien is also extinguished in the event that the owner fails to pay their mortgage and a lender with a superior interest in the property (such as a first mortgage lender) holds a forced sale of the property (referred to as a Trustee's Sale).

If this occurs and the lender successfully auctions the property to a bidder, the association has a claim to any resulting excess proceeds. If the sale does not result in any excess proceeds, the association may still be able to obtain a personal

judgment against the owner for the arrearage.

## FORECLOSURE

Foreclosure is the Court-authorized forced sale of the owner's property to pay off the assessments and related charges which the Owner has failed to pay. As a general rule, association foreclosure extinguishes all other legal interests in the property except those related to the first mortgage, county property taxes, and federal income taxes.

Foreclosure is the "heavy hammer" and may facilitate payment where all other collection efforts have failed - for example, where the owner does not have regular wages or bank assets that can be garnished.

To foreclose, the property must owe: (1) at least \$1,200.00 in unpaid assessments (excluding any late fees, fines, and other charges) or (2) have failed to pay a year's worth of assessments (whichever comes first).

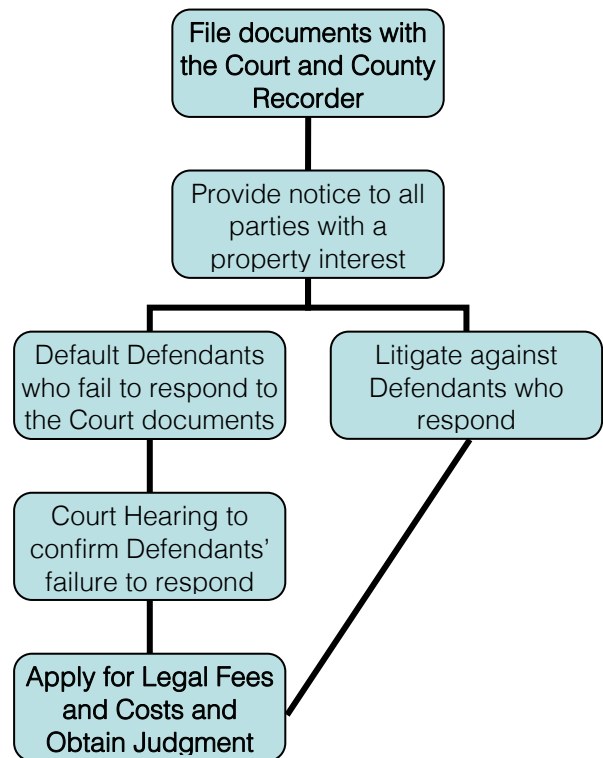
The overwhelming majority of owners fail to contest foreclosure lawsuits. In our experience, many owners even when faced with foreclosure will find a way to keep the property and resolve the debt by entering into a formal payment plan or paying the account in full.

To assist the Board in making this decision, we summarize the title report, credit report, and categories of charges owed that may not be foreclosure eligible (such as non-collection related attorney's fees and costs and penalties) for the Board.

Absent a bankruptcy (which can delay but not stop a foreclosure lawsuit) and assuming that there are not multiple defendants, we can obtain a foreclosure judgment within three to six months after filing.

### OBTAINING JUDGMENT

The path to obtaining a foreclosure judgment is as follows:



Once the owner and the other parties who have a legal stake in the property which would be affected by the association's foreclosure (defendants) have received notice of the lawsuit, they have a limited time window by which to respond. Any parties that fail to do so, are defaulted.

A Court hearing is held at which the Judge determines the amounts owed and the legal fees and costs that the owner is responsible for. After a judgment has been entered and recorded, it becomes a Lien on the owner's property. It typically takes two to four months to obtain the foreclosure judgment. It may take longer if the defendants cannot be easily located or if any one of them files a response in the Court requiring us to litigate the matter.

### SHERIFF'S SALES AND REDEMPTION

Once Judgment has been obtained, the County Sheriff coordinates and conducts the sale of the property. If there is sufficient equity, and another party bids over the amount of the Judgment, the association is paid in full. Any purchaser (including the

association), takes the property subject to any interests in the property that were not

included in the foreclosure. These typically include the first mortgage and delinquent property taxes.

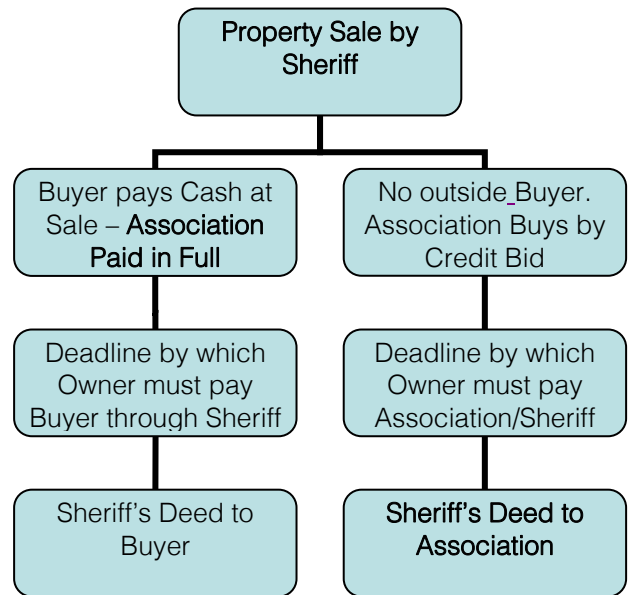
If the owner wants to keep the property, there is a six month deadline from the date of the sale by which the owner must pay back the buyer through the Sheriff's Office (redemption period).

If the property is not occupied at the time judgment is entered, the owner only has 30 days to do so. Until the deadline expires, the owner remains the legal owner, is permitted to reside in the property, and remains responsible for any on-going association related charges such as assessments.

If the owner, or a property interest holder whose interest was foreclosed upon (such as a second mortgage holder), does not pay by the deadline, the buyer can obtain a Sheriff's Deed to the property.

If there is not sufficient equity, and no buyer bids at the sale, the association may not recover any monies, unless the owner(s) pay. If this occurs, the association has no obligation to pay the mortgage, property taxes or any other charges related to the property, unless it intends to obtain ownership of the property (for example in an effort to recover some of the monies owed by selling the property).

Some Boards prefer to pursue foreclosure even when faced with this risk, figuring that it is better to write-off the old debt than to continue to have a non-paying owner. The following outlines how the association recovers the monies owed or obtains ownership to the property:



### EXCESS PROCEEDS AFTER TRUSTEE'S SALES

If no buyer purchased the property at the sale, and the owner stops paying the mortgage, any superior lien holder (such as the first mortgage) may exercise its right to conduct a forced sale of the property. If this occurs, the association's Judgment becomes unenforceable, and the association will have to pursue a claim for any amount the lien holder receives above the amount they are owed (the excess proceeds). Recovering these monies can require a letter to the trustee or filing pleadings the Court.

### BANKRUPTCY

We monitor all bankruptcy cases for clients on a monthly basis and aggressively pursue debtors in Chapter 7 and 13 who do not pay post-bankruptcy assessments. Regardless of a bankruptcy discharge to the owner, the Association's lien against the property remains fully intact. Bankruptcy is becoming more complicated for clients as the Court is going to require that all filings, even proofs of claim, to be made electronically. Recent changes in the law have resulted in more Chapter 13's, but also prohibit most debtors from discharging post-bankruptcy assessments.