



BARKER · MARTIN

Collections & Assessments

Daniel Zimberoff

Barker Martin, P.S.
319 SW Washington Street, Suite 420
Portland, OR 97204
503-796-9806 x 115

www.barkermartin.com

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. Have a clear collection policy, including information about late fees and fines. Follow it to the letter for every past due account.
 - a. Fine Resolution – If possible, identify authority within governing documents to levy fines as assessments and collect them as such. Deliver to all owners.
 - b. Collection Resolution – If possible, identify authority within governing documents to assess late fees and/or interest, as well as attorney fees and collection costs. Unless Declaration states otherwise, state that all fees, fines, and interest are enforceable as assessments and collected as such. Set forth late fees and/or interest rates.

2. Send violations notices on time.

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

If the Unit Owner disputes the validity of this debt or any portion thereof, the Unit Owner may notify this office within 30 days of the receipt of this letter. If the Unit Owner notifies the undersigned in writing within 30 days that any portion of the debt is disputed, we will then obtain and mail to the Unit Owner proof of the debt. And if, within the same period, the Unit Owner requests in writing the name and address of the original creditor, we will furnish that information as well. If the Unit Owner fails to dispute the debt within the 30-day time period, we will assume the debt is valid.

This communication is an attempt to collect a debt, and any information obtained will be used for that purpose.

b. Otherwise comply with FDCPA regulations pertaining to debt collectors.



4. File liens and provide timely notices to owner and mortgage holder.
5. Refer to matter to counsel or file claim in small claims court. Consider the attached Collection Services Program.
6. File suit for money judgment or foreclosure.
7. Obtain money judgment.
8. Execute on judgment by garnishment (wages and/or bank accounts), debtor exams, liens on real property, or negotiation.

State Statutes

File liens and provide timely notices to owner and mortgage holder with information required by ORS 100.450 and ORS 94.709.

- a. Interest rate stated on lien must match interest rate on account.
- b. Notice to mortgage holder of condominium minimum unit under ORS 100.450(7)(a) should include:
 - Borrower and Unit Owner: [Name of Owner]
 - Recording Data for Lender's Interest: [Recording number, location, and date of recording for Trust Deed or Mortgage]
 - Name of Condominium: [Name]
 - Unit Information: [As designated in the Declaration or Supplemental Declaration]
 - Amount of Unpaid Assessment: [Accurate amount at time of notice or date specified]

NOTICE: The lien of the association may become prior to that of the lender pursuant to ORS 100.450

State Statutes

ORS 100.450(7) identifies how a condominium Association's lien may gain priority over a first mortgage: if the owner is in default and the mortgage holder doesn't foreclose within 90 days of receiving the above notice, and Association has otherwise complied with the statute.

- i. Must provide lender copies of liens, and statements of assessments and interest upon request of lender.
- ii. Record Affidavit of Notice in county lien records, per ORS 100.450(7)(f).

If an Attorney Becomes Involved, the Association/Manager Needs to Provide:

1. Documents supporting the balances owed. These can be ledgers, billings or violations notices, the form doesn't matter as much as the accuracy of the information. The accounting should be up to date and accurate so the attorney can present the information directly to the judge.
2. Start and End Dates used to calculate interest on the principal. If the Association is entitled to charge interest on other costs or late fees, also provide information on how that was calculated.
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.). If you have a clear collections policy, this should be easy.
4. A copy of the lien (if one was recorded) along with mortgagee notices if they've been sent. As previously mentioned, an assessment lien may be able to take priority over other debts in a foreclosure under some circumstances if the proper steps were followed.



7. 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.

8. Are there any special circumstances that the attorney should be aware of (i.e., bankruptcy)?

9. 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 landlines



BARKER · MARTIN

Collections & Assessments

Daniel Zimberoff

Barker Martin, P.S.
319 SW Washington Street, Suite 420
Portland, OR 97204
503-796-9806 x 115

www.barkermartin.com