# Effective Collection of Delinquent Assessments

## A Proactive Approach to Collecting Delinquent Assessments

For over 25 years, Mulcahy Law Firm, P.C., has successfully collected delinquent assessments from owners on behalf of the associations we represent. We are often asked about the "secret" to effective assessment collection. This Cheat Sheet shares our secrets. Please contact Beth Mulcahy, Esq., or anyone on the Mulcahy Law Firm, P.C. team if your association has owners who aren't paying assessments. Our firm can help clean up these delinquencies to increase the likelihood the owners will never get behind again!

## Secrets to Effective Collection of Delinquent Assessments

**1. Obtain Owner Information Upfront**
Obtaining information from homeowners before they are in collection will assist the association in collecting past due amounts.

Our firm recommends the association obtain the following information from owners at the close of escrow: bank information (bank accounts, banking institution, etc.); employment; mortgage company; mailing address (if different from property address) email address, cellphone number, and home phone number. This can be accomplished by creating a form for this purpose.

Additionally, the association should update and retain an owner's information on an ongoing basis by keeping copies of an owner's checks when payments are made, noting changes in employment and information regarding potential renters.

**2. Accurate Bookkeeping**
Accounting records (owner's ledger) should be accurate, easily available and reflect <u>current</u> charges and payments to avoid allegations of inaccuracies and potential liability.

**3. Collection Policies/Late Fees**
The association should have a collection policy in place to allow quick notice to owners regarding the association's delinquency policy and intended course of action.

Late fees should be uniformly and strictly imposed and the late fee amount should be set high enough to encourage payment on time, but in a reasonable manner, within the limits of the law (for planned communities, late fees cannot exceed $15 or 10% of the assessment, whichever is greater).


MULCAHY LAW FIRM, P.C.
3001 East Camelback Road Suite 130, Phoenix, Arizona 85016
Phone: 602.241.1093; E-Mail: info@mulcahylawfirm.com
www.mulcahylawfirm.com

**4. Communication with Owners**

The association should use open and continuous communication with owners (i.e., reminders in newsletters and at annual and regular board meetings) regarding the need for timely payment of assessments and the procedures the association will follow in the event of nonpayment of assessments.

**5. Timely Action**

*Timeliness is the key to successful collections!* If an assessment is 60-90 days past due, the association should record a notice of lien on the lot/unit. If an owner owes the association more than $600, the association should turn the owner's file over to the association's attorney to pursue collection of the debt. The longer the association waits to pursue the owner for the debt, the harder it will be for the association to collect the debt. In addition, by allowing amounts to increase without action, the association gives its membership the impression that delinquencies will not be pursued and that there is little to no consequence for nonpayment.

When accounts are turned over to the attorney, the association should provide the attorney all pertinent and complete information on file: name of owner, address, break-down of charges and previous correspondence between owner and association. By providing this information up front the association will avoid additional delays while the attorney investigates. However, if the association does not have the information, the attorney may have tools to discover pertinent financial information.

After a file is forwarded to the attorney, the association should forward all correspondence to the attorney to handle and consult the attorney for payoff amounts. This will avoid delay, ensure accurate communication and guarantee pursuit of the total amount due and owing, including pending fees.

**6. Due Diligence/Credit Evaluations**

The association's attorney should conduct a credit evaluation on a delinquent owner to gauge the value versus risk of collection. Having background information on the owner may assist the association in making informed and cost effective decisions regarding collection.

Prior to opening a file in our office and spending legal dollars, our firm conducts due diligence checks, including, but not limited to: ownership records (to confirm record owner); Trustee Sale search; potential Bankruptcy filings; and recorded liens.

Our firm also does a complete online search for each owner to obtain information that may be helpful to collect the debt (Facebook, LinkedIn, Google, tax payment information from the assessor's office, research as to whether other creditors have judgments against this owner, research about the amount the owner owes on any mortgages on the property and the value of the property).

This information helps our firm make good decisions on which files to pursue and the most efficient means of collecting money from the owner.

**7. Understanding Available Legal Remedies**
Board members should have an understanding of and use legal remedies available to collect delinquent assessments (e.g., justice court action vs. foreclosure) if the owner isn't responding to demand letters.

## Personal Judgment Against the Owner Justice Court

The association's attorney files a lawsuit in justice court against the delinquent owner and obtains a judgment against the owner personally. With the judgment, the association can garnish the owner's wages, bank accounts or rent payments (from a tenant to the owner) or levy and execute on other real or personal property.

**Benefits to obtaining a personal judgment in Justice Court**:

1. It is a relatively fast means of obtaining a judgment for delinquent assessments (usually four to six months to obtain a judgment).
2. It is a cost efficient means of obtaining a judgment for delinquent assessments (the estimated cost is approximately $700 – $1,000 in attorneys' fees and court costs).

**Disadvantages to obtaining a personal judgment:**

1. The judgment may not be collectible if the individual has no assets.
2. If a debtor files for bankruptcy, there is a chance that the debtor will be discharged from the entire debt, and the proceedings or efforts to collect the debt will be halted due to the automatic stay of the bankruptcy.

## Foreclose an Assessment Lien on the Lot/Unit — Superior Court

Under Arizona law, **condominium** associations can foreclose only if assessments are delinquent for a period of **one (1) year** or if the owner owes **$1,200** or more in assessments (whichever occurs first), whereas **planned community** associations can foreclose only if assessments are delinquent for a period of **eighteen (18) months** or if the owner owes **$10,000** or more in assessments (whichever occurs first). Under this option, the association records a lien on the lot/unit and the association's attorney files a lawsuit to foreclose the lien. The association then obtains a judgment against the owner which orders a sheriff's sale of the lot and a deficiency judgment against the owner to the extent the sheriff's sale proceeds do not cover the judgment amount.

**Benefits to foreclosure of an assessment lien:**

1. Assuming that the foreclosure is successful, the delinquent owner no longer owns the property after the sheriff's sale and can be evicted after the redemption period (30 days or 6 months, depending on whether or not the unit/lot is abandoned).
2. The delinquent owner may attempt to settle the lawsuit before the sheriff's sale if he/she has equity in the property.
3. If the property is sold to a third party at the sheriff's sale for an amount that exceeds the judgment, the association will recover the foreclosure judgment amount, plus awarded post-judgment attorneys' fees and costs, plus interest.

**Disadvantages to foreclosure of an assessment lien:**

1. The estimated legal fees and court costs for a foreclosure action are approximately $2,500.00 to $3,000.00.
2. It takes approximately six months to a year from the date of filing the lawsuit to the sheriff's sale of the lot.
3. If the delinquent owner files for bankruptcy, the foreclosure or sheriff's sale will be halted due to the automatic stay of the bankruptcy.
4. If the delinquent owner stops paying the mortgage, the first deed of trust could foreclose before the association and wipe out the association's lien.
5. If a delinquent owner pays the full amount owed to the association (as per the judgment) within 30 days or 6 months (depending on whether or not the unit/lot is abandoned) after the sheriff's sale, he/she can redeem the property and continue to live in the association.

Our firm always researches the credit history, status of the first deed of trust and the financial condition of all delinquent owners prior to instituting legal action. By doing this, the board can make an informed decision as to which option to pursue.