

What to Expect When You're Collecting



A Primer on Tools for Your Community Association



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Assessments are the cornerstone of an association, and the necessity of an association to collect delinquent assessments is of utmost importance—an association cannot be run without assessments being paid! According to a study conducted by CAI in 2016 (released in October 2017), 5% of owners in community associations were delinquent on their accounts. With 21.3% of the populations residing in community associations (approximately 69 million people), that means that nearly 3.5 million owners are delinquent at any given time.

Leading into summer, many associations could bet on many delinquent owners bringing their accounts current. Why? No cash, no splash. However, as we near the end of our pool days, how can an association ensure that it is efficiently, and effectively, collecting from its delinquent homeowners? Speaking of restricting access to amenities, does your community have a clubhouse, fitness center, or sport court? While it may not bring in as much cash as pool access might, restricting access to other community amenities (if provided for in your governing documents) can be a potential solution to collecting past due assessments once pool season is over.

So, what are some tools that a Board can use to collect from delinquent owners? First, collect early and often. The sooner an association takes action to collect, the more likely it is to be successful. If delinquent accounts are allowed to linger and grow, continuing to incur late fees and interest, it is less likely that owners will be able to resolve the debt without legal action. Ensure that your association has a collection policy in place (it is required by law!) and that it follows the policy. Assess the time frames provided for in your documents. Can they be altered to allow collection on past due accounts sooner?

And speaking of collecting early, acceleration is a great tool to consider when looking at collection options for past due accounts. Acceleration allows a board to call due the entire fiscal year's debt against the owner's account, rather than just the current delinquency. Consider those owners who may be chronically delinquent.

For example, John Doe (it's not his first rodeo) has been consistently delinquent for years. On January 10th, the association turns the account over to its attorney for collections. The current balance due at that time is \$1,000. However, the Board, due to the owner's continued delinquency, has reviewed its documents and decided to accelerate Mr. Doe's assessments for the year. At \$100 per month, an additional \$1,100 would be added to the balance, making the total amount due \$2,100. Rather than proceeding to collect on the \$1,000, the attorney can now attempt to collect on the \$2,100. If it takes

six months to collect, once complete, the association will still be paid in full through the end of the fiscal year. You only hope that the owner will pick up paying regular assessments at the start of the next fiscal year!

As we head into the latter part of the year, assess your documents to ensure that your community has the ability to use this tool.

So, what is the process? Every case is different based on its own set of facts and circumstances, but generally, the process goes something like the following: The first thing that must be done once an account is turned over to the attorney for collections is compliance with the Fair Debt Collection Practices Act (FDCPA), both state and federal. A demand letter must be sent to the delinquent owner. If an owner fails to respond to the demand letter, the attorney will generally move the process to the lawsuit stage. Most cases are brought in county court, where the jurisdictional limit for the court is under \$15,000. Note that the legislature recently passed a bill that will increase this limit to \$25,000 (effective January 1, 2019).

Once an owner is served with the lawsuit, he or she is required to appear in court on the specified date. If the owner fails to appear in court (which happens the majority of the time) and/or file an answer, the association's attorney will request that judgment enter against that owner. Once a judgment is obtained, further collection efforts such as bank and wage garnishments can be pursued.

Bank and wage garnishments are reasonably typical means of collection, and can be very successful. However, if an owner's bank account cannot be located (or the owner banks with a bank that does not have ties to Colorado), or the owner works out of state (with a company that does not have ties to Colorado), you'll often

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find your community out of luck with those avenues of collection. Receiverships are a great solution in this case. A receivership is a court-ordered appointment of a rental manager for a property. The receiver must be a disinterested person (i.e., not the property manager or management company) and the property must not be owner-occupied. While some county courts do not recognize it as a legal remedy, it is explicitly allowed in the rules of civil procedure, so can always be pursued in district court. Once the court has approved a receivership, the receiver will step into the shoes of the owner in the management of the property. The receiver will collect rents, apply the money to the receiver's fee first, and then to the satisfaction of the debt. Receiverships are effective ways to collect delinquent accounts when the property is not owner-occupied. Additionally, although we are discussing post-judgment collection options here, the remedy of receivership is also available pre-judgment. So, if your association has an owner that cannot be located for service and to obtain a judgment, discuss pursuing receivership with your attorney.

What about settling accounts? George Herbert, a British poet, said: "A lean compromise is better than a fat lawsuit." In order to decrease delinquencies, and when the circumstances warrant, a Board may consider waiving soft costs (such as late fees and interest) to settle an account. When doing so on an individual basis, make sure that your Board is reviewing the facts and circumstances surrounding the request, as well as implementing the policy of waiving fees, in a consistent manner. A Board certainly would not want a claim of selective enforcement brought against it due to the perception of unequal treatment of owners.

As you well know, a few delinquent owners can wreak havoc on an association's budget and potentially affect property values. If the association cannot collect enough to maintain, repair, and replace items in the common areas or items that are its responsibility, conditions of the association may cause property values to decline. Additionally, for a condominium community to be eligible for FHA approval, no more than 15% of units can be delinquent in their assessments more than sixty (60) days. If your community is not FHA approved, the pool of potential buyers into your community will be significantly decreased, thereby leading to declining property values in the community. Board members have a fiduciary duty to maintain property values, and keeping delinquent accounts to a minimum (and taking steps to collect on delinquent accounts) support that goal.

As Board members, facing collection issues can sometimes be challenging. These owners are your neighbors. Collection of community association assessments is not "faceless" like credit card, medical, or student loan debt. These owners live in the community, (maybe) show up to your board meetings, and will (maybe) end up on your board. Be respectful and treat each case as an individual matter, with its own facts and circumstances. As the saying goes, everyone is fighting a battle you know nothing about. Be kind. Always. 🏠

Ashley Nichols is the principal and founder of Cornerstone Law Firm, P.C. She has been in the community association industry for ten years, providing associations with debt recovery solutions for their communities. Cornerstone Law Firm represents Colorado communities in all areas of common interest community law. You may find out more at www.yourcornerstoneteam.com.



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