

# How to collect delinquent HOA dues

By Michael Hunter

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Q. I am the treasurer of an HOA and need advice. We are a small community of 85 homes. We had an attorney when we took over from the developer. We also had a management company. Since neither one was responding to us in a way that we felt was appropriate, we have taken over both duties. We have handled our own filing of liens because we could do it for \$6 and not \$266. Our dues are only \$198 a year. This covers electricity, water, lawn-mowing, etc.

We have a few homeowners who have not paid their dues. There are currently liens on their properties. They ignore our statements and letters. We charge \$20 a month late fees so some of the charges have accumulated to a large amount. A couple of these residents are two or more years behind. What can we do to collect this money? Also, how do we remove a lien from a property once the back dues are paid?

There may be language in your governing documents that affects the method that you use to collect unpaid assessments. However, N.C. law provides a specific process for collecting delinquent HOA assessments - filing a claim of lien against the owner's property, followed by the foreclosure of that lien if the owner does not pay.

Filing liens requires knowledge of real estate law and title searches. Even if you know how to search a title, I don't recommend that you prepare and file your own liens. There are too many pitfalls. I strongly suggest that you hire an attorney experienced in HOA matters to handle your collections. In the vast majority of cases, they can recoup all attorneys' fees and court costs in addition to the underlying debt.

We (attorneys) begin by performing a limited title search to confirm the true legal owners of the property, and we check for pending mortgage foreclosures.

We then prepare and file a claim of lien for the balance owed (including the initial attorneys' fees and court costs), and serve it on the owner along with a demand letter. Often this will elicit a response from the homeowner - either payment in full, or a proposal for a payment plan. The HOA isn't obligated to accept payment plans, but we strongly encourage our HOA clients to do so, especially in this economy.

File foreclosure proceeding

If the owner does not respond, we file a foreclosure proceeding, nearly identical to mortgage foreclosures.

At a hearing, the clerk of court is required to sign an order allowing the foreclosure sale to proceed if there is evidence to prove only four factors: (1) a valid debt; (2) default in payment of the debt; (3) a legal right to foreclose (which is given in the statutes and also in the governing documents); and (4) all persons with an ownership interest in the property have been served with the notice of hearing.

Occasionally a homeowner will appear at the hearing, claiming that the HOA board has failed to enforce the covenants or bylaws or not communicated effectively.

Such arguments are not a defense to nonpayment of HOA assessments. If the owner wants to address these issues in court, he/she will have to file a separate lawsuit against the HOA, but the foreclosure will proceed unless the owner appeals and posts a bond, or a judge issues a "stay" order in a separate lawsuit.

A foreclosure sale is typically held a few weeks after the hearing, which are public sales conducted in the lobby of the county courthouse. Sometimes investors bid on the properties, but often there are no bidders and the HOA ends up being the sole bidder, taking title to the home.

Very few cases get to that point, as most homeowners pay the debt or propose an acceptable payment plan. Of those that do go to sale, we find that in most cases the homeowners are also several months behind on their mortgage, and a mortgage foreclosure soon follows.

Typically, a mortgage foreclosure "trumps" the HOA's foreclosure, and when the owner abandons the home to the mortgage holder, it is rare for the HOA to recover its debt. When a lien is paid off by the homeowner, the lien is canceled by the filing of a certificate of cancellation with the court.

As alternative to the lien/foreclosure process, the HOA can file a lawsuit against the owner personally. You absolutely will have to retain an attorney to do that. However, even if your attorney obtains a judgment in the HOA's favor, collecting on a judgment is a complex and time-consuming process, and litigation also exposes the HOA to counterclaims from the owner. There are no counterclaims in a foreclosure proceeding.

I strongly recommend to every HOA board that they adopt a written policy setting forth how delinquent accounts will be handled, distribute the policy to all owners, and enforce it consistently and uniformly.

Charlotte attorney Michael Hunter specializes in community and condominium association law for the firm of Horack Talley. E-mail questions to [home@charlotteobserver.com](mailto:home@charlotteobserver.com)



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