

We Understand Community Associations.

Lazega & Johanson

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We Have a Judgment...Now What?

Post Judgment Collections & Remedies

The ultimate goal of filing a lawsuit for delinquent assessments is to obtain a judgment against the delinquent owner. While obtaining a judgment can often force the owner to settle his account with the association, additional legal collection actions are oftentimes necessary in order to collect on a judgment. The reality of the collection process is that once an association has obtained a judgment, it is only half-way there. The second, and, perhaps the most challenging part of the collection process, is collecting on the judgment. Understanding the post-judgment collection process and remedies can help an association set reasonable expectations and effectively plan for post-judgment collections. The following are some of the more common questions posed by associations and managers on the post-judgment collection process.

What is included in a judgment?

In most cases, a judgment will include all past due assessments owed through the date of the judgment, interest charged on the account, attorneys' fees incurred in pursuing the collection account, and court costs incurred in filing the lawsuit. Any assessments, interest, attorneys' fees and costs that accrue after the date of

judgment are not included in the judgment and are considered post-judgment amounts. Post-judgment amounts should be accounted for on the owner's ledger and would be subject to future collection efforts, including another lawsuit, if necessary.

How long does a judgment last?

A judgment is valid for seven years from the date it is issued by the court, and it is renewable for consecutive seven year terms thereafter.

We have a judgment, so what do we do now?

The name of the game in post-judgment collections is locating assets an association can levy on to satisfy the judgment. This process works most effectively and efficiently when the attorney, the manager and the board work together in identifying homeowner assets.

When a judgment is obtained, the manager or board will be notified of the judgment and requested to provide any information relating to that owner's checking account, employer or tenant that is on file. Many times, there are copies of checks and/or employment information that is recorded

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in the owner's file. This is the quickest and best way to move a judgment to garnishment. The manager or board should forward any information on file to the attorney so that garnishments can be filed immediately.

If there is no useful asset information on file, the attorney begins its search for assets. This process is known as "skipping" or "skip tracing" for assets. Where the pre-judgment process is more of a science, locating owner assets in the post-judgment process is an art. "Skipping" for assets takes on many forms, and many resources are at the collection attorney's disposal. Following are some of the resources that are used by effective collection attorneys in locating owner assets:

Credit Report: Often there is information on credit reports that will show where an owner banks or is employed. The credit report also gives insight into the current state of the owner's credit, and, therefore, a feel into how collectable a judgment may be at a particular time.

Social Media: This is a relatively new and exciting resource for identifying an owner's employer information. With the increase in usage of social media outlets like Facebook, Twitter and Instagram, attorneys have tools by which to locate owner information.

Internet Searches: Although search engines such as Google, Yahoo and Bing are not new sources for information, they do provide some of the most up-to-date and easily accessible information regarding a homeowner.

Asset Skip Databases: There are subscription based databases that provide another resource for the collection attorney in locating employment information. This is also a useful source to obtain or confirm an owner's social security number. Social security numbers are essential in filing garnishments.

Outside Asset Search Providers: If all other resources fail to produce verifiable assets, there are outside asset search providers that will attempt to locate bank and employment information. These outside providers will perform these searches and typically only charge a fee if and when verifiable assets are located. The charges for these services vary, but range from \$25 to \$300.

In our experience, the majority of judgments are collected through the garnishment process.

The three most common types of garnishments are:

- **Wage Garnishment** (also known as a "continuing garnishment"), is often the most successful form of garnishment. If a homeowner's employer is located and verified, the association can garnish the owner's wages to satisfy the judgment. The first step is to file the necessary garnishment documents in the county where the employer's registered agent or corporate office is located. The county sheriff serves the garnishment summons on the employer after the garnishment documents are filed. The employer is then obligated



It is important to understand that the foreclosure only eliminates the lien on the property. While a foreclosure eliminates the Association's lien on the property, it does not eliminate the debt owed prior to the date of foreclosure.

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to withhold 25% percent of the owner's disposable earnings each pay period for a total of 179 days from the date of the service of the garnishment. If the full judgment amount is not collected through the first wage garnishment, subsequent wage garnishments should be filed timely to avoid any gaps in garnishment withholdings.

Can we take his car to satisfy the judgment?

It can be extremely frustrating for a board to see a delinquent owner driving around in a shiny new, expensive car. If the owner can afford the car, then surely he can afford the assessments. However, levying on assets such as a car to satisfy the judgment is rarely a good collection remedy for an association. In most cases, the owner does not own the car free and clear. Typically, there is a note on the car that must be satisfied. Furthermore, even if a levy is possible, there are often large fees associated with the storage and subsequent auction of the vehicle. These fees are usually so substantial that an association will not realize any gain from pursuing this as a collection remedy.

How do foreclosures and bankruptcy impact judgment collection?

There are a few common misunderstandings related to how bankruptcy filings and foreclosures affect judgments.

Perhaps one of the most common misunderstandings relates to foreclosures. Often times, a board or manager will request that an account with a judgment be closed due to a recent foreclosure of the owner's property. It is important to understand that the foreclosure only eliminates the lien on the property. While a foreclosure eliminates the Association's lien on the property, it does not eliminate the debt owed prior to the date of foreclosure. There are many situations where it may be worthwhile for an Association to pursue a suit in order to obtain a money judgment against the foreclosed owner. This is especially true in situations where there is a large pre-foreclosure delinquent balance and the foreclosed owner is still local and can be easily served with the suit. This is a decision that the Association should discuss

- **Bank Garnishment** (also known as a one-time or "regular" garnishment) is another extremely effective tool in the post-judgment collection process. Like the wage garnishment, the association's attorney will locate and verify an owner's bank account information before filing and serving the garnishment summons on the particular bank. The owner's bank will then be obligated to freeze the homeowner's account and forward to the court 100% of all funds in that account or are deposited into that account for the next 5 days from the date of the service of the bank garnishment.
- **Rent Garnishment** is the type of one-time or "regular" garnishment, and is useful in circumstances where the association is aware that the owner is currently renting or leasing his or her property. If an owner is leasing, the association can file a rent garnishment that will obligate the tenant to pay all rent amounts currently due to the homeowner to the court to satisfy the rent garnishment. Because rent garnishments are "regular" garnishments, a new garnishment must be filed each month. As a result, this type of garnishment is most effective in forcing the owner to come forward and work out a resolution or payment arrangement that meets the board's approval.

We just obtained a judgment against an owner who has a brand new automobile.



Contact Us:

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with its attorney and make based on the likelihood of collection of the money judgment. Again, any judgment entered against that foreclosed owner remains collectable and is not impacted by the foreclosure.

There is rarely a situation where a judgment account should be closed as an immediate response to a foreclosure. The association should perform the asset searches described above to determine whether or not there are any assets to levy on to collect on the judgment. An owner who has been foreclosed upon may still have a job where the wages can be garnished to satisfy the judgment. If it is the case that the owner has truly fallen upon hard times and is not employed or does not have a bank account with funds to garnish, as stated above, the judgment is good for seven years and can be renewed. Accordingly, it may be an effective collection strategy for the association to leave the file open and to skip for assets on a periodic basis until the judgment can be satisfied. Leaving a judgment account open and skipping for assets on a periodic basis is most times advisable instead of closing a judgment file in response to a foreclosure.

A second common misunderstanding is how a bankruptcy filing impacts post-judgment collection efforts. Once an owner files for bankruptcy, the Federal Bankruptcy Court issues a stay on all collection activities related to that owner. That means that if the association has a judgment against an owner who files for bankruptcy after the judgment is issued, the association is prevented from filing any type of garnishment and must dismiss any pending garnishments. In addition, the bankruptcy stay prevents almost every other type of collection activity while the bankruptcy is pending including: collection letters or late notices, collection phone calls, utility suspension, parking suspension, services suspension and voting suspension. The stay issued by the bankruptcy court action applies to both Chapter 7 and Chapter 13 petition filings.

Bankruptcy filings are often times damaging to the Association's ability to collect on a delinquent debt, but there are avenues by which the Association can and should expect to see some payment from a delinquent owner who has filed for bankruptcy. First, all owners regardless of the type of bankruptcy that is filed are required by the bankruptcy court to pay all assessments that become due after the bankruptcy petition is filed. If the delinquent owner fails to make the post-petition assessment payments, the Association has the right to request a leave of the bankruptcy stay in order to pursue a suit against that owner for the post-petition assessments. Second, in almost all cases where an owner has filed a Chapter 13 bankruptcy and the Association's attorney has filed the necessary Proof of Claim with the bankruptcy court, the Association will receive payments from the trustee in accordance with the repayment schedule approved by the bankruptcy court.

No matter what type of bankruptcy an owner files, any judgment entered against the delinquent owner remains intact unless the owner's debt is discharged in the bankruptcy. If the debt is discharged under the bankruptcy, the judgment is extinguished and is not collectable. All amounts included in the bankruptcy discharge must be written off and removed from the owner's ledger. If the bankruptcy filing is dismissed, as opposed to being discharged, then the association attorney can resume all post-judgment collection efforts.

The business of collecting delinquent assessments from homeowners is a difficult, but necessary, process for associations. Understanding post-judgment collections, and remedies, and using these remedies effectively, can make all the difference to an association's bottom line. Having a collection attorney that is knowledgeable, aggressive and efficient makes the collection of those delinquent assessments a much easier job for the association.

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