DELINQUENT ASSESSMENT COLLECTION
Overview of Procedures, Notifications and Collection Timelines

By A.S.A.P. Collection Services

Responsibility To Collect Assessments
Community Associations are required to levy regular and special assessments sufficient to perform their obligations under the governing documents and California Civil Code §1366(a). Once they are levied, the assessments must be collected. Prior to January 1, 2006, boards could routinely delegate assessment collection to their management companies. Effective January 1, 2006 boards are now required to be actively involved in the collection process.

Pro Forma Operating Budget - Civil Code § 1365
Boards are required by statute, to prepare and distribute to all of its’ member a pro forma operating budget pursuant to Section 1365 of the Civil Code not less than 30 days nor more than 90 days prior to the beginning of the Association’s fiscal year. Civil Code § 1365(a) 4. There are penalties for distributing a late budget. A board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the Association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the Association.

Assessment Collection Policy - Civil Code § 1367.1
The assessment collection policy is “a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members.” This policy is one of the required annual disclosures and must be annually delivered to the members not less than 30 days nor more than 90 days immediately preceding the beginning of the Association's fiscal year. To be in compliance with the collection laws, an assessment collection policy should include the assessment due date, delinquency date, late fee calculation, interest rate and where to mail overnight payments in addition to several other requirements found in Civil Code § 1367.1. In addition, the policy should provide a basic overview of how a delinquency will be handled if a member does not pay the assessments on time. A.S.A.P. Collection Services provides such a policy to all California Associations that sign up with our service at no cost and no case required at the time of set up.

Additional Annual Disclosure Items Regarding Assessment Collection - Civil Code § 1365.1
In addition to the assessment collection policy, the Association must also distribute annually, a copy of the current Civil Code § 1365.1 Required Notice Regarding Assessments and Foreclosure, and must disclose to the membership, an owner’s right to submit a SECONDARY address for legal notices to be sent to the primary and secondary addresses.

Dispute Resolution, Meet and Confer and ADR - Civil Code § 1363.850
Dispute Resolution, Meet and Confer, and ADR replaces § 1366.3 Resolution Of Assessment Dispute By Alternative Dispute Resolution “pay under protest” which was repealed effective January 1, 2006. The Board now needs to designate a member of the Board to meet and confer with owners disputing their delinquent assessment account and if the owners want to appeal the decision of the meet and confer, then the Board must meet with the owner to review the dispute and attempt to resolve the dispute. A.S.A.P. has available for clients, an overview of "How To Conduct A Meet And Confer” and has established procedures and guidelines for the board to adopt and provide to the designated board member to follow when conducting a meet and confer.

Mailing Address For Owners - Civil Code § 1367.4(c)
It is the Owners’ responsibility to notify the Association in writing of any change in their mailing address. The Association is only obligated to send mailings to the most current address in the Association’s records as provided by the owner. Written notice is also required for adding a secondary address to the Association’s records for legal notices.

Method Of Billing Membership
Associations are not required to send out billing statements, coupons, or courtesy notices to owners, rather these types of notifications are merely a courtesy extended to the membership. It is however, recommended that the same form of written communication be sent to the owner prior to sending the account to collection.

Prior To Sending To Collection
Whether the Association uses coupons, statement or a newsletter to remind owners of their obligation to pay their assessments on time, we recommend the following be done prior to sending an account to our office for collection.
30 Days Delinquent - send out an account history/billing statement reflecting the balance due;

60 Days Delinquent - send out a "Notice of Delinquency" letter and an account history/billing statement and give the owner 30 days to pay in full; [ASAP has a sample letter that we provide to our clients]

95 Days Delinquent – fax, email or mail ASAP a completed “Delinquent Owner Form,” with an account history as far back to a zero balance as possible.

ASAP welcomes accounts delinquent longer than the timelines stated above, however, strongly discourages cases being sent over for 60 days or less.

Case Set Up Stage [1 – 3 Days ]
Prior to setting up a case in our office, ASAP will verify that we have a current, compliant Assessment Collection Policy and a signed contract between the Association and ASAP. Once that is verified, ASAP will set up the case beginning with verifying that the owners of record provided by the Association’s management agent are the same owners of record at the time the case is set up. If the records do not match, a copy of the most current grant deed is pulled and provided to the management agent for their records. We also search for any pending bankruptcy filed by the owners and enter the Association’s account history into our system.

Pre Lien Stage [30 Day Waiting Period Per Statue + 5 Days For Mailing]
Law dictates a majority of the contents of this letter and law requires all of the attachments, including but not limited to a copy of the Association’s Assessment Collection Policy and a copy of the Dispute Resolution, Meet and Confer and ADR Policy. This letter gives the owner 30 days to contact our office to either arrange payment in full or arrange a payment plan.

Before A Lien Can Be Recorded [Board Approval Required Per Statute]
Before a lien can be recorded for delinquent assessments, the BOARD must approve the decision by a majority vote in an open meeting and record the vote in the minutes of the meeting. If a lien has not been pre-approved by the board before the account has been sent to collection, A.S.A.P. will email a Resolution To Record A Lien for signature. The case will be on hold until authorization is received.

Lien Stage [30 Day Waiting Period Per Statute]
If the Board has approved the Lien ASAP will prepare, notarize and record the lien in the County where the property is located. If the Lien has not been approved, the case is put on hold pending the approval. If an owner notifies ASAP in writing, during either the pre lien stage or while ASAP is waiting for Board approval on recording the lien, that they are disputing the debt ASAP will put the case on hold pending the outcome of the meet and confer.

Notice Of Recorded Lien Stage [Within 10 Days After Recording Per Statue]
Within (10) ten days after a lien has been recorded with the County, ASAP will notify the owner of the lien by first class and certified mail. ASAP attaches the lien to a Notice of Recorded Lien letter, which gives the owner 30 days to contact our office and either arrange payment in full or a payment plan.

Before Foreclose Can Begin [$1,800 Assessments / More Than 12 Mos. DQ Per Statute]
Foreclosure of assessment liens are prohibited UNTIL the amount equals or exceeds $1,800 or assessments are more than 12 months delinquent; this does not include accelerated assessments, late charges, fees and costs of collection, attorney’s fees, or interest. A.S.A.P. will monitor the regular assessment and special assessment amounts until they equal either the $1,800 or are more than 12 months delinquent. In the meantime, A.S.A.P. will continue to attempt collection until one of those requirements are met.

Notice of Intent To Proceed Stage [30 Day Notice, Pending $1,800/More Than 12 Mos.]
Accounts that are not at the $1,800 or are more than 12 months delinquent are sent an interim letter as another attempt to resolve the account by inviting the owner to contact our office and either arrange payment in full or a payment plan.

Notice Of Intent To Foreclose [30 Day Notice]
Accounts that are approaching or have reached $1,800 or are more than 12 months delinquent are sent this letter which gives the owner 30 days to contact our office and either arrange payment in full or a payment plan. The letter informs the owner that the next step is to initiate foreclosure and includes the statutorily required meet and confer notice. At the same time, the Association’s managing agent is notified by email that the account is not paid, and requests Board approval to proceed with initiating foreclosure with instructions on how that approval is to be obtained in accordance with the law. A resolution to initiate foreclosure authorizing the Notice of Default is attached for
signature. If the owner requests a meet and confer, the case is put in hold pending the outcome through to the appeal process.

**Pre Notice Of Default [30 Day Notice – Optional]**
Law does not require this 30-day notice it is optional, however it informs the owner that there account is now in the foreclosure stage and once again invites the owner to make contact and either arrange payment in full or a payment plan.

**Notice Of Default [90 Day Waiting Period Per Statute]**
The Notice of Default is sent by first class and certified mail and is also served in accordance with the manner of service of summons e.g. personal service as provided by a process server. A copy of the signed Resolution To Initiate Foreclosure is included with the Notice of Default to fulfill the statutory requirement of providing the owner with the “notice of decision to foreclose.”

**Before The Notice Of Sale [At Least 30 Days Prior to Public Sale]**
At least 30 days prior to any public sale, the Board is required to meet in executive session, by majority vote, and record the results of the vote identifying the property by the assessor’s parcel number (“APN”) in the minutes of the next meeting of the board open to all members. A.S.A.P. will email a Resolution To Proceed With The Sale for signature. The resolution includes the APN as required by law. In addition, and in an effort to assist the Board in this difficult decision, A.S.A.P. also includes a total of the liens and encumbrances as stated on the Trustee Sale Guarantee (“TSG”) Report, a current account history reflecting the amount due and a full detailed status report of all collection activities performed to date. With this information the Board can determine if there is any equity in the property. If there is equity, the Association can proceed with the sale. If there is no equity, the Association can put the case on hold for 60 days to determine the next step.

**Notice Of Sale – [Sale Date Published (3) Consecutive Weeks Prior To Sale]**
Once the 90-day Notice of Default period expires, the sale date of the property can be set. The sale is published in an adjudicated paper in the city and county that the property is located in and is published once a week for three consecutive weeks. The following week the property can be sold. This notice is also posted to the door of the property.

**90-DAY Redemption After The Sale [90 Day Redemption Period Per Statute]**
New law as of January 1, 2006, the Association's sale is subject to a right of redemption. During this redemption period the separate interest may be redeemed from the foreclosure sale up to 90 days after the sale.

**Payment Plans [Strongly Recommended, Fully Administered By A.S.A.P.]**
A.S.A.P. facilitates, prepares and administers all payment plans. In accordance with the law, Payment Plans must conform to the PAYMENT PLAN STANDARDS, if they exist. A.S.A.P.’s Collection Service Agreement establishes the Pre Authorized Payment Plan Standards that will be followed. Only requests outside of the pre-authorized guidelines will be directed to the Board for approval. The Board of Directors MUST MEET with an owner who requests a meeting to discuss a PAYMENT PLAN within 45 days of the written request. Payment plans shall not impede the Association's ability to record a lien and cannot include late fees if owner complies with the plan. If a default occurs, collection activities can resume from the time prior to entering into the payment plan.

**Lender Foreclosure [Can Occur At Any Time During The HOA’s Collection Process]**
Lender foreclosures are on the rise. Properties are over encumbered with little to no equity for the owners to rescue their property through a refinace. Therefore, when the lender takes the property to public auction and there are no bidders the property reverts to the lender’s portfolio. When this happens the lender is only responsible for the assessments from the date of the trustee sale forward. They are not responsible for the previous owners assessments. Therefore, the account needs to be split between the previous owner’s debt and the lender’s new debt.

**Small Claims Court [Only If Foreclosure Is Not An Option]**
In the situation of a lender foreclosure, there is not a lot that the Association can do other than take the owner to small claims court and enforce the debt as a personal obligation. However, even small claims is not a guarantee of payment because once the judgment is received the Association has to collect. Collection on a judgment will yield the Association less than 50% of the debt because the judgment collector will take 50% of the judgment, and the Association has to pay the 100% of the collection fees and costs and any foreclosure fees and costs incurred, if any, out of their 50% of the judgment proceeds. It is also important to note that less than 40% of judgments are collected. So, how does the Association determine if they should pursue the debt in small claims court? If the owner currently owns another piece of property, then it would be worth the Association’s effort to pursue the debt because the judgment can be recorded as an abstract of judgment and attach to the other property similar to a lien. If the owner can be easily located and personally served with the lawsuit and the amount due is sufficient enough to pay the collection fees and costs, any foreclosure fees and costs, if any, and there is a sufficient amount to be paid to the
Association, then the Board might determine that it is worth the effort. However, you cannot go to Court if the owner cannot be located and personally served.

**Summary Of Collection Timelines**

Several of the timelines mentioned below are determined by either statute or requires board approval before proceeding to the next step of collection. So a straight calculation of the number of days from the time of issuance to the time of foreclosure is difficult to determine. It is important to note that there are also several interruptions that can occur during the process, e.g. owner disputes, meet and confer process, lender foreclosure, bankruptcy, etc.

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- Case Assigned For Collection [95 Days Delinquent]
- Case Set Up Stage [1 – 3 Days]
- Pre Lien Stage [30 Day Waiting Period Per Statute + 5 Days For Mailing]
- Before A Lien Can Be Recorded [Board Approval Required Per Statute]
- Lien Stage [30 Day Waiting Period Per Statute]
- Notice Of Recorded Lien Stage [Within 10 Days After Recording Per Statute]
- Before Foreclose Can Begin [$1,800 Assessments / More Than 12 Mos. DQ Per Statute]
- Notice Of Intent To Proceed Stage [30 Day Notice, Pending $1,800/More Than 12 Mos.]
- Notice Of Intent To Foreclose [30 Day Notice]
- Pre Notice Of Default [30 Day Notice – Optional]
- Before The Notice Of Sale [At Least 30 Days Prior to Public Sale]
- Notice Of Sale – [Sale Date Published (3) Consecutive Weeks Prior To Sale]
- 90-DAY Redemption After The Sale [90 Day Redemption Period Per Statute]
- Payment Plans [Strongly Recommended, Fully Administered By A.S.A.P.]
- Lender Foreclosure [Can Occur At Any Time During The HOA’s Collection Process]
- Small Claims Court [Only If Foreclosure Is Not An Option]

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**WE UNDERSTAND IT’S NOT ABOUT FORECLOSURE...**

**IT’S ABOUT PAYMENT IN FULL!**

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