

Collections: the Policy, the Process, the Options
Final of a three part series

Option D: *Obtain Personal Judgment in Lieu of Foreclosure*

This would be an option that would be in lieu of foreclosure and really on effective with the owner has other attachable assets and resides in the immediate area.

Pros:

- *We don't have to follow the foreclosure process and may be more timely
- *The value of the home or whether or not they have equity in the home does not Matter
- *If the owner has attachable assets, the owner may be more inclined to pay the Delinquent assessments vs. having to sell a vehicle or other personal property

Cons:

- *A personal judgment can be difficult to collect. The additional attorney fees required to obtain asset information from the owner can be costly and may not be recoverable
- *If the owner files for bankruptcy the judgment is discharged with no return of costs to the association
- *If the owner has no other assets – which may not be discovered until the asset search has been completed and could wind up costing more than the actual judgment (Please note: most states have an “exclusion” list of assets that are prohibited from being attached which could include income, insurance settlement funds, certain investments, etc.)

Option E: *Petition the Court for Rental Income*

This action can be initiated after the Association or Mortgage Company has filed a foreclosure complaint. This scenario would be effective when we have a non-resident owner leasing the home.

The rental income would be held with the Registry of the Court.

Pros:

- *The Association may receive a portion of the rental income to help offset Delinquent assessments and legal fees.
- *The owner is not receiving the rental income and therefore may decide it would be beneficial to pay off the association so they can resume receiving rental income

Cons:

- *Cost to petition the court for rental income

Option F: *Accept Payment Plans*

In this economic climate, if a reasonable payment plan is offered or worked out by the association, this is probably a viable alternative. However, this payment plan needs to be documented in writing, outlining the specifics for payment amounts and timing and signed by both parties to ensure total understanding of the agreement. If necessary, it might be to the

Association's advantage to engage the association's legal counsel to monitor the payment plan to ensure adherence to the requirements.

Pros:

- *Allows the owner to pay off the debt without losing their home
- *Avoids legal fees relative to foreclosure
- *Association does not have the financial and maintenance responsibilities for the property by avoiding foreclosure.

Cons:

- *May be a delaying tactic to avoid further collection action by the owner
- *Payment of debt is prolonged over an extended period of time
- *May set a precedent for other collections so a realistic goal for final payment is vital

Evaluating the Pro's and Con's of each Collection Option will help determine what the best strategy is to accomplish your goal in collecting delinquent assessments. The Association's legal counsel should always be a part of whatever decisions are made in this area to ensure the correctness of the actions within the state's requirements.

Below are listed some collection strategy scenarios that may be part of the consideration for action:

1. Vacant lots – this seems pretty straight forward in continuing to proceed with the foreclosure suit due to minimal financial and maintenance responsibilities associated with foreclosing on the parcel of property
2. Mortgage foreclosure – It seems reasonable to wait for a period of six (6) month. If the foreclosure action stalls, then the association can initiate their own foreclosure. This tactic creates pressure on the owner to enter into a payment plan or acknowledge the debt to gain knowledge of their intention. Many times the mortgage foreclosure will be voluntarily dismissed because the owner has negotiated with them and worked out a payment plan.
3. Petition the court for rental income on leased property.
4. If there is no mortgage foreclosure initiated, the Association should take their action as quickly as possible.
5. Accept reasonable payment plans. If the collection action is already with the attorney, have the attorney draft the plan and monitor the payments.

No matter what action the Association chooses to take, generally the results are not immediate but it is important that action be taken to secure the position of the Association and to do what will bring the most satisfactory