



The ABC's of Collections for Associations

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We urge you to consult your own attorney about any particular factual situation or any specific legal questions you may have.

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What is Collectible?

- Assessments?
- Late Fees?
- Interest?
- Fines?
- Attorneys' Fees and Costs Incurred in Collecting Delinquent Assessments?
- Attorneys' Fees and Costs Incurred in Enforcing the Governing Documents?



How Much Time Do You Have to Collect?

- Also known as, the Statute of Limitations
- Washington
 - New and Old Act Condos: 3 years from date assessment is due
 - HOA and WUCIOA: 6 years from date assessment is due.
- Oregon
 - 6 years from date assessment is due
- Judgment = 10 years
 - In WA judgment can be renewed for another 10 years (20 years total)
- TIP: Keep the Statute of Limitations in mind when deciding when to turn an account over for collections.



Collection Options:

- Courtesy and Delinquency Notices by Association
- Payment Plans (either before or after turning over for collections)
- Turnover for Collections
- Lien (can be recorded before turning over to attorney)
- Lawsuit (Personal Obligation or Foreclosure)
- Garnishment (Wage or Bank)
- Sheriff's Sale (if chose Foreclosure)
 - Terminates owners' ownership interest in the property



Association's Lien:

- Condominium/WUCIOA Lien: Automatic in WA and OR
- HOA Lien: Automatic in OR. In WA refer to Governing Documents.
- Lien priority: Depends on whether WA or OR and type of Association.
- What if Lender Foreclosure?
 - Does not impact owner's personal obligation to pay
 - May impact Association's lien if DOT is prior to Association lien.
- What if Owner files bankruptcy?
 - Impacts personal obligation to pay, may or may not impact lien.



Personal Obligation Lawsuit

- Results in money judgment against owner or past-owner
 - Does not impact owner's ownership interest in property
 - Does not impact lender's deed of trust on property
- Lawsuit must be filed in county where Defendant lives
- Begins with filing a complaint and serving the Defendant
 - If no response within specified time period, then can obtain default judgment against defendant
 - If response/answer received, then need to schedule and attend hearing to obtain judgment against Defendant if agreement cannot be reached
- Once judgment is entered, can proceed with bank or wage garnishment to attempt to recover funds



Foreclosure Lawsuit

- Results in money judgment against owner and decree of foreclosure against property
 - Process by which Association can terminate owner's ownership interest in property. Cannot be used against past-owners.
 - Might impact lender's deed of trust on property (depends on priority of Association's lien to the lender's deed of trust)
 - Lawsuit must be filed in county where property is located
- In addition to the owners, all parties with an interest junior in priority to Association's lien must be named as defendant and served.
- Same process as personal obligation to obtain judgment
- Once judgment is entered, can proceed with bank or wage garnishment, can proceed with sheriff's sale to terminate owners' ownership interest in property, or can garnish first and then initiate sheriff's sale process



Garnishment

- Asset Research
- Bank garnishment:
 - Attaches to all funds in the account in excess of the exemption amounts on the date the writ is served on the bank.
- Wage garnishment:
 - WA: Attaches to 20% of net wages in excess of the exemption amounts over a 60-day period.
 - OR: Attaches to 25% of net wages in excess of the exemption amounts over a 90-day period.
- Social Security, Disability, Unemployment, and CARES Act funds are exempt from garnishment.
- Can only garnish judgment amount but can continue to garnish until judgment is satisfied.



Sheriff's Sale

- If foreclosed, the Association can proceed with a sheriff's sale where the sheriff auctions the property.
 - Debtor's ownership rights in the property are terminated through this process
 - Association informs the sheriff of the opening bid amount
 - The highest bidder at the sheriff's sale (which may be the Association) will become the legal title owner of the property after the redemption period expires.
- Redemption period: Amount of time after the sheriff's sale date that the debtor has to pay the balance to retain their ownership interest in the property
 - OR: 180 days
 - WA: 12 months, 8 months, or none
 - Depends on circumstances



Impact of COVID-19 on Collections

- Did not impact authority to levy and collection assessments
- WA Governor's Proclamation 20-51
 - Prohibited assessing fines 4/17/20 to 8/1/20
 - Prohibited assessing late fees and interest 4/17/20 to 7/25/21
- OR Governor did not issue Proclamation
- Both states sheriff's offices ceased sheriff's sales at different points in time but have since resumed them
- Courts are still backlogged
- Options:
 - Payment plans
 - Settlement (not required to waive amounts but can)



If you have any questions, please
do not hesitate to contact me!

Thank You!

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