



2010 Community Association Law Seminar & Expo

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The Collections Journey –
Rocky and Steep or
Level and Smooth?

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Scenario #1: Traditional HOA

- Homeowners association with annual assessments
- \$300 per year due January 31st of each year
- Amenities:
 - Small pool with pool house
 - Playground
 - Entry signs and landscaping at entry



Collections Strategy for this HOA

- Develop collections policy
 - Communicate policy with owners
 - Work with owners on reasonable payment plans
- Preserve lien rights
 - Must file paper liens in timely manner to avoid losing right to collect at closing or refinance of loan



Collections Strategy for this HOA

- Initiate legal collections process timely
 - Utilize lien filing program or deferred collections program to secure lien rights and begin collections process
 - Deferred collections program includes letters and collection calls designed to encourage owners to prioritize debt to association
 - Avoid statute of limitations problems (4 years)



Scenario #2: Condominium Association

- Condominium association with monthly assessments
- \$250 per month due on the 1st of each month
- Amenities/Features:
 - Pool, tennis, clubhouse, landscaping, entry features
 - Electronic gated entry to parking areas
 - Assigned limited common element parking spaces
 - Water service provided by association



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Collections Strategy for this Condominium

- Develop collections policy (like HOA)
 - Communicate policy with owners
 - Work with owners on reasonable payment plans
- Utilize suspension powers
 - Review documents for authority (consider amendments)
 - Investigate ability to suspend
 - Provide proper notices and enforce uniformly



Collections Strategy for this Condominium

- Initiate legal collections process timely
 - Utilize deferred collections program to further protect lien rights and begin collections process
 - Deferred collections program includes letters and collection calls designed to encourage owners to prioritize debt to association
 - Avoid statute of limitations problems (4 years)
 - Utilize acceleration and lien foreclosure rights as collections tools



Initiating the Condo Lien Foreclosure Process

- O.C.G.A. 44-3-109 requires:
 - Owners receive 30 days notice prior to initiating foreclosure action; AND
 - Lien amount in excess of \$2,000.00
- Statutory lien under O.C.G.A. 44-3-109 includes (if the documents provide):
 - Past due assessments (monthly, special, specific)
 - Late charges (\$10 or 10% whichever is greater)
 - Interest 10%
 - Reasonable attorneys fees actually incurred



Scenario #3: Association subject to POA – Past Due Assessments and Fines against Lot Owner

- Homeowners association subject to Georgia Property Owners Association Act (“POA”) with annual assessments
- Assessments are \$300 per year due January 31st of each year
- Amenities: Small pool with pool house, playground, entry features and landscaping
- Covenant Violation: Chain link fence installed in violation of declaration– fines of \$25/day



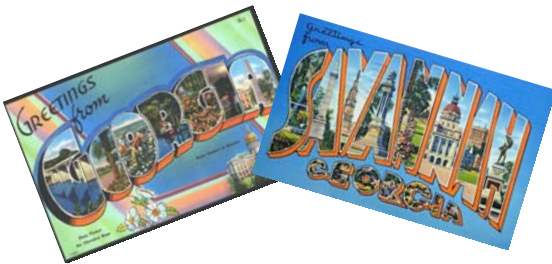
Collections/Enforcement Strategy for this POA

- Develop collections and enforcement policies
 - Communicate policies with owners
 - Work with owners on reasonable payment plans for money owed and resolutions to violation
- Utilize suspension powers
 - Provide proper notices and enforce uniformly



Collections/Enforcement Strategy for this POA

- Utilize enforcement powers to correct violation
 - Confirm ability to fine or utilize self-help
 - Provide proper timely cease and desist letters, notices of violation and enforce covenants uniformly
 - Document violations (photos, letters, etc.)



Collections/Enforcement Strategy for this POA

- Initiate legal process timely
 - Utilize deferred collections program
 - Avoid statute of limitations problems
 - 4 years for assessments and fines
 - 2 years for curing the violation
 - Utilize lien foreclosure rights as enforcement tool
 - Seek order of the court to force owner compliance



Initiating the POA Lien Foreclosure Process

- O.C.G.A. 44-3-232 requires:
 - Owners receive 30 days notice prior to initiating foreclosure action; AND
 - Lien amount in excess of \$2,000.00
- Statutory lien under O.C.G.A. 44-3-232 includes (if the documents provide):
 - Past due assessments (monthly, special, specific)
 - Late charges (\$10 or 10% whichever is greater)
 - Interest 10%
 - Reasonable attorneys fees actually incurred



Scenario #4: Habitual Delinquents

- TYPE A: Frequent visitor to WNCW deferred collections program – Pays after receiving collection demand letters
- TYPE B: Owner you sue, garnish and sue again



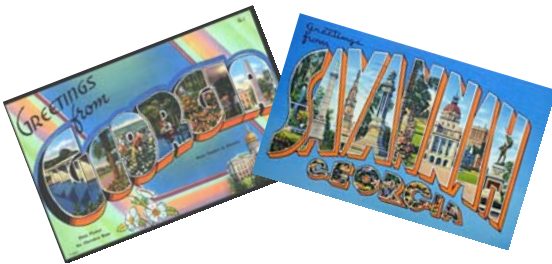
Scenario #5: Judgment obtained...now what?

- Final Order and Judgment for Money Damages only
- Final Order and Judgment for Money Damages AND Foreclosure of the Association's Lien
- Final Order and Judgment may also provide Injunctive Relief (covenant enforcement action)



Judgment for Money Damages

- Search for assets
 - Look to association records and neighborly knowledge
 - Use credit reports, private investigators, skip tracing
 - Schedule post judgment depositions or discovery
 - Don't give up: collectability analysis
 - Judgment good for seven years and can be renewed



Judgment for Money Damages

- Garnishment
 - Bank accounts
 - Wages
 - Rent
 - Anything of value
- Levy on personal property
- Levy on real property



Order for Foreclosure of Association Lien

- Sheriff's sale:
 - Title search to confirm other liens on property
 - Publish advertisement
 - Sale conducted on courthouse steps by sheriff
 - Association typically opens bid
- Review documents for association's ability to:
 - Own property
 - Borrow money to pay for it



Order providing Injunctive Relief

- Found in covenant enforcement action
- Force owners to comply with covenants and/or remedy violation
- Use power of court and threat of further sanctions, including possible jail time, if owner doesn't comply



Thank you!



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