

Community Associations and Debt Collection

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Governing Documents

1. What are you trying to collect?
 - regular assessments
 - special assessments
 - individual assessments
 - fines
2. Are assessments/fines authorized by Declaration, Covenants, and/or Bylaws?
3. What rights and remedies do the Declaration, Covenants, and/or Bylaws provide?



State and Federal Laws



- Chapter 47F – NC Planned Community Act
- Chapter 47C – NC Condominium Act
- Chapter 47A – Unit Ownership Act
- Fair Debt Collection Practices Act
- Association's rights and remedies will be limited by the relevant provisions of law.

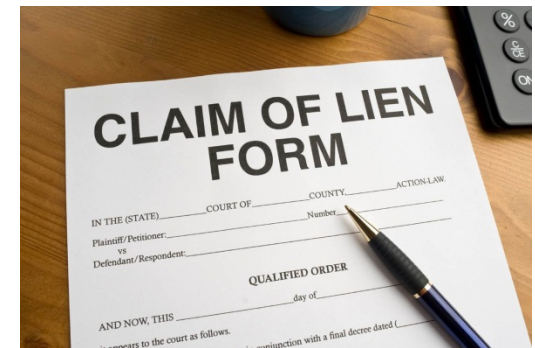
Legal Options for Debt Collection

- Demand Letter – Attorneys' Fees
- Claim of Lien
- Lawsuit
- Foreclosure



Claim of Lien

- **What is the purpose?**
 - Provides Association with a "lien" on the subject property.
 - The "lien" is security for the Association's right to payment.
 - That "lien" remains on the property until:
 - The underlying debt is paid;
 - A "senior lien" on the property is foreclosed; or,
 - The claim of lien becomes unenforceable – good for three years.



Claims of Lien: What Must You Do?

- Debt must be 30-days past due.
- Association must send prior notice (demand letter) to the owner:
 - Must allow an additional 15-days to pay the debt.
 - Must provide name and telephone number for representative who can discuss payment schedule.
 - Must include a statement of the debt owed.
- Notice must be sent to:
 - The physical address of the subject property.
 - The owner's address as reflected in Association's records.
 - If different, owner's records as shown in county tax records and county real property records.



Filing The Claim of Lien

- Once demand and notice requirements are satisfied, Claim of Lien can be filed.
- Once filed, a copy of the Claim of Lien must be sent to the same addresses as the demand and notice.

Your Claim of Lien is Filed. Now What?



- The Association has a "lien" against the real property.
- The Claim of Lien can be enforced in court or by foreclosure.
- The Claim of Lien is extinguished unless the Association acts to enforce it within 3 years of its filing.



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Collections Lawsuit



- **Why File Suit?**

- Additional method of collecting the debt.
- Typically faster and cheaper than a foreclosure action.
- If successful, Association obtains a judgment against the owner for the amount owed.
- That judgment is enforceable for up to 20 years.
- All assets of delinquent owner can be used to satisfy the debt.

Recovering on the Judgment

- Association must "execute" to reduce it to payment.
- Individuals can claim certain real and personal property "exempt" from execution.
- Once exemptions are settled, Sheriff's Department conducts an asset search.
- Assets located can be seized and sold at auction to pay down the Judgment.



Foreclosure

- **Why Foreclose?**

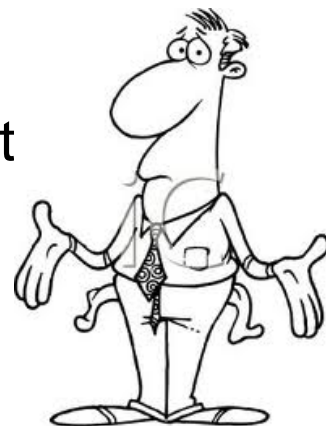
- Other options are not available or would not produce payment for the debt.
- Remove habitually delinquent owners from the community.
- Obtain possession of property so Association can obtain rental income or sell property to satisfy debt.

Foreclosure Process

- Can take several months, especially if the subject property is the owner's principal residence.
- Foreclosure will not extinguish liens that are "senior to" the Claim of Lien being foreclosed. (ex: earlier filed mortgage)
 - If owner stops making payments to that senior lienholder, they may foreclose and divest the Association of its ownership interest, if any.
- Association can "credit bid" to purchase the property at the sale.
 - No cash payment apart from legal fees, costs of foreclosure and revenue stamps.
 - Some counties will require ad valorem taxes to be paid before Trustee's deed will be recorded.
- Debt to Association will be offset by purchase price at the sale.

Rights in Bankruptcy

- If owner files for bankruptcy protection, the Association still has rights.
- Association is entitled to file a claim for all assessments due as of the bankruptcy filing.
- If a Claim of Lien is outstanding, the Association may be entitled to repayment and certain treatment of its claim.
 - Depends on priority of the Association's lien, value of the property, and a variety of other case-by-case factors.
- Assessments and other charges that become due and payable after the filing of the bankruptcy petition are not dischargeable in that proceeding.



Other Collection Efforts



- Adopt formal collection policy and stick to it.
 - Owners may be less inclined to miss payments if they know the Association routinely enforces its rights.
- Act early to collect accounts when balances are small.
- Offer variety of payment options to your owners.
 - Automatic drafts;
 - Online payments by check and/or credit card;
 - Payment by phone;
 - 24-hour lockbox or office available for payments.
- Determine if Association is willing to accept reasonable payment plans.
- Suspend services or privileges of delinquent owners, if allowed by governing documents.



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