



BARKER · MARTIN

Enforcement/Collections



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Overview

- Explain “Collections”
- Explain “Assessments”
- Explain legal steps
- Discuss practical steps

“Collections”

Broad term used to describe the continuum of events from initial overdue assessment (monthly, special or CC&R violation), through negotiation with owner, recording of lien, suit (foreclosure or monetary damages), entry of judgment and execution on the judgment.

“Assessment”

Term used to describe the financial amount of money an individual homeowner must pay to the association; sometimes mistakenly referred to as “dues.” Can include monthly assessments for common expenses and reserves, special assessments and fine assessments for violation of an association’s CC&Rs, among others.



Steps for Enforcing Assessments / Collections

1. Clear Collection Policy
 - a. Fine Resolution
 - b. Collection Resolution

2. Send violations notices on time.

- a. Include FDCPA validation notice in *initial* communication regarding collection of debt:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office **in writing** within 30 days from receiving this notice that you dispute the validity of the debt or any portion thereof, this office will obtain verification of the debt against you and mail you a copy of such verification. If you request to this office **in writing** within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



3. Keep ledgers current.
4. File liens.
5. Consider small claims court.
6. Money judgment or foreclosure?
7. Obtain and execute on money judgment.

State Statutes

- RCW 64.34 364 (Liens for Assessments)
 - Priority except for mortgages, prior recorded liens and property taxes or other governmental assessments
 - Mortgager/buyer from sheriff's sale must pay for up to 6 mos of regular assessments
 - If Association forecloses on its lien, it is not be entitled to lien priority as described in preceding subsection
 - Lien extinguished unless enforcement proceedings instituted within 3 years after amount sought becomes due
 - Costs and reasonable attys fees are recoverable

State Statutes

- RCW 64.32.200 (Assessments; Liens and Foreclosures; Etc.)
 - Can shut off utilities with 10-day advance notice
 - Lien priority except for tax liens and mortgages of record
 - Mortgagee who purchases unit at foreclosure shall not be liable for past-due assessments which became due prior to purchase



State Statutes

- RCW 64.38 is silent, other than under general Association Powers (RCW 64.38.020(11)):
 - An Association may impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association.

How to make your attorney's life easier

1. Documents supporting the balances owed.
2. Start and End Dates used to calculate interest on the principal.
3. Excerpts from the governing documents that provide the authority for charging a specific interest rate, and show that the Association is entitled to recover attorney fees or other costs (e.g. NSF fees, lien recording fees, etc.).
4. A copy of the lien (if one was recorded) along with mortgagee notices if they've been sent.
5. Are there any notice requirements or mediation requirements in the CC&R's that have to be followed before suit can be filed? Provide documentation if the Association has already met those requirements.
6. Are there any special circumstances that the attorney should be aware of (i.e., bankruptcy)?
7. Any information on the debtor's assets (i.e., where they bank, where they work, if they're self-employed precluding garnishment, etc.).



Practical Considerations

- Ensure proper and accurate collections policies
- Ensure uniform application of collections policies
 - Unless extraordinary circumstances, do not take different actions for different owners; however, must act reasonably
- In current market, must tighten fiscal responsibility
- Likely want to defer to professionals
 - Too many landmines



Questions?

