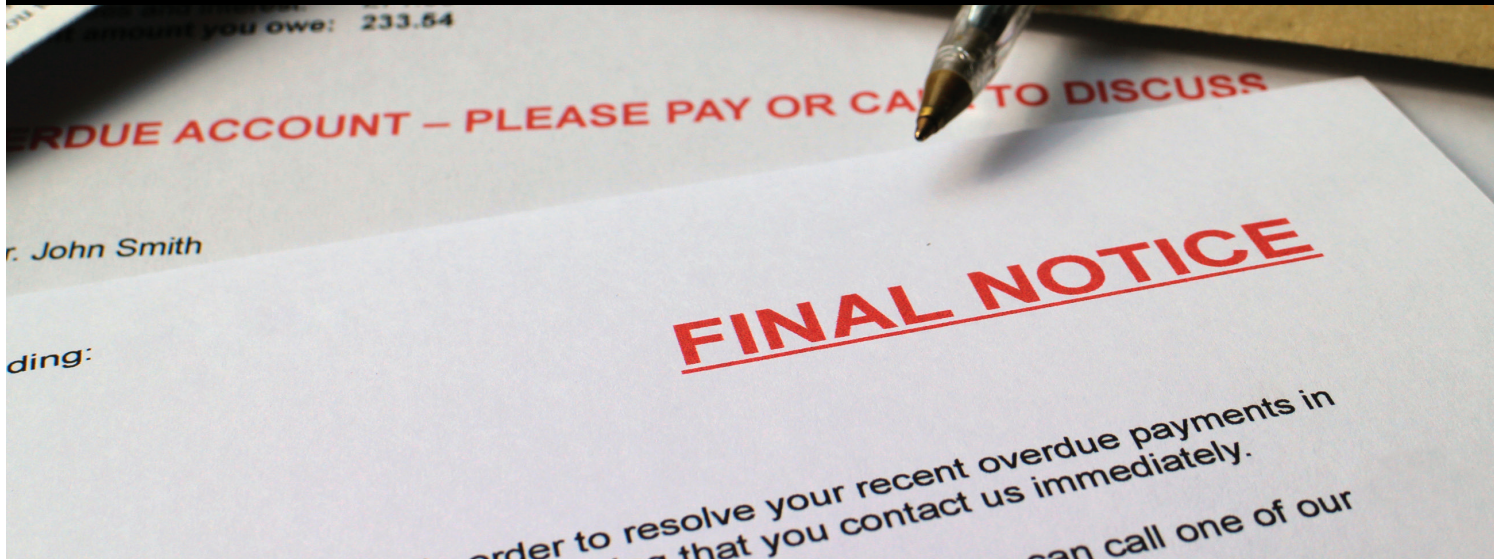


HUSCHBLACKWELL



HOA Collections: A Procedure That Works

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I. Goals of the Association

- A. To make nonpayers either pay or move;
- B. To recover the greatest amount possible, taking into account the costs of recovery, while protecting the association to the maximum extent possible; and
- C. Getting the owners to understand that if they don't pay their assessments timely there will be negative consequences.

II. Procedure

- A. Association:
 - 1. The Board should have and follow a Collection Policy that includes:
 - a. Any assessment not paid within 30 days of the due date will be advised of late fee and assessment;
 - b. Any assessment not paid within 45 days of the due date will be sent a past due notice; and
 - c. Any assessment not paid within 60 days of the due date will be sent to the attorney for collection.
 - 2. Make sure the Association Documents provide for:
 - a. Attorney fees – for both collection and defense;
 - b. Compound interest;
 - c. Late fee if not paid within 10 days of due date; and
 - d. Costs.
 - 3. If the documents don't provide for the above, amend them.
- B. Timely filing liens.
 - 1. Liens must be filed within six months of the assessment date Sec. 779.70 Wis. Stats.
 - 2. If assessments are not paid within 60 days of the due date, file a lien (or have your attorney file a lien) to avoid risk of late filing based on language in Sec. 779.70, Wis. Stats. (Under all circumstances file the lien within 4 months of the assessment date – See, IV(B) below); and
 - 3. There is a three year Statute of Limitations, so must foreclosure within that time.

III. Example of Problem with Statutory Language for Lien

- A. Assessments are \$250 per year and are assessed on 10/15 of the prior year with a due date of 1/1 of each year. The home owner never pays any assessments (dues).
 - 1. 2010 – \$250 due and lien filed on 3/15/10 (filed timely);
 - 2. 2011 – \$250 due and lien filed on 6/15/11 (arguably filed late);
 - 3. 2012 – \$250 due and lien filed on 7/15/12 (definitely filed late) and
 - 4. 2013 – \$250 due and lien filed on 3/15/13 (filed timely).

- B. Association wants to collect its \$1,000, what happens with respect to each year's debt:
 - 1. The 2010 lien cannot be foreclosed as more than three years have passed (Statute of Limitations issue), however the debt would still be owed and could be sued upon in small claims court for up to six years from the due date;
 - 2. The 2011 lien will be contested by the owner, who will argue that it was filed late. WHD would argue it was filed timely and the court could go either way due to the language of the Statute.
 - 3. The 2012 lien was filed after six months from the due date and is therefore invalid, although the debt is still be owed and can be sued upon in small claims court, the lien can't be foreclosed upon.
 - 4. The 2013 lien is valid and can be foreclosed upon.

IV. Solution to the Problem

- A. Have a collection policy, publicize it and follow it;
- B. File a lien within four months of the date the assessment is passed by the Board;
- C. Before any lien becomes 2½ years old, foreclose, so as to avoid a Statute of Limitations issue. Normally, this results in two years of maintenance liens being unpaid.

V. Other

- A. **DO NOT** talk, email or otherwise communicate with an owner about the debt, a payoff, or the amount owed **at any time** once the account has been sent to the attorney for collections; and
- B. **ALWAYS** refer the owner to the attorney to discuss the debt. The reasons for this are:
 - 1. It will avoid the problem becoming personal, since the owner is your neighbor;
 - 2. The Association rarely if ever considers and charges the delinquent owner for the attorney fees and costs to:
 - a. Dismiss the collection action,
 - b. Satisfy the lien; and/or
 - c. Satisfy the judgment;
 - 3. The Association does not know the total attorney fees and costs that have been incurred that have not been billed yet;
 - 4. It is contrary to the collection policy to reward untimely payments, and instead encourages more untimely payments; and
 - 5. When the Board or management company cuts its own deals, it forces the other owners to pay the attorney fees and costs of the untimely owner.

VI. Questions

If you have any questions, just give Dan Miske a call at 414.978.5311 / 608.255.4440 or Lydia Chartre at 608.234.6082 / 414.978.5418.