



AN ASSOCIATION OF ATTORNEYS INCLUDING PROFESSIONAL CORPORATIONS

**ASSESSMENT COLLECTIONS THROUGH JUDICIAL FORECLOSURE:
THE RIGHT CHOICE**

Real estate recessions, earthquakes, fire and flood damages, construction defects, as well as a rather dismal economy have left thousands of community associations with extraordinary repair bills. Homeowners with good-paying jobs are being specially assessed thousands of dollars for repairs and frequently refuse to pay. Other owners with current income frequently stop paying their monthly trust deed payments and their regular assessments to the association—often because there is little if any equity left in their residences. The association's lifeblood, its assessments, are not getting paid. This is just one of many circumstances appropriate for an association to employ judicial foreclosure proceedings.

Collecting special and regular assessments may be pursued by judicial foreclosure, Small Claims Court, or through non-judicial or trustee's sale proceedings. This latter method allows the association to force an owner's residence to be sold. Once sold (if it can be sold), the association is nevertheless prevented from collecting any monies still due to it. Furthermore, no deficiency judgments are allowed. If the foreclosed residence has no equity, the trustee's sale will result in a complete waste of time and association's funds to pay trustees' costs.

In the past, advocates of non-judicial foreclosures boasted of the high response rate in collecting dues. This was primarily due to the small amounts of money in default to an association in comparison with the loss of equity an owner was likely to suffer if the property was sold by a trustee. However, special assessments for earthquake, fire and flood repairs, for example, are frequently significant. They have been and could be \$1,000.00 to \$20,000.00 per unit. Sufficient equity frequently doesn't exist.

A lawsuit seeking judicial foreclosure and a money judgment allows the association two remedies for collecting assessments: a forced sale of the owner's unit and a money judgment against the individual owner. Even if a delinquent homeowner abandons his unit or, for instance, loses his/her house through a senior lien foreclosure, the owner remains liable pursuant to a money judgment for all assessments (and reasonable attorney's fees, court costs, interest and late charges) due up to the day the owner is no longer the owner.

Collecting on the money judgment is inexpensive and successful; an owner's paycheck may be garnished; his/her bank account and vehicle (unless exempt) may be attached; and an owner may be held responsible for a money judgment for up to twenty years. Furthermore, interest accrues on the judgment amount at ten percent per year. Non-judicial foreclosure proceedings, however, do not provide for these collection remedies.

It should be noted that a current or prior owner can be sued in Small Claims Court by the association for delinquent assessments and no attorney is required. Where the amount due is minimal, the association should consider suing on its own behalf for a money judgment only. If the association abandons its efforts to pursue a non-judicial foreclosure sale, its only remedy is to proceed directly to court for a money judgment. This is what we recommend.

How does one know if a unit has equity? A Lot Book Report or property profile may be obtained for about \$100.00 or less. It provides copies of all liens and encumbrances, as well as copies of any Notice of Defaults commencing a foreclosure by a lender. Subtract the total encumbrances from the fair market value (board members have a good idea what units are worth in their own complex) and the equity, if any, will be established.

Non-judicial foreclosures have their advantages. These proceedings can be faster than getting a judgment (but not always). Non-judicial foreclosures also make sense if the deadbeat homeowner is insolvent or there is equity in the unit. If the association acquires the property (by completing the non-judicial foreclosure sale) which has little or no equity, it will not recover any money. If, however, there is no equity or the owner is in arrears on paying his senior trust deed, it would be greatly advantageous for an association to pursue, in one lawsuit, a money judgment and judicial foreclosure.

Judicial foreclosures filed in court includes a claim for a money judgment. A money judgment is the only available remedy once foreclosure is no longer an option, such as when the delinquent owner has transferred title to the property or the senior trust deed holder has foreclosed. Judicial foreclosures also provides clear, undisputable title to the purchaser.

Most owners sued in court under a Complaint for Foreclosure and Money Damages do not litigate their case. Instead, they either do nothing or work out a payment plan. Where an owner does nothing, a judgment is usually entered after only two to three months via a Default Prove-up Package.

Before you give the green light to your trustee collection service, first learn if the subject residence has only nominal equity or if the unit is in jeopardy of being lost to the trust deed holder. If so, we recommend associations go for the money, not the valueless residence. It's the most sensible way of collecting the association's lifeblood.