



How to Collect Unpaid Dues

With Bonus Materials

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TOPICS OF DISCUSSION



- Assessments, late fees and interest
- Recovering fees and costs
- Recording a lien and the foreclosure process
- Bankruptcy
- Best practices before and after the delinquency arises
- Bonus Topic: Marketable Record Title Act

OMINOUS SIGNS IN THE ECONOMY: 4TH QUARTER 2023

- Total household American debt rose during the quarter by \$212 billion.
- Credit card balances increased by \$50 billion and mortgage balances rose by \$112 billion.
- Delinquency rates increased for all debt types except student loans.

Are Owners prioritizing their HOA dues?

Source – Federal Reserve Bank of NY



SUBDIVISIONS

There is no statutory scheme for subdivision associations and HOAs.



- Collection options are governed by recorded restrictions and corporate bylaws.
- Rights and obligations vary from community to community.

TYPES OF ASSESSMENTS

There should be provisions calling for an **annual assessment** payable by all lot owners equally.

- There may be restrictions on what can be budgeted for annual assessments.
- There may be limits on how much an assessment can be increased year over year.

Many subdivisions do not authorize boards to levy **additional assessments** without owner approval.

- All assessments other than annual assessments may need to be approved by owners.

DELINQUENCY CHARGES

Late Fees



What does the Declaration or Bylaws say?



If your Declaration allows you to recover costs, we can probably get there.



Late fees cannot be a penalty and must be a reasonable approximation of your administrative costs.

DELINQUENCY CHARGES

Interest



Is there an interest rate specified in restrictions?



We use 5% as default and will not exceed 7% to avoid usury issues



Is it worth calculating interest if you can levy late fees?

DELINQUENCY CHARGES

Attorney Fees and Costs

What does Declaration or Bylaws say?

Typical Declaration provision:

Each such assessment, together with interest thereon, late payment fees, and costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was (were) the Owner of such lot at the time the assessment fell due.

LIEN AND FORECLOSURE

- Lien must be recorded with Register of Deeds and sent to Co-owner as required by governing documents.
- Lien priority.
- Two types of foreclosures.
 1. Foreclosure by Advertisement
 - Right must be included in governing documents.
 - No court action.
 - Publication followed by sale.
 - 6-month redemption.
 2. Judicial Foreclosure
 - Initiated at Court.
 - Longer process than foreclosure by advertisement.

PERSONAL JUDGMENT

- Filed with Court.
- Seeks money judgment against Owner.
- Owner has right to defend and seek installment payment order.
- Does not impact title to Lot. Collected by garnishments or requests to seize property.

What about small claims court?



BANKRUPTCY



- Must halt any collection action.
- Differences between Chapter 7 and Chapter 13 cases.
- Chapter 13 case may force you to accept 5-year payment plan.
- Owner responsible for post-petition assessments under bankruptcy code.

BEST PRACTICES

- Make sure assessments are within the thresholds permitted by governing documents.
- Understand what your rights and remedies are under the existing documents.
- Adopt a standard collection policy applicable to all Owners.
 - When will account go to attorney or lien or foreclosure/lawsuit?
 - Is there a guideline for payment plans?
 - Late fees and interest.
- Seek assistance if you receive a bankruptcy notice.
- Remember that while Owners may be your neighbors, this is still a business.

MARKETABLE RECORD TITLE ACT (MRTA)

Were your restrictions recorded prior to 1985? You need to take immediate action because of the Marketable Record Title Act (MRTA).

- Legislation enacted to protect title examiners having to search property records more than 40 years of age to establish a chain of title.
- Recent amendments (2019 and 2022) question ongoing validity of subdivision restrictions more than 40 years of age if lot owners merely provide that title is subject to “easements and restrictions of record” when conveying property.
- No express exemption in the statute for subdivision and HOA restrictions.

MARKETABLE RECORD TITLE ACT (MRTA)

Legislative sunset provision expires **September 29, 2025**. What to do?

- Seek assistance in preparing and recording Notice of Claim to be recorded with Register of Deeds.





Questions & Answers

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