



# The Fiscally Sound Community

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## Establishing and Enforcing a Clear Collections Policy

- ▶ Policy is an internal protocol for determining how the association will handle unpaid assessments.
- ▶ Promulgated by Board of Directors similar to Rules & Regulations.
  - ▶ Adopted via formal resolution of the board.
  - ▶ Goes into effect after reasonable notice has been given to association's Owners.
  - ▶ Homeowner consent not required.

# Collection Policies: Benefits

- ▶ Helps ensure current & future boards are aware of all relevant legal requirements.
- ▶ Helps association (and management company) prevent inconsistent enforcement of assessment obligations.
  - ▶ Association must make “good faith” enforcement decisions; “arbitrary and capricious” enforcement of assessment obligations may give rise to liability.
- ▶ Helps manage the financial health of the association by ensuring delinquencies are not allowed to get out of hand

# Collection Policies: Contents

- ▶ Describe process for “acceleration” of assessments, if applicable.
- ▶ Describe payment plan policies.
- ▶ Describe policies for suspension of membership rights (e.g., right to use certain Common Element amenities) for delinquent homeowners.
  - ▶ Ensure no discrepancies with Declaration here.

| Delinquent Amount                   | Collection Action                                                                                                                                            | Fees                                                                                                                                                                                                                                                       |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| At or more than<br>\$106.00         | Delinquency Notice from<br>Management Company                                                                                                                | \$ <u>25.00</u> Late Fee<br>recurring monthly until delinquency<br>cured.                                                                                                                                                                                  |
| At or more than<br>\$212.00         | <ol style="list-style-type: none"> <li>1. Transfer to 3<sup>rd</sup> Party<br/>Collections Company</li> <li>2. Notice from Management<br/>Company</li> </ol> | <ol style="list-style-type: none"> <li>1. \$<u>25.00</u> Late Fee, recurring monthly<br/>until delinquency cured.</li> <li>2. Accountholder will be responsible<br/>for all costs associated with 3<sup>rd</sup><br/>party collections company.</li> </ol> |
| At or more than<br>\$ <u>720.00</u> | <ol style="list-style-type: none"> <li>1. Notice of Filing of Lien<br/>Letter</li> <li>2. Filing of Lien</li> </ol>                                          | <ol style="list-style-type: none"> <li>1. \$<u>25.00</u> Late Fee, recurring monthly<br/>until delinquency cured.</li> <li>2. Accountholder will be responsible<br/>for all costs associated with<br/>preparing and recording the lien.</li> </ol>         |

# Collection Policies: Summary

- ▶ A Collections Policy is a simple, effective tool that all associations should have in place.
- ▶ Best Practice: Have policy drafted or reviewed by association's legal counsel prior to putting any new or updated policies into effect.
- ▶ If your association needs a policy, or if your association's policy needs updating, we can help!

# Legal Collections Process: What does an Attorney Do?

- ▶ Validation Letter
- ▶ Follow-up Demand Letter(s)
- ▶ Enforcement:
  - ▶ Lien
  - ▶ Foreclosure
  - ▶ Judgment



# Foreclosure vs Judgment

- ▶ Foreclosure: Action against the property connected with unpaid assessments.
- ▶ Lawsuit for Money Judgment: Action against the person or persons

# Foreclosure by Advertisement

- ▶ A nonjudicial process. County sheriff sells the property at auction after the creditor completes a series of steps.
- ▶ Potential remedy for associations governed by MCIOA and for non-MCIOA associations with “power of sale” language in the Declaration.
- ▶ Timeline: Generally about 12 weeks from start of process to foreclosure sale (although this can take longer under certain circumstances). Homeowner then typically has six months to redeem property by paying back purchaser.
- ▶ Homeowners have ample opportunities to stop process by addressing past-due balance prior to and post-sale.



# Advantages of Money Judgment

- ▶ Lower risk option for properties with little to no equity.
- ▶ Longer statute of limitations (six years versus three years for foreclosures under MCIOA).
- ▶ Less “aggressive” option for associations reluctant to commence foreclosure proceedings but still requiring legal action.

# Disadvantages of Money Judgment

- ▶ Possibility of counterclaims.
- ▶ Judgment limited to assessments arising through date of claim/hearing.
- ▶ Potential challenges in collection on money judgment post-lawsuit.

# Partnering with a Collections Professional

- ▶ HOA Experience
- ▶ Early Engagement
- ▶ Approach
- ▶ Transparency
  - ▶ Outcome
  - ▶ Cost
  - ▶ Capacity
- ▶ Communication

| Homeowner Name  | Address                    | Principal Balance | Collection Costs | Total Balance |
|-----------------|----------------------------|-------------------|------------------|---------------|
| Oprah Winfrey   | 3314 Lightning Crest Court | \$11,439.60       | \$415.00         | \$11,854.60   |
| Elon Musk Trust | 910 Rolling Clouds Way     | \$10,198.92       | \$2,800.50       | \$12,999.42   |

|  | Principal<br>Balance | Collection<br>Costs | Total Balance | Amount<br>Collected | Outstanding<br>Balance | Last Actions                                                                                                                                                                                                                                                                                                                   |
|--|----------------------|---------------------|---------------|---------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | \$11,439.60          | \$415.00            | \$11,854.60   | \$250.00            | \$11,604.60            | <p><b>7/25/2024:</b> Reviewed account. D<br/>demand letter for mailing.</p> <p><b>7/26/2024:</b> Dispute letter receiv</p> <p><b>9/24/2024:</b> Response to dispute<br/>mailing.</p> <p><b>12/27/2024:</b> Follow up email ser<br/>manager.</p>                                                                                |
|  | \$10,198.92          | \$2,800.50          | \$12,999.42   | \$10,198.92         | \$2,800.50             | <p><b>7/16/2024:</b> Reviewed account. D<br/>demand letter for mailing.</p> <p><b>9/20/2024:</b> Emailed title opinion<br/>community manager.</p> <p><b>11/7/2024:</b> Notice of Pendency p<br/>forwarded to community manag</p> <p><b>12/6/2024:</b> Notice of Sale prepar</p> <p><b>1/8/2025:</b> Payment of \$10,198.92</p> |

| Pending<br>Balance | Last Actions                                                                                                                                                                                                                                                                                                                                                                          | Next Action                                                             |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 4.60               | <p><b>7/25/2024:</b> Reviewed account. Drafted initial demand letter for mailing.</p> <p><b>7/26/2024:</b> Dispute letter received.</p> <p><b>9/24/2024:</b> Response to dispute letter prepared for mailing.</p> <p><b>12/27/2024:</b> Follow up email sent to community manager.</p>                                                                                                | <p><b>1/31/2025:</b> Follow up with opposing counsel, if necessary.</p> |
| 0.50               | <p><b>7/16/2024:</b> Reviewed account. Drafted initial demand letter for mailing.</p> <p><b>9/20/2024:</b> Emailed title opinion letter to community manager.</p> <p><b>11/7/2024:</b> Notice of Pendency prepared and forwarded to community manager.</p> <p><b>12/6/2024:</b> Notice of Sale prepared for publication.</p> <p><b>1/8/2025:</b> Payment of \$10,198.92 received.</p> | <p><b>1/31/2025:</b> Prepare updated demand letter, if necessary.</p>   |

# Thank You!

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**HOA LEADERSHIP  
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By Board Leaders. For Board Leaders.