ASSOCIATION COLLECTIONS

Martin, Leyhe, Stuckmeyer and Associates, LLC.
Attorneys At Law

330 Jefferson Street
St. Charles, MO 63301
Phone 636-487-4097

Email: Office@MlsLawmo.com

Introduction

- Collecting unpaid sums is a growing problem in our troubled economy. The no-pay/slow-pay group ranges from folks who have hit a rough patch of debt overload to those who deliberately seek to stiff their creditors. Even the fastest action may still take many months to collect anything.
- <u>The art of collection is to bring home as quickly as possible the maximum amount obtainable from the debtor without setting off the minefield of laws that protect bad debtors and can actually expose the creditor to liability for a misstep in collection procedures</u>.

STEPS TO COLLECTING A DEBT

- <u>Step One. The Letter</u>

- A letter giving the Debtor 30 days to dispute or pay the debt. This letter is required by the Fair Debt Collection Practices Act.

Step Two: The Lien

- A "Hard" Lien is filed with the local Recorder of Deeds and gives notice to the public that the Debtor owes money to the Association. The Property cannot be sold without satisfying the lien. It will not have any effect until the Property is sold.
- The Lien does not supersede the Mortgage. Generally, if the Property is sold at foreclosure, for the amount owed on the note, the Lien will be extinguished. However, some title companies are requiring that the liens be removed at the sale to the new owners and this may be a way to get the Association the money.

Quick Definition:

A "Hard" Lien is a document that is filed in the recorder of Deeds office evidencing the Debt.

A "Soft" Lien is a lien that is automatically in place (without a formal document filed) because the Association Indentures make delinquent assessments a lien. It is why you fill out Trustee Letters or Resale Certificates.

- <u>Step Three: The Lawsuit</u>

- Filing the Lawsuit (Petition).
  - This is the formal way a case is brought by the Association in order to get a personal judgment against the Debtor. This is the only means whereby you can take money or personal property from the Debtor (Garnishment).

- Personal Service.
  - A Judgment cannot be granted unless the Debtor is personally served with a summons directing the Debtor to come to Court and answer the lawsuit. This is the first critical step. Since the summons must be personally served it is crucial that you get reliable information about where the Debtor may be found. Service at the property address may be enough but employment information is extremely helpful because an employer must produce the Defendant.

Most Courts will not allow a lawsuit to continue past 90 days if service is not obtained.

- Judgment

> NOTE:
> All Judgments do not become final (executable) until the expiration of the 30 day right to appeal.

  - Default.
    - If the Debtor fails to appear in Court on the specified Court Date the Court will issue a Judgment for the amount asked for in the Petition.
  - Consent.
    - If the Debtor wants to avoid a trial and pay the debt voluntarily with a payment plan they can sign a Consent Judgment. This is still a Judgment that can be executed upon if the Debtor fails to make payments as agreed.
  - Trial.
    - If agreement cannot be reached then the case is set for trial and the Court decides the how much, if any, the Debtor owes and issues a judgment for that amount.

Practical Application

Obtaining a judgment doesn't mean you automatically get paid. The Association can Garnish Wages or a Bank Account.

However, in order to garnish, you must first locate some cash assets of the owner in the State of Missouri. Sources of these cash assests are most easily found in the form of paychecks (wages) or bank accounts.

Associations should try to collect this information from owners whenever possible. One example would be to keep a copy of checks used to pay or ask for employment information in the annual informational form to be filled out by owners. Another step is to execute and sell the property.

- Execution.

  - <u>Garnishment.</u>
    - This is the method by which you attempt to intercept a Debtors bank account or wages.

  - <u>Levy.</u>
    - This is the method by which you attempt to get a Debtor's personal property like automobiles or other valuable items. These items are always subject to any amounts that may be owed against the property.

  - <u>Execution On The Property.</u>
    - In some cases the Sheriff can cause the Home to be sold to satisfy the debt. This is a complicated and costly process with no guarantee that it will reap any rewards. The sale and anyone who buys the property does so subject to any Mortgages, that means that if the property has little or no equity there will be no one to buy it.

  - <u>Debtor Exam</u>.
    - If the attempts to execute on the Judgment do not fully satisfy the amount owed, then you can ask the Court to issue a summons requiring the Debtor to appear and answer questions about their assets. This summons is required to be served on the Debtor personally. If the Debtor fails to respond the Court can issues several sanctions against the Debtor including a Body Attachment (civil arrest)

- Loss
  - <u>Bankruptcy.</u>
    - This is a means by which the Association could lose its money or be slowed down in the collection of the Debt. It is very crucial that when notice is received by the Association that action is taken. There are several deadlines to file claims that if not meet may make it more difficult to collect.

All collection activity must cease after the Debtor files Bankruptcy unless The Court, for good cause, grants permission for the Creditor to proceed.

- <u>Chapter 7.</u>
  - This is where a Debtor "liquidates" their assets. Usually, this is where the Debtor walks away from the property and is discharged from the debt that is owed. In some instances the Debtor will be allowed to keep the home and will still get the forgiveness of the debt. Although the Discharge will relieve the Debtor of their personal obligation to pay the Debt, the lien still remains and the property cannot be sold without satisfying the debt. This leverage can in some cases be enough for the Debtor to agree to pay the debt.

- <u>Chapter 13</u>.
  - This is where the Debtor sets up a payment plan through the Court for payment of the past due assessments. **Current Assessments are still owed and if not paid can be cause to ask the Court to allow collection actions to resume.**

- <u>Foreclosure.</u>

  - This is the main way in which Association can lose the assessments that are owed. As mentioned before, if the Mortgage company decides to foreclose and they only get what is owed on the note then the lien against the property is wiped out. The old Owners are still liable for the debt but the chances to collect are greatly diminished.

  - Once the Bank or Mortgage company takes title to the property they become liable for the debt that is incurred after that time. One new problem starting to emerge is Mortgage companies informing people that they are going to foreclose or the Debtors walk away and the Mortgage Company never takes title. In these cases it is unclear how to get the Mortgage Company to pay.