One Size Does Not Fit All. Association Foreclosure should be the Last Option?

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Will 2021 be a market repeat for Associations with deferrals turning into Short Sales and Foreclosures?

Let us imagine a monthly Aging report where balances never exceed $8,000? Nothing is ever a guarantee, but there are options to collect the association dues other than filing an action of foreclosure for associations. The need is simple… to be PAID.

During the market cycle in 2012 these were statistics as reported by RealtyTrac:

- ✔ The average time to Foreclosure in Florida is 853 days (2.3 years)
- ✔ Florida had a 53% increase in Foreclosure Filings in 2012 (the highest in the nation for 5 consecutive months)
- ✔ Short Sales were up 32%
- ✔ Short Sales without a Foreclosure saw a 49% increase

When the economy changed, associations found themselves examining collection practices just as much as expense reduction. As an industry, we've made changes including collecting rents, discontinuing certain services and condo's, making banks responsible for 12 months all as a result of the economy.

So what about another right of associations, rarely discussed or used? **Money Judgments**. Both 718 and 720 give associations the right to pursue a Money Judgment without foregoing their right to later Foreclose.

We like to practice the 3 P's - ***Proactive, Persistence and Personality***. In our experience, we help homeowners and Associations reach a resolution for delinquency and 70% of the time, the matter is resolved within the statutory waiting period.



But what about the 30% for the cases that do see the Claim of Lien recorded? Time is not on the association's side. No action means the debt can grow and grow to what can seem to be an unmanageable debt. We have seen that Association Foreclosure is the **"One Size Fits All"** solution recommended in many cases. With a looming time frame for Foreclosure Stays and mounting legal fees, we have seen more and more Associations make the conscience decision to take no action. This can be harmful to the financial stability of the association.

Before the balance (with legal/collection fees) reaches $8,000 - consider **Small Claims Court**. The ultimate goal should not be a Judgment, but rather the face-to-face meeting with the homeowner in which a mutual resolution to non-payment should be reached. Success is measured by a decreasing aging.

In some cases, homeowners may ignore the summons to appear and a Default Judgment may be entered in your favor. This is where the real work can begin. According to the Florida Bar, the court can require the debtor to give written information or testimony about their income, assets, property, employer and Social Security number. If a judgment is entered by a court, wages and/or bank accounts may be taken to pay the judgment. This is called garnishment and attachment.

Through a process called execution, the association can collect money owed under a judgment. This may include the seizure of personal property. When this happens, a judgment creditor pays a bond to the local sheriff to seize personal property owned by a judgment debtor so that it can be auctioned and the proceeds applied to pay the judgment.

The garnishment law allows the judgment creditor to obtain a Continuing Writ of Garnishment which orders the debtors employer to deduct money from paychecks until the judgment has been satisfied in full.

In making a litigation recommendation, the following facts should be reviewed:

- ✔ Is the property in mortgage foreclosure?
- ✔ If the property is mortgaged, is the mortgage balance greater than the property value?
- ✔ Is the property owner occupied / tenant occupied / vacant?
- ✔ Is the property owner employed?
- ✔ Is the property owner current on other financial obligations such as autos, credit cards?

Having the answers to these questions can assist in the recovery if litigation is necessary. The key here is IF necessary. In most cases, a good proactive program designed to communicate respectfully results in the association's balance being paid in full, and the homeowner can avoid expensive legal/collection fees. Statistically, 90% of the files may never reach trial. And this is GOOD for the association.

The features to a good collection strategy are mapped and defined with specific action steps, time periods and out-of-pocket costs.

Time is not on the association's side. Most Foreclosure cases are approached with the One Size Fits All solution. The benefit to a Small Claims Court Money Judgment is very simple: Less Time; Less Legal Costs; Better Chances for Full Recovery. Be Proactive and create a collection plan TODAY.

Collection agencies manage a collection process. **Law firms manage a legal process.** The two can work very well together to reach the desired result – putting the "check" into your association.

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