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If the Association Forecloses—Does it Own the Property?

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There are two ways to collect assessment delinquencies in Arizona: from the owner personally and from the property. Pursuing an owner personally involves suing them for a personal judgment and garnishing their wages and bank assets to collect upon the judgment. As a general rule, an association's best bet is to pursue the owner personally—the process is typically quicker and cheaper than the lien foreclosure process and the personal obligation follows the owner, even if they lose the property.

In certain situations though, pursuing the property through the association lien foreclosure process is the most viable means of collection, particularly when the association is attempting to collect from an owner who is self-employed, owes a substantial amount, resides out of state, has received a discharge of their personal responsibility to pay through bankruptcy, or is a non-individual owner—such as a corporation or LLC. None of these cases are good candidates for personal judgment collection.

Attorney Nikita V. Patel covered the foreclosure process in detail in her [January 15, 2010 E-Newsletter article](#), 'The Lien Foreclosure Process Explained'. Nikita explained that associations are authorized to foreclose the assessment lien against the owner and creditors with lower priority interests in the property. To recap, the association files a foreclosure lawsuit in Superior Court, obtains a judgment of foreclosure, and enforces its judgment by forcing a sale of the property at Sheriff's sale.

When the association attempts to satisfy its foreclosure judgment by forcing a sale of the property, there are two potential outcomes: (1) an investor successfully bids at the sheriff sale and the association is paid in full, or (2) no investor bids. In situations where no one else bids, boards will ask "do we now own the property?" and "are we obligated to pay the mortgage?" The answer is a definitive "no".

In these situations, the association doesn't own the property, but rather obtains the right to own the property if the owner fails to pay off (redeem) the association's judgment within a certain time. During this time (six months maximum), the owner remains the legal title holder of the property. At the end of this period, the association has the option to obtain title to the property by Sheriff's deed. There is no obligation to do so. The association does not own the property until and unless it obtains that Sheriff's deed.

Throughout this process, only one party remains obligated to pay the mortgage(s). The owner. This makes sense given that the association never borrowed the money and never signed loan documents. As a practical matter the association may find itself wanting to bring a first mortgage current to protect its interest in the property and to avoid a trustee's sale. If there is insufficient equity in the property, there is no incentive to bring a mortgage current.

If you have further questions, please contact Javier Delgado or another attorney in the firm.

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