



ROEDER SMITH JADIN
PLLC

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SHOW ME THE MONEY!

A Collections Overview for Property Managers

Anthony T. Smith, Esq.
(952) 388-0289
asmith@rsjlawfirm.com
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Why Are Collections Important?

- Assessments fund the operation of the community.
- For most associations, assessments are the only source of funding.
- When assessments are not collected, association may face the possibility of budget shortfalls that could lead to future assessment increases and/or special assessments.



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What is the Association's Responsibility?

- When there is a budget shortfall, associations cannot pay for necessary maintenance, repair, and replacement.
- When there is a budget shortfall, associations cannot pay for necessary services.
- Board has a fiduciary duty to use its best efforts to collect all assessments due.
- Board should adopt formal collection policy.



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How To Collect?

1. Personal judgment against homeowner
2. Lien foreclosure by advertisement
 - Pros: greater likelihood of recovery because debt backed by property
 - Cons: greater out-of-pocket costs, takes several months, may not be available to non-MCIOA associations
3. Lien foreclosure by action
 - Pros: greater likelihood of recovery because debt backed by property
 - Cons: highest out-of-pocket costs, takes longest amount of time



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First Things First!

- Attorney begins all collection actions by sending demand letter to delinquent homeowner.
- If delinquent homeowner does not pay, attorney orders O&E report on property and prepares recommendation letter to Board.
 - Are there other liens on property?
 - Are there any pending foreclosures?
 - Does the homeowner have equity in the property?



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Option 1: Personal Judgment

- Attorney goes to court and obtains a judgment for the association against the defaulting homeowner
- PROS: Generally least expensive and fastest collection process – judgment can typically be taken in a few weeks via conciliation court at minimal cost. MCIOA associations (and some non-MCIOA associations) can include attorney fees in their claim.
- CONS: Generally the least reliable method of collection, as judgment is no guarantee of payment. Association's out-of-pocket legal fees may increase if homeowner appears in court to challenge the association's claim.



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Option 1: Personal Judgment

- Attorney starts lawsuit in Association's name against defaulting homeowner for amount owed
 - Conciliation court if defaulting homeowner owes \$15,000 or less
 - District court if defaulting homeowner owes more than \$15,000
- Attorney makes necessary court appearance(s) or files necessary motions to obtain judgment
- After attorney obtains judgment, he/she can levy on defaulting homeowner's bank accounts and/or garnish defaulting homeowner's wages



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Option 2: Assessment Lien Foreclosure by Advertisement

- Foreclosure by advertisement is the process of foreclosing an association's assessment lien by advertising the foreclosure sale instead of filing a lawsuit (action). Foreclosure by advertisement is usually simpler, cheaper, and quicker than foreclosure by action.
- Foreclosure by advertisement is available to all MCIOA associations.
- Foreclosure by advertisement may also be available to non-MCIOA associations if authorized by their Declaration. Consult with an attorney to confirm.
- PROS: High likelihood of recovery. Relatively low out-of-pocket costs. For MCIOA associations (and some non-MCIOA associations), lien will include attorney fees. Faster and less expensive than foreclosure by action.
- CONS: Association's lien subject to first mortgage.



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Option 2: Assessment Lien Foreclosure by Advertisement

1. Attorney drafts and records a lien against property
 - Lien amount includes all past-due assessments
 - Lien amount may also include accelerated assessments (if MCIOA) and attorney fees and collection costs (all MCIOA associations, others as permitted by declaration)
2. Attorney then drafts and sends two required letters:
 - Pre-foreclosure notice to homeowner
 - Letter to foreclosure prevention counseling agency
3. Attorney then drafts two additional documents that must be filed with the county recorder:
 - Notice of Pendency to Foreclose Lien
 - Power of Attorney (Board president must sign)



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Option 2: Assessment Lien Foreclosure by Advertisement

4. Attorney then drafts a Notice of Lien Foreclosure Sale, which sets the foreclosure sale date, and publishes it in a legal newspaper
 - Must be published for at least six weeks before the foreclosure sale
5. Attorney sends process server to attend the foreclosure sale on behalf of the association
 - Process server bids in all amounts owed to association (past-due assessments, attorney fees, and costs).
 - If nobody outbids the Association, then it gets the property subject to the homeowner's right to redeem the property.
 - If someone outbids the Association, then the Association gets the amount owed to it.



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Option 2: Assessment Lien Foreclosure by Advertisement

6. After the foreclosure sale, the defaulting homeowner has six months to redeem the property
 - To redeem, defaulting homeowner must pay all amounts owed to association (assessments, attorney fees, costs, etc.)
 - If homeowner does not redeem, then the property becomes the association's, and it can do whatever it wants with it (sell or rent, typically)



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Option 3: Foreclosure by Action

- Foreclosure by action is the process of foreclosing an association's assessment lien by filing a lawsuit (action). Foreclosure by action is usually the slowest, most expensive way to foreclose.
- Foreclosure by action is used by non-MCIOA associations if authorized by their Declaration. Consult with an attorney to confirm.
- PROS: High likelihood of recovery.
- CONS: Slow. Costly.



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Option 3: Foreclosure by Action

- Attorney prepares a Summons and Complaint against the defaulting homeowner and starts a lawsuit against him/her
- Case proceeds through district court until resolved via a motion (most common) or trial (very uncommon).



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Questions?

Anthony T. Smith, Esq.
Roeder Smith Jadin, PLLC
7900 Xerxes Avenue South, Suite 2020
Bloomington, MN 55437
(952) 388-0289
<http://www.rsjlawfirm.com>
asmith@rsjlawfirm.com