How to Collect through the Courts when you're a Community Association

LAW prepares a

Statement of Claim

YES

Resident meets with

on payment

Board and agrees

LAW sends 30-Day Demand

Letter to resident

Resident contacts

LAW to pay or

enter into a

Payment Plan

YES

LAW advises resident to meet with Board

Filing Statement of Claims in the local county small claims court may be a more efficient use of an association's time and money when attempting to collect outstanding assessments.

By: Lee Mason, Esq., Broker, CMCA, AMS, PCAM

D uring these unpleasant economic times, mandatory membership associations with tight budgets are constantly looking for ways to collect outstanding monies owed from homeowners in the most expeditious means as possible. Although filing a lien on the property of the owner is a great collection tool, there are circumstances that could wipe out the lien, such as when the property of the owner is foreclosed upon by a lender. Associations often find it necessary to also pursue the homeowner in court by seeking a personal money judgment. Generally, the Association can choose to file a suit in the county where the owner resides and the Association can do so in small claims, State or Superior Court. There are pros and cons for filing suit in each of the three types of courts, but small claims court may prove to be the swiftest and most economical way to obtain a judgment, as well as collect on the judgment.

Small claims court is the most informal of the three types of courts. It is often referred to as the "People's Court." Most of the time, the owners who are sued in small claims court will appear "pro se", which means they appear without an attorney. As everyone knows the fewer attorneys that are involved in anything, the less complicated and the less costly things become, right? The small claims court usually has pre-printed forms where an Association's attorney can simply fill out by hand the amounts owed by the owner to the Association. There is nothing fancy involved. Usually, there are blank spaces on the form to fill in the principal amount owed, the attorney's fees and the court costs incurred. A Sheriff's return of service form also is filled out at the time of the filing of the statement of claim so that a representative from the Sheriff's office can then attempt to serve the owner who is being sued by the Association.

When the statement of claim is filed and the owner is served by the Sheriff, the owner has thirty (30) days to respond by filing an answer with the small claims court. If the owner fails to timely file an answer, then the Association can immediately seek

Court assigns a Civil Action number © 2012 Law Offices of Lee Mason, LLC This infographic explains the process that LAW. Law Offices of Lee Mason. LLC, conducts in court for community associations. default judgment against the owner. If the owner files an answer, then the case is set for a bench trial hearing. At the hearing, before the Judge will consider holding a bench trial on the matter, the parties will be required to informally and in a civil manner go out and conference with one another to try and settle the matter. If an agreement can be worked out among the parties, there is usually a Consent Judgment prepared and signed by all parties, which sets out how the owner is going to

Payment Request

End of Process

YES

YES

NO

due date

Resident prepares and executes:

Waiver of Service of Process

Consent Judgment with Exhibits

Resident default on

Payment Plan set in the

Consent Judgment

LAW prepares a Statement of Claim Notion for Defau Court grants motion Judgment with the Court It gets placed in the litigation LAW files Statement LAW files the Consent LAW files the executed Waiver file, and LAW LAW hires a private process of Claim with Judgment with Exhibits with of Services of Process with monitors if server to find and serve Small Claims Court **Small Claims Court** Small Claims Court payments are the resident with Consent LAW files a Claim of Lien being made Judgment that includes the with Superior Court of the persuant to Civil Action Number particular County as part of the consent the Collection Process judgment. Resident signs Court mails to LAW a copy of the LAW files the Consent YES Judge Signs the and sends Consent Signed Consent Judgment which also Judgment with Exhibits Consent Judgment has the Civil Action Number Judgment to LAW with Small Claims Court I AW files notice of YES I AW releases Claim of NO tion for Defa Lien that has been filed in dismissal/satisfaction with Judgment with the Court **Small Claims Court** LAW files post judgment LAW files a motion to compel Court enters default judgment Post judgment collection the resident to answer the post interrogatories (questions procedures begin judgment interrogatories in favor of Association to resident as to where their assets are located) Courts sets hearing for filed Motion repay the Association. Due to residents losing their jobs or having other issues, such as family illness, etc., it is often better for the Association to enter NO into a Consent Judgment with the owner and Information Resident LAW files a motion for provided by have the owner pay some amount per month over appears incarceration. resident time than to not collect anything at all from the owner. In other words, the Association's obtaining YES YES a judgment against the owner, be it by default or LAW OFFICES OF after a bench trial, does nothing for the Association LEE MASON LLC LAW to seek LAW and if it cannot collect on the Judgment. Accordingly, garnishment of Resident agree wages and bank on payment accounts of resident process

the Association should try to work out a re-payment plan that is reasonable for both parties. Payment plans should usually only be extended through the end of the particular calendar year so that when the assessments for the following year become due, the owner will not be trying to catch up on previous year's assessments that are outstanding.

LAW follows up with

the Sheriff or Court

and asks reason

why they have not served yet.

notifies LAW

LAW receives notice from

Sheriff that resident could

not be served

LAW files a Motion for Private

Process server with Court

NO

YES

Subsequent action is

taken based on Sheriff

or Court feedback

heriff serves

resident with

Statement of

Claim

Resident

contacts LAW

LAW files a

NO

YES

Court assigns a Civil

Action number

LAW files Statement of Claim

with Small Claims Court

LAW prepares a Consent

Judgment with Exhibits

Resident executes Consent

Judgment with Exhibits

One of the limitations that an Association may run into is the jurisdictional limits of the small claims court. The small claims court can only hear cases that do not exceed a claim of \$15,000. It would be rare for an Association to sue an owner in small claims court for assessments totaling \$15,000, but there are times when an owner may owe not only outstanding assessments, but also fines. So be careful that if your Association sues an owner in small claims court, it must stay within the \$15,000 jurisdictional limit. Another limitation in the small claims court is that the Association cannot make an owner take any particular action because the small claims court is not a court of equity. In other words, if the Association wanted to make an owner mow his or her grass or correct some other covenant violation, then it would have to sue the owner in the Superior court, since the Superior court is a court of equity. The small claims court can only deal with contract issues, such as outstanding homeowner association dues or fines that are owed to the Association.

If the Association is victorious at obtaining a judgment against an owner in small claims court, the owner can appeal the judgment to either State or Superior court. The legal term for this type of an appeal is called "de novo", which means that the case is tried anew as if it had not been heard before. The advantage to the Association if this happens is that it allows the Association to have already run through the events in small claims court so that it will be even more prepared the second time around. Also, if the owner has not paid the assessments or fines legally due and owing to the Association, it is highly unlikely that he or she will win in State or Superior court. It just means that the owner is attempting to use all of his or her procedural rights to prolong the inevitable. The advantages of an Association pursuing a personal money judgment in small claims court far outweigh any of its disadvantages and are likely the most efficient and economical means of collecting outstanding assessments from delinquent homeowners.

Find out how Lee Mason and Community Association Management can manage the entire association legal process on your behalf by calling 770-692-0152.