

Collection / Foreclosure Process

The collection and foreclosure process for an Association has various stages mandated by both the Florida Statutes and the Association's governing documents. In general, the law requires various notices before an owner loses his/her home, as a safeguard measure to protect the rights of the owner. However, this notice requirement does not prevent an Association from exercising its rights to foreclose upon the assessment obligation in order to recover the amounts it is due.

The first step in the process is called the initial demand letter. Once a parcel owner becomes delinquent in the payment of assessments, the Association is required to send an initial notice to that owner, explaining that there is an amount due and owing and the failure to make a full payment will result in the recording of a claim of lien upon the property. Both Florida Law and the Association's governing documents allow the costs related to this notice to be included upon the parcel owner's account. Generally, this notice costs the owner \$165.00 including mailing charges.

The failure of the owner to make a full payment, including the additional collection costs noted above, within the time allowed under the law, will result in greater legal action and greater legal costs. The next step in the process is to give the owner one more notice and to record the claim of lien. This typically costs the owner an additional \$450 to \$500 in legal fees, recording costs, and postage charges. The notice given to the owner warns that owner that the failure to bring the account current will result in the Association beginning a lawsuit to foreclose the claim of lien. For a homeowner, the waiting period is 45 days from the date of that notice. The failure to pay will result in the Association bringing a lawsuit against the owner and any other person that has an interest in that property.

Litigation, as one could imagine, is an expensive task. Just to file the lawsuit, the costs and fees range well over \$1,000.00. Again, Florida Law and the Association's governing documents permit these charges to be placed upon the account of the parcel owner. Merely filing the lawsuit, though, is not the end of the litigation process, though the owner, by this point, has already incurred over \$1,600.00 in legal fees and costs. To prosecute the lawsuit, the Association relies upon the attorney to seek defaults and other motions, ultimately leading up to a final judgment hearing. Once the Judge enters the final judgment in favor of the Association, the Judge will set the property for sale on the "courthouse steps."

Taking the litigation all the way to a sale, where the owner will lose their house, is a costly but necessary process. In total, the costs and fees could exceed \$3,000.00, all of which would be the responsibility of the parcel owner. Clearly, it is always best to deal with the issue as soon as possible, especially at the initial demand letter stage, as the costs of collection have been kept to a minimum and the Association and the owner can resolve the issue.