

A review of our collection policy and procedures for delinquent accounts was completed recently and the Board decided to continue with the present collection process as outlined below. The collection policy and procedures should be followed without exception.

1. Monthly Assessments are due and payable on the 1<sup>st</sup> day of the month but UP's Documents allow a 30 day grace period before homeowner is considered delinquent.
2. On the 31<sup>st</sup> day after assessments are due and payable, AMI imposes a \$25 late fee plus 1.5% interest on unpaid assessments (1.5% interest is *not* calculated on fees or fines).
3. On the 35<sup>th</sup> day of delinquency AMI mails a friendly reminder letter to delinquent owners (see attached sample letter). AMI charges the HOA a \$5.00 fee for the reminder notice and the HOA passes this fee to the homeowner.
4. On the 45<sup>th</sup> day of delinquency AMI mails a letter via regular mail and a certified return receipt requested letter advising the delinquent homeowner the account will be turned over to legal counsel for collection if account is not paid in full within 15 days (see attached sample letter). AMI charges the HOA a \$10 collection fee for the letter and the HOA passes this fee to the homeowner.
5. On the 61<sup>st</sup> day of delinquency if account not paid in full, AMI turns over homeowner file to legal counsel for collection. AMI charges the HOA a \$10 collection fee for this service and the HOA passes this fee to the homeowner.

**NOTE:** If a homeowner's check is returned from their bank for any reason (insufficient funds for example) AMI charges the HOA a \$15 handling fee and the HOA passes this fee to the homeowner.

6. Attorney prepares initial demand letter (see attached sample) and mails via certified mail return receipt requested and regular US mail demanding homeowner remit in full or a lien will be placed if account not current within 45 days (averages 50 days as law requires "from receipt"). Attorney bills HOA \$225 and AMI passes this fee to the homeowner.
7. If owner does not pay within the time frame, a Claim of Lien is filed and attorney bills HOA \$112.50 for drafting the lien plus a \$10 for recording fee. AMI passes these fees to the homeowner.
8. Simultaneous with recording the claim of lien, attorney sends a certified letter (see attached sample) return receipt requested and regular US mail advising the homeowner that the claim of lien has been recorded, setting forth the amount due, including interest, late charges, costs and attorney's fees, and demanding payment within 45 days from date of receipt of letter. This letter informs the owner that the association will commence a foreclosure action if the account is not paid in full within the deadline. Attorney bills HOA \$225 and AMI passes this fee to the homeowner.
9. If owner does not become current within the allowed time frame, attorney seeks direction from the Board Treasurer (through AMI) whether or not to proceed with a foreclosure lawsuit. A foreclosure lawsuit is the process through which the claim of lien is enforced. The outcome of a successful foreclosure lawsuit is a judgment ordering the clerk to sell the unit at a public auction but there are many steps required to get the auction.
10. According to a booklet published by the CAI, the most important part of the foreclosure lawsuit is extinguishing as many competing interests in the unit as the law allows. Some competing interests may be superior and others may be subordinate to the association's lien. Competing interests may include, for example, mortgages, federal tax liens, construction liens, judgment liens and leases. The fewer encumbrances at the time it is sold, the easier it is to sell, and the more it is worth to the person buying it at the foreclosure auction. The process of extinguishing competing interests is accomplished by naming the holders of these competing interests as defendants in the foreclosure lawsuit and proving the association's claim of lien is superior to these interests.
11. The CAI booklet says the only interests that are always superior to the association's claim of lien are real estate taxes and a first mortgage recorded prior to the association's claim of lien. This means the buyer at the foreclosure auction will normally take title subject to the rights of the tax collector and the first mortgage holder.

12. If it is decided to proceed with foreclosure, attorney orders a title search to determine whether or not the competing interests are superior or subordinate to the associations' claim of lien. The cost of the title search is \$125 which attorney bills to HOA and AMI passes this fee to the homeowner.
13. Attorney evaluates the title search results; discusses with the Board Treasurer and together the Treasurer and the attorney decide if initiating a lawsuit by filing a foreclosure complaint is in the best interest of the Association. If HOA proceeds with foreclosure, attorney charges \$225 (could be more if case is complicated) and bills HOA to draft the foreclosure complaint. AMI passes this fee to the homeowner.
14. Attorney files a foreclosure complaint initiating the lawsuit and bills HOA \$250 filing fee and AMI passes this fee to the homeowner.
15. The foreclosure complaint must be properly delivered to (or served on) the property owner and other defendants before the case can proceed. Delivery of the complaint is called "service of process." Proper delivery requires the sheriff or a licensed process server to locate and personally give each defendant a copy of the foreclosure complaint. Each defendant has 20 days from the date of delivery to file a response to the foreclosure complaint.
16. Attorney bills HOA \$35 for each person served (more if out of state). AMI passes these fees to the homeowner. If an individual defendant cannot be found after diligent search, the complaint can be "delivered" by publishing notice of the foreclosure lawsuit in a local newspaper. The notice must be published for two consecutive weeks. The deadline for the defendant to respond is 30 days from the first publications of the notice.
17. In most foreclosure lawsuits, according to the CAI booklet, there are three likely outcomes: (1) The association will be paid; (2) the association will take title to the property at the public auction. As the foreclosing plaintiff, the Association has the right to bid up to the amount of its foreclosure judgment at the auction without actually paying any money (except the clerk's nominal fee and documentary stamps). All other bidders must pay cash or pay in a form acceptable to the clerk; (3) if the owner is truly in dire financial straits, the bank which holds the mortgage on the unit may ultimately foreclose as well. This may prompt the Association to stop its own foreclosure action in midstream.
18. If the bank forecloses its first mortgage before the association does and if the bank takes title, the bank will have to pay assessments beginning from the date the bank acquired title.
19. If the homeowner files for bankruptcy, as with the first mortgage holder foreclosing, the Association's lawsuit will also be interrupted by the bankruptcy. This is based on federal bankruptcy law which imposes an automatic stay (or stop) on any pending lawsuits or other actions against the owner for claims arising prior to the filing of the bankruptcy petition.
20. But a bankruptcy filing should not always be viewed as the time to give up. The Association should protect its rights in the bankruptcy by asserting all appropriate claims and seeking all appropriate relief from the bankruptcy court. In this case, if the Association recorded a claim of lien before the bankruptcy was filed or was permitted to record a claim of lien after the bankruptcy was filed, the association will likely be paid because bankruptcy does not extinguish liens.

PLEASE NOTE: Section 2.06 page 5 of our covenants: b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

July 12, 2007