

We Understand Community Associations.

Lazega & Johanson

LLC is a law firm dedicated to representing community associations. We believe in building and maintaining long-lasting relationships with community associations and their managers by providing personal attention and superior services. We take pride in being a part of the team of experts you rely on to ensure the successful operation of your community.



3520 Piedmont Rd
Suite 415
Atlanta, GA 30305
P: 404.350.1192
F: 404.350.1193

Visit us at:
www.LJLAW.com



With current economic conditions negatively impacting the financial health of many community associations, associations subject to the Georgia Condominium Act (“GCA”) or the Georgia Property Owners’ Association Act (“POA”) are increasingly using judicial foreclosure as a collection tool, with great success. Attorneys at Lazega & Johanson, LLC were instrumental in creating Georgia’s judicial foreclosure law for community associations, and the law has helped many communities.

Even with difficult economic times, traditional methods of collecting delinquent assessments still work in most cases. An effective legal collection approach involves a practice of initiating regular phone and email communications to owners, suspending amenity use and privileges, filing lawsuits, and garnishing wages, bank accounts and tenant rents.

However, a result of the economic downturn is a larger number of owners for which this traditional process does not work. Compounding this problem, community operating costs continue to rise, making assessment levels and typical community delinquency rates higher than ever. In response, whether to put greater pressure on an owner to pay delinquent assessments or to remove a chronic delinquent owner from the community, more communities are exercising the power of judicial foreclosure to provide much needed relief.

Associations subject to the GCA or the POA have the power to judicially foreclose their statutory lien on a delinquent owner’s property if the total amount owed, including late charges, interest, attorneys’ fees and costs, is \$2,000.00 or greater. This means that these associations can sue a delinquent owner for both a money judgment for all amounts owed and for an order for judicial foreclosure of its lien. For more information on

foreclosure, follow this link to [L&J’s Quick Facts© on Foreclosure](#).

An order of foreclosure allows an association to foreclose on its lien, and to sell the unit or the lot of the delinquent owner at a foreclosure sale, subject to the superior liens on the property. In other words, anyone who purchases the lot or unit at the foreclosure sale will take the property subject to any first priority mortgages on the property, or for any property tax lien.

While it may sound like a drastic solution, the ability to foreclose is a valuable collection tool for an association and, when used appropriately, it is useful in helping associations get out of situations with debtors that are detrimental to the community.

Lazega & Johanson has had some great success stories using foreclosure as collection tool. Here are some recent successes:

Success #1 – Owner Paid to Avoid Foreclosure

This example involves a chronic delinquent owner.

The association obtained a Final Order and Judgment for over \$10,000 and a Judicial Foreclosure Order on May 15, 2012. The foreclosure sale was set for November 6, 2012. The owner paid the judgment and costs in full on November 5, 2012, the day before the foreclosure sale, to stop the sale scheduled for the following day. It is unfortunate the association has to go to such lengths to pursue this owner; however, it was able to recover all amounts owed by the owner, and the owner kept his property.

Success #2 – Hard Fought Judgment Yields Full Payment with Threat of Foreclosure

L&J filed a lawsuit for a POA association and

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Contact Us:

Lazega & Johanson LLC
3520 Piedmont Rd. NE
Ste. 415
Atlanta, GA 30305
(404) 350-1192 Tel
(404) 350-1193 Fax
www.LJLlaw.com



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obtained a Final Order and Judgment and a Judicial Foreclosure Order.

Prior to proceeding with judicial foreclosure, the association attempted to collect the judgment through the traditional means of wage and bank garnishments. However, the owner's employment was not steady, and bank garnishments yielded very little funds. All the while, the owner's delinquency continued to increase as current assessments went unpaid as well. The association considered its options and concluded that it simply could no longer allow this owner to drain the community, so the association's board of directors agreed to proceed with judicial foreclosure.

L&J began the foreclosure advertisement and sale process with the Gwinnett County Sheriff's Office in October, 2012, and the Sheriff set a foreclosure sale date for December, 2012.

In the foreclosure process, the Sheriff sent notice to the owner regarding the pending foreclosure sale, highlighting the seriousness of the issue. The owner quickly responded with a payment proposal, but the board rejected any significant reduction in assessments and hard costs owed, or any lengthy installment payments. When the owner learned this, he contacted his mortgage holder. Although the mortgage holder had no legal responsibility for this debt, it recognized that association foreclosure could complicate issues for the mortgage holder. The mortgage holder then elected to pay the association the full \$21,102.46 owed in November 2012 to avoid the association's foreclosure sale. Here, the lender rather than the owner stepped in to stop the foreclosure sale, resulting in success for the association!

Success #3 – Owner Evicted as a Result of Judicial Foreclosure

This case involves a habitual delinquent owner that caused a great deal of unrest in the community through abusive and contentious interactions with the board and other members.

The association made numerous attempts to resolve the matter with the owner prior to submitting the account to legal. Following each attempt made by the association, the owner was aggressive in refusing to pay the lawfully levied assessments.

The association was left with no option but to file the foreclosure lawsuit as a result of the owner's refusal to pay the escalating past due balance. The lawsuit was filed, and approximately 5 months later the association was awarded a Final Order and Judgment for over \$27,000, as well as a Judicial Foreclosure Order.

An initial attempt to collect on the money



judgment through garnishment was partially successful, collecting approximately \$3,000. However, the owner continued his refusal to pay either the past due amounts remaining on the judgment balance or his ongoing, monthly assessments. The owner also continued his aggressive and threatening behavior towards board members, all the while continuing to enjoy many of the benefits of living in the community.

The association decided to move forward with the judicial foreclosure sale. Neither the owner nor any interested investor bid on the association's lien at the May, 2011 foreclosure sale. The association took the Sheriff's Deed to the property for a \$100 credit bid against its lien. The now prior-owner remained defiant in his refusal to make payment on the past due amounts or to vacate the unit he no longer owned, even after the association foreclosed on the property.

As a result, L&J moved forward with the eviction process. The problem owner was evicted, and the association was successful in working with the mortgage company, who retained a security deed on the property to find a new owner who has remained current on assessments and is a valued member of the association.

These examples illustrate the need for associations to consider and appropriately use all collection powers available and authorized by their governing documents to deal with uncooperative owners who continually refuse to fulfill their obligations as members of the community. Rather than continue their battles with a delinquent owners, associations are making wise decisions to exercise their options to either put greater pressure on delinquent owners to pay or cut their losses by removing delinquent owners from the community in hopes for new owners who will add value to the community.