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The Lien Foreclosure Collection Process Explained

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If owners fail to pay their assessments to their community association, the community association has a recognized interest in the owner's property, through a "lien," for any outstanding assessments. Arizona law authorizes the association to collect on its lien by forcing a sale of the property and "selling" the owner's property to satisfy the lien.

To be foreclosure eligible, an owner must be delinquent in the payment of assessments for a period of one year or in the amount of one thousand two hundred dollars (\$1,200.00), whichever comes first. Fees, charges, late charges, monetary penalties, and interest are not enforceable as assessments. Pursuant to A.R.S. Section 33-1807 (planned communities) and Section 33-1256 (condominiums), a lien for assessments is prior to all other liens, interests, and encumbrances on lots or units except for (1) liens and encumbrances recorded before the recordation of the Declaration, (2) a recorded first mortgage on the unit, and (3) liens for real estate taxes and other governmental assessments against the unit.

Assuming foreclosure eligibility requirements are met, the association would file a foreclosure lawsuit in the Superior Court in the county in which the property is located. Once the owner and any junior lienholders receive notice of the lawsuit, they have a limited time period in which to respond. An association lien foreclosure will "wipe out" the interests of junior lienholders, such as holders of second mortgages and/or personal judgments. Any party that fails to respond is defaulted, as in other civil lawsuits.

The court then schedules a foreclosure default hearing to determine the amount owed and the attorneys' fees and costs to award. At the hearing, the judge will also sign the judgment, which is a decree of foreclosure and order of sale. Once this judgment is obtained, the County Sheriff coordinates and conducts the sale of the property at the request of the plaintiff association. The starting bid at the "Sheriff's Sale" is typically the amount of the judgment plus any unpaid assessments and related charges that accrued since the date of the judgment.

If there is sufficient equity in the property, and a third-party buyer bids over the amount of the judgment, the association is paid in full. The winning bidder has to make arrangements to pay off any creditor interest that survives the association's lien foreclosure process (e.g. first mortgage). Until the "redemption" deadline expires, usually in six months, the owner remains the legal owner and

is permitted to reside in the property. If the owner fails to pay the association in full, including all costs, by the redemption deadline, the buyer receives a Sheriff's Deed to the property.

If the property lacks sufficient equity and no third party bids at the Sheriff's Sale, the association takes the property in satisfaction of the credit bid (essentially the association "spends" its judgment at the sale to take the property). Should this occur the association does not "own" the property until the statutory redemption period expires without payment. If the redemption period expires without payment, the association may request the Sheriff's Deed. Once the association records the Sheriff's Deed, it takes title and becomes the owner of the property. The association is not obligated to pay the first mortgage, and may choose to let the property go if there is no equity.

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