



## GETTING A JUMP START ON COLLECTIONS

The holidays are behind us, a new year is upon us and it's time to get back to business... the collections business, that is. Even though your association's annual assessments may not be due for another month or two, it's never too late to start the year off right and get a jump on collections by establishing a collection policies and procedures guideline for dealing with delinquents.

With five simple steps, you can create a solid collection policy that will ensure you will have a firm handle on delinquencies in the upcoming year.

### **STEP 1:**

#### **Review your governing documents to determine standard collection powers.**

The first step to creating a collection policy is to determine what collection powers are granted to your association under the governing documents for your community. Specifically, you will want to know the following:

Can late fees be imposed? If so, how much? What interest rate is to be applied to an outstanding balance? Do the governing documents authorize the Association to impose liens for past due assessments? Do the governing documents allow for the foreclosure of Association liens? Do the governing documents allow the Association to recover attorneys' fees incurred in collection of delinquent assessments?

### **STEP 2:**

#### **Review Your Governing Documents for Additional Collection Powers**

Many community association documents will allow for further collection powers above and beyond the standard collection powers listed in Step 1, such as suspension of use and services. The second step to establishing a collection policy is to determine what, if any, additional collection powers and procedures your association may have. The following is a list of additional collection pow-

ers available to community associations:

**Suspension of the right to vote on matters put before the membership.** If your documents allow for the suspension of the voting rights of delinquent owners, it is important to determine whether such suspension is automatic under your governing documents or if the documents require notice to the owner prior to suspension.

**Suspension of use of common areas and/or recreational facilities.** Many association documents allow for the suspension of use of the common areas and/or recreational facilities for delinquent owners. If your community's documents allow for such suspension, take care to note the scope of such suspension. Some documents will allow for the suspension of use of all common areas, while others will only allow for the suspension of use of the recreational facilities. Furthermore, if the documents allow for the suspension of use of common areas, including the driving and parking of vehicles on the common property, you should review your documents or consult with your association attorney to ensure that you have the authority to tow vehicles in violation of suspension.

**Suspension of utilities paid for as a common expense.** Another collection power often afforded to associations is the suspension of utilities paid for as a common expense, such as water or electricity. If your documents allow for such suspension, it is imperative that you review your documents carefully to determine any steps which must be met prior to such suspension. Any condominium is required under the Georgia Condominium Association Act to obtain a judgment of \$750.00 or more against a delinquent owner prior to suspending any utilities provided as a common expense to such owner. Suspension of services paid for as a common expense. Some association documents also allow for the suspension of services paid for as a common expense, such as

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internet or cable. Again, it is important to make sure that any prerequisites required by your governing documents are met prior to pursuing any such suspension. Assignment of rent to the association. Another common collection power is the assignment of rent to the association. Rent assignment allows an association to demand a tenant of a delinquent owner to tender all monthly rental payments to the association until such time as the owner's delinquency is paid in full. Denial of other membership privileges. Some association documents will also deny other membership privileges to delinquent owners, such as the right to obtain a leasing permit or the right to seek approval for architectural modifications.

The foregoing list is examples of many of the other collection remedies available to associations. However, you can only pursue those collection remedies which are permitted under your governing documents. If your documents do not contain some of the foregoing remedies, you may consider amending your governing documents to include these additional remedies.

**STEP 3: Review Your Governing Documents for Notice Requirements** Once you have determined what collection remedies are available to your association under your governing documents, the next step is to determine if there are any notice requirements or other requirements which will help you establish a timeline for your collection procedures. For example, most association documents require an owner to be thirty days delinquent prior to the suspension of voting rights, use of common areas or services paid for as a common expense. A few documents require the association to send notice to an owner prior to commencing any collection procedures. It is imperative that any requirements of the governing documents are met prior to taking any collection actions to ensure successful collections.

### **STEP 4:**

#### **Establish Your Collection Procedure**

After you have gathered all of the necessary information, it is time to establish your collection procedure. Your procedure should set forth what collections powers will be used and when. It should furthermore specify how and when delinquent owners will be notified of the collection actions being taken. For example, you might decide to send out a friendly notice to those owners who are thirty days delinquent, notifying them of their delinquency and warning them of the steps that will be taken in the event their delinquency is not satisfied. Your second letter imposing the collection remedies may go out at 60 days and a final warning may go out at 90 days. The time frame is dependent on the needs of your association and the requirements

under your governing documents. The policy should establish when accounts will be turned over to your attorney for collections, and should furthermore specify the additional attorneys' fees and costs an owner can expect to incur once the account is turned over for collections. A well drafted collection policy will leave no question as to what a delinquent owner can expect and will furthermore establish solid guidelines to **ENSURE** your association is handling each collection account on a fair and consistent basis. A good collection procedure will also allow for some flexibility for an association to negotiate with those owners who have run into financial difficulties but who are willing to work with the association to resolve their delinquency.

### **STEP 5:**

#### **Publish Your Collection Procedure**

The last, but certainly not the least step in this process, is to publish your collection procedure to the membership. You may do so by mailing a copy to the members, including it in your newsletter or posting it online. By publishing your collection procedure, you are making all owners aware of the collection remedies and letting the membership know that your association is serious about collections.

If you take the time to follow these simple steps and establish a solid collection policy and procedure for your community, you are one step closer to ensuring financial security for your association in 2009.

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