

Methods of Collecting Assessments from Members

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In order to perform their duties and fulfill their obligations, community associations must collect assessments from their members. With the exception of a fortunate few, most community associations must deal with members who either refuse to pay their assessments or cannot pay their assessments. There are essentially two methods of enforcement which associations may pursue to enforce delinquent assessments. Community associations can either: (i) file a claim of lien and foreclose against the owner's property, or (ii) file a lawsuit against the owner and obtain a money judgment. Many community associations pursue a foreclosure action as the primary method of enforcement, and while there are advantages and disadvantages to each method, a lawsuit may be the best method of enforcement, especially in today's real estate market.

Foreclosure

Placing a lien on an owner's property will often result in payment of the delinquent assessments when the owner sells or refinances the property, but that may take a while and a claim of lien must be enforced within three years after it is filed. This means community associations often have to enforce the claim of lien through foreclosure. The threat of foreclosure will certainly grab an owner's attention, and may very well result in payment of the delinquent assessments (perhaps before a foreclosure sale is even held). However, many properties are secured by a deed of trust, and if the balance of the loan secured by the deed of trust is greater than the value of the property, it is unlikely that a community association will be able to recover its delinquent assessments through foreclosure. In those situations, the community association also will not recover the attorney's fees and costs associated with the foreclosure action.

Lawsuit

A lawsuit for money owed, which results in a judgment against the owner, can be enforced by a sheriff's sale of any of the owner's property, including personal property and real property other than the property subject to assessments. A judgment lien is enforceable for ten years. Also, a lawsuit for money owed can be less expensive than a traditional foreclosure if it is unopposed. Generally, a lawsuit for money owed allows more flexibility in collection of the judgment due to the longer period of time to enforce and the broader range of property subject to the judgment. Due to broader options of enforcement and typically lower costs, a lawsuit may, in most circumstances, be the best method of enforcement.

Collection of Attorneys' Fees and Costs

Many community associations may prefer to enforce delinquent assessments through a lawsuit for money owed, but community associations also must consider the costs when deciding what method of collection to pursue. Courts have not always awarded attorney's fees and costs to community associations when delinquent assessments are enforced by a lawsuit as opposed to a foreclosure. Although the North Carolina Planned Community Act and Condominium Act always have allowed courts to award expenses, courts have not always done so. Recent legislation, which became effective last fall, now provides that community associations shall be entitled to recover costs and reasonable attorney's fees incurred in the collection of assessments. The prospect of not recovering the cost of collecting assessments may have deterred some community associations from pursuing a money judgment in the past, even if that would have otherwise been their preferred method. Thanks to this recent legislation, community associations are now free to pursue their preferred method of

enforcement, either foreclosure or a lawsuit to obtain a money judgment, with the comfort that they are entitled to recover reasonable attorney's fees and costs.

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