

SECRETS FOR COLLECTING DELINQUENT ASSESSMENTS

1. Adopt and strictly enforce a collection procedure/policy;
2. If an assessment is 60-90 days past due, record a notice of lien on the lot/unit;
3. If the association documents provide, suspend lot/unit owner's privileges (e.g., voting rights or use of common area amenities);
4. Request that all lot/unit owners complete an owner information sheet including owner name(s), employment, mortgage company and bank account number(s);
5. Understand and use legal remedies available to collect delinquent assessments (e.g., justice court action vs. foreclosure);

6. Use open and continuous communication (e.g., newsletters, demand letters, etc.) with owners regarding the need for timely payments of assessments and procedures the association will follow in the event of non-payment of assessments;
7. Make copies of all delinquent lot/unit owners' checks (this information can be useful for future garnishments);
8. Immediately consult with an attorney if an owner files bankruptcy or if a lot/unit is scheduled for a trustee's sale; and
9. Once a collection file has been turned over to an attorney, allow the attorney to handle all communications with the debtor.

ENFORCEMENT OF CC&Rs

One of the larger problems in community associations is obtaining owner compliance with association documents. Set forth below are some suggestions for enforcing CC&Rs:

Courtesy Reminder Letter: The board or management company mails a courtesy letter or posts a notice on the property noting the violation and giving the owner a certain period of time to correct the violation. This letter, in most cases, results in the owner addressing the problem immediately.

Formal Violation Letter: In the event the violation is not corrected in a timely manner, the next step is for the board, management company or association attorney to send a formal violation letter threatening fines against the owner. Under Arizona law, after notice (the violation letter) and an opportunity to be heard (response letter from or appearance by the violator at a board meeting), an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules and regulations of the association.

Fines: Associations can enforce payment of these fines by:

1. Filing a lawsuit against the owner;
2. Obtaining a judgment against the owner; and
3. Recording the judgment with the county recorder's office.

After the judgment is recorded, the association will have a lien that is effective upon conveyance (or paid at the time of the sale of the lot/unit). In addition, associations may proceed forward with collection of the judgment through traditional collection means, such as a bank, wage or rent garnishment. Associations no longer have the right to record a notice of lien for unpaid fines and penalties, interest, late charges on fines and other fees and charges.

"Self-help" Option: Some association documents also allow the association to correct a violation on a lot/unit, at the owner's cost, if the owner fails to correct a violation in a timely manner (this is often referred to as "self help"). If association documents allow the use of "self help", it is important that the association specifically follow the procedures outlined in the association's documents prior to entering the lot/unit to rectify the violation.

Litigation: If litigation is the only alternative for an association to correct a violation, an association has the right to file an equitable claim for relief with Superior Court, requesting an order for injunction. In most cases, the judge will order that the violating owner cease from taking action or require the owner to take action and the association will be awarded its attorneys' fees and costs for filing the lawsuit.

Certified Letter Response by Owner: It is important to note that under Arizona law, if an owner sends a written response by certified mail to the association within ten (10) business days after notice to the owner by the association of a violation regarding the condition of their property, the association may not proceed forward with any action to enforce the association's documents (including fines, self-help and or lawsuit) until the association responds in writing within 10 business days to the owner with the following information:

1. The provision of the association's document(s) that has allegedly been violated;
2. Date of the violation or the date the violation was observed;
3. First and last name of the person(s) who observed the violation; and
4. Process the lot/unit owner must follow to contest the notice.

Once the association provides this information to the owner, the association may proceed with any action to enforce the association's documents (including fines, self-help and litigation).

Deed Enforcement, Fine and Notification Policies: Associations should adopt a deed enforcement policy and notify residents of this policy. This policy should outline the steps the association will take to address a violation (such as reminder notices, demand letters, fines and penalties, self-help, referral to an attorney, corrective action, filing of a lawsuit, etc.), as well as any fines which may/shall result as the continuation of the violation. Associations should also consider placing reminders in the association's newsletters or mailings to the owners regarding common violations (such as parking violations) and request that all owners comply by a certain date.