



# Advanced Collections & Covenant Enforcement

Presented by

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04.18.2019



# Notification and Fining Process





# Dealing With Violations

- Sources of Enforcement Powers
  - Declaration
  - Bylaws
  - Articles of Incorporation
  - Rules & Regulations
  - Design Standards
  - State Statute



**Section 15.2. Types of Enforcement Actions.** In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (a) Suspend all Violators' rights to use the Common Property;
- (b) Suspend the voting rights of a violating Owner;
- (c) Impose reasonable fines against <sup>the</sup>~~the~~ [No Title] Violators, which shall constitute a lien on the violating Owner's Lot;
- (d) Use self-help to remedy the violation;
- (e) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (f) Record in the Cobb County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Lot.



# Enforcing Obligations and Correcting Covenant Violations



- Determine enforcement powers
- Create enforcement policy
- Select the right enforcement mechanism
  - Fines
  - Right of abatement (“self help”)
  - Suspension of rights, use, services, or voting
  - TRO
  - Lawsuit



# Required Notices

- What are the due process requirements set forth in **this** community's governing documents?
- Are fines effective immediately or after 10 day's notice, or at some other time?
- FORM LETTERS ARE "BAD"! Sometimes...
- When in doubt, copy the language from the governing documents!



# What to Include in Violation Notice:

- Specific identification of the violation
- Necessary action on part of owner/occupant to correct violation
- Time frame within which corrective action must be taken
- Proposed sanction
- Hearing notice, if required





# Sample “Due Process” Language

Section 2. Fining Procedure. The Board shall not impose a fine unless and until the following procedure is followed:

(a) Notice. If any provision of the Declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice by either hand delivery or by United States mail first class postage prepaid, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice. If a challenge is not made, the sanction shall be imposed ten (10) days from the date of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within such ten (10) day period.





**Section 15.3. Suspension and Fining Procedure.** Except as provided below, before imposing fines or suspending the right to use the Common Property or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

(a) **Violation Notice.** The written violation notice to the Violator shall:

- (i) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (ii) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) or the fine(s).



Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(b) **Violation Hearing.** If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(c) **No Violation Notice and Hearing Required.** No violation notice or violation hearing shall be required to:

- (i) impose late charges on delinquent assessments;
- (ii) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights



# They ignored us... now what?

- Ongoing violation with ongoing fines versus a corrected violation with outstanding fines
- Be aware of limited timelines – statute of limitation concerns on both existence of violation and collection of fines
- Are fines assessments?
- Getting the Association's attorney involved and what you should send over from the Association's records



# Court Order Requirements





# Restrictions of Private Property





# What do the Documents say???



What Authority Does the Association Have to Act?

What Exact Action was Taken by the Homeowner?

Is that Action/Inaction a Violation?





# Did we follow the Notice Requirements???

Section 21. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the member shown on the Association's records, specifying:

- (i) The nature of the violation, the fine to be imposed and the date, not less than fifteen (15) days from the date of the notice, that the fine will take effect;
- (ii) That the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;
- (iii) The name, address and telephone members of a person to contact to challenge the fine;
- (iv) That any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (v) That all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice

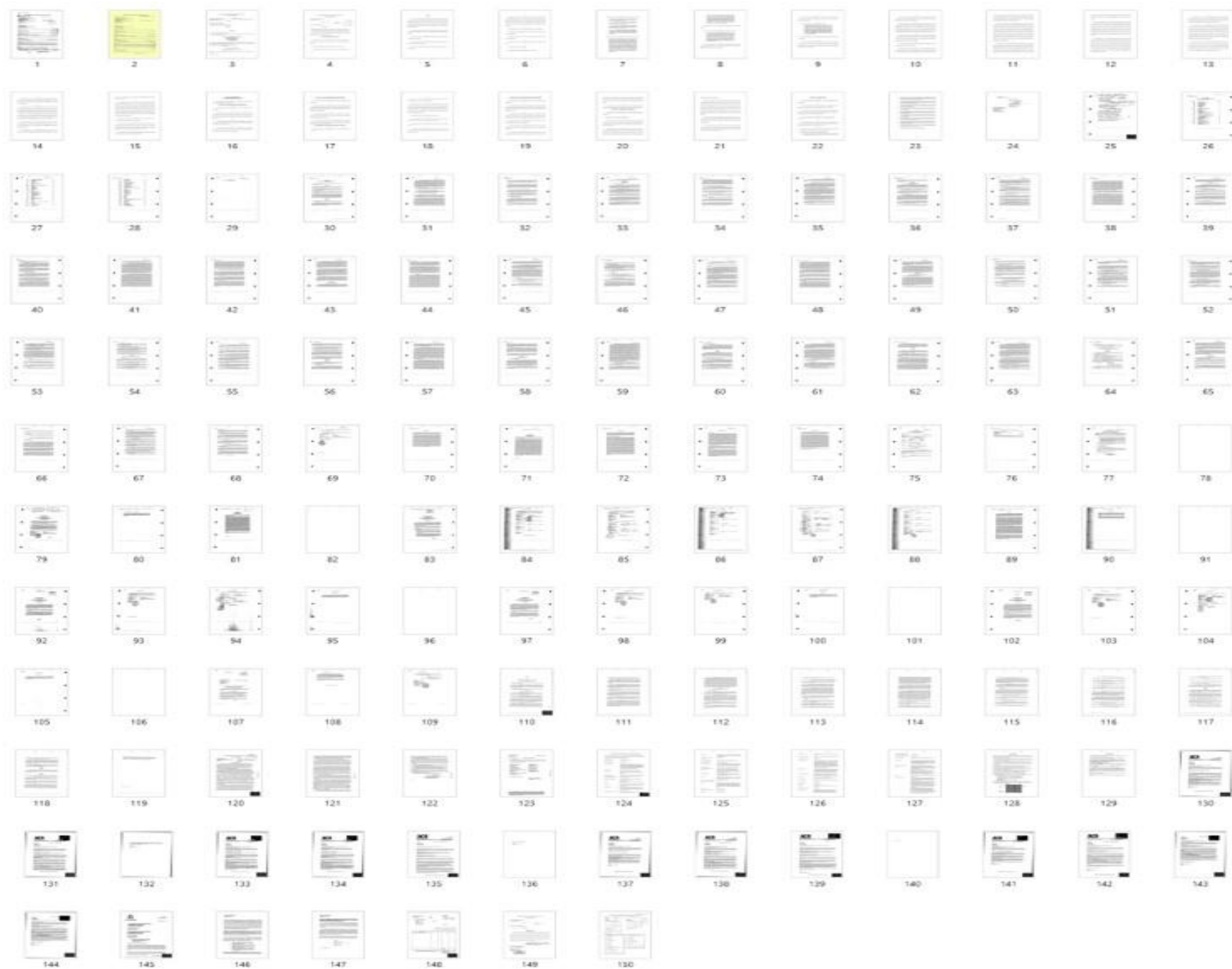
(b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine shall be imposed prior to the date that is five (5) days after the date of the hearing.





# Collections Suit vs. Covenant Enforcement Action

1232567



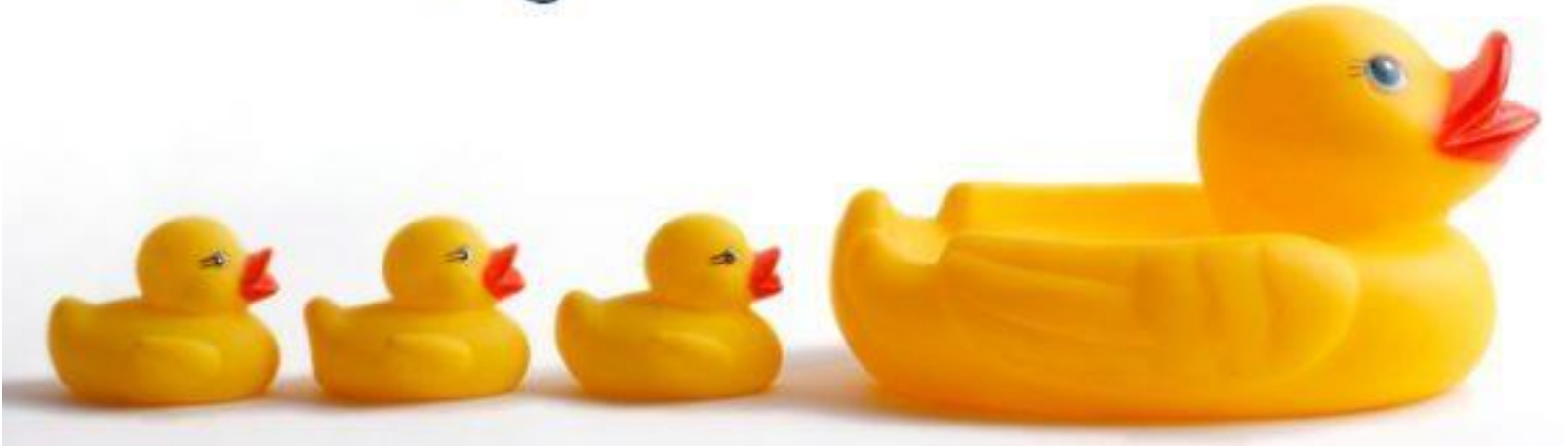


But how do we get an  
order?



# BE PREPARED!

Are all of your ducks in a row?





# Strong Evidence WINS Cases





# No Surprises!

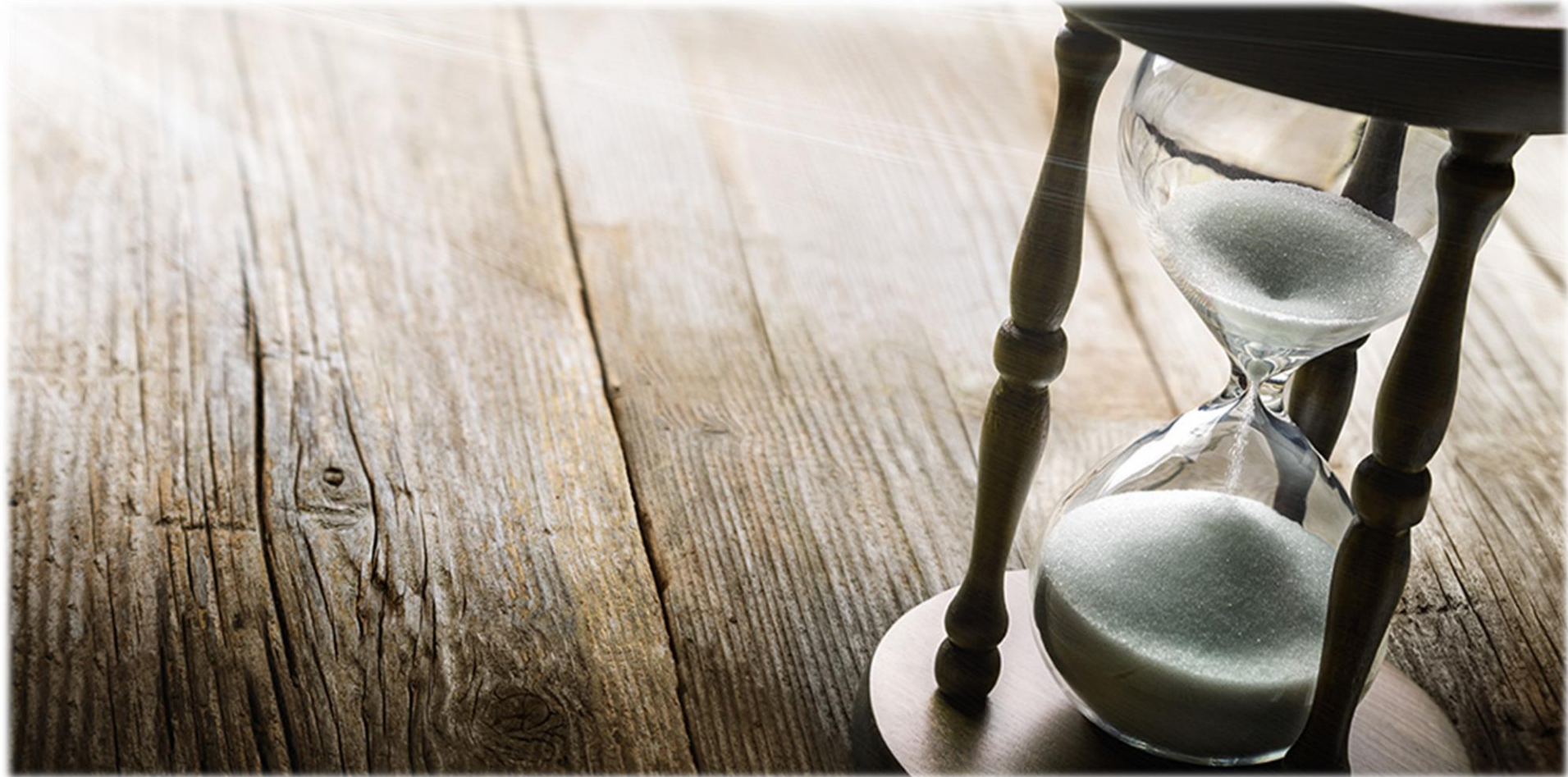








# Statute of Limitations













# Compliance

Straight Ahead ↑↑



# Litigation is Unpredictable











# Cost Expectations





D & O



# Types of Orders

- Money Judgment
- Foreclosure Judgment
- Enforcement Judgment
- Hybrid Judgment

## CIVIL ACTION FILE NO.

vs.

Defendants.

The Court, having reviewed the pleadings and all documents filed in this case, finds that the Summons and Complaint herein were served on the Defendants on December 7, 2016 that forty-six (46) days have elapsed, and no Answer has been filed by Defendants. After reviewing Plaintiff's Motion for Default Judgment and the supporting documentation filed therewith, the court expressly directs that Plaintiff's Motion for Default Judgment be GRANTED and final judgment be entered as follows:

**FEDERAL BUREAU OF INVESTIGATION**

**WASHINGTON, D.C.**

**7-100-2 (Rev. 1-35)**

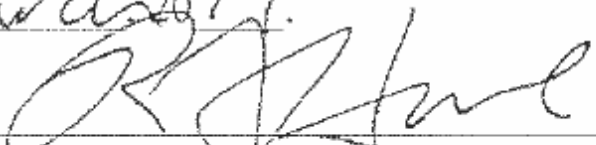
**REPORT OF SPECIAL AGENT IN CHARGE**

**ALEXANDER G. DERBY**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff has a money judgment against Defendants for the following amounts, including post-judgment interest at the legal rate from the date of the judgment:

\$4,434.50	Principal
\$1,340.00	Attorneys Fees
<u>\$313.00</u>	Court Costs
<u><b>\$6,087.50</b></u>	<b>Total</b>

SO ORDERED, this 1 day of March 2017.

  
\_\_\_\_\_  
Judge, Superior Court of Gwinnett County

Prepared and presented by:

NOWACKHOWARD, LLC.  
945 E. Paces Ferry Road, NE, Fourth Floor  
Atlanta, Georgia 30326  
Telephone: (770) 863-8900  
Facsimile: (770) 863-8901  
Attorneys for Plaintiff



IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CIVIL ACTION FILE NO.

Plaintiff,

vs.

Defendant.

**FINAL ORDER AND JUDGMENT**

COBB COUNTY, GA  
FILED IN OFFICE  
2017 SEP -8 PM 1:43  
Cobb Superior Court Clerk  
*Debra A. Houston*

The Court, having reviewed the pleadings and all documents filed in this case, finds that the Summons and Complaint herein were served on the Defendant on May 22, 2017, that forty-six (46) days have elapsed, and no Answer has been filed by Defendant. After reviewing Plaintiff's Motion for Default Judgment and the supporting documentation filed therewith, the court expressly directs that Plaintiff's Motion for Default Judgment be GRANTED and final judgment be entered as follows:



**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff have a **judgment of foreclosure** of its statutory lien in the amount of **\$9,630.01** (including post-judgment interest at the legal rate) on the property located at GA 30008, (the “Subject Property”), subject to all superior liens and encumbrances as provided by O.C.G.A. §44-3-109 and that the Sheriff of Cobb, his lawful deputy or other duly appointed officer, shall proceed with the sale of the Subject Property to satisfy the Plaintiff’s lien, and that Plaintiff shall be authorized to credit bid the above referenced amount at the foreclosure sale without tendering payment.



**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff has a money judgment against Defendant for the following amounts, including post-judgment interest at the legal rate from the date of the judgment:

\$5,891.12	Principal
\$519.94	Interest
\$2,757.50	Attorneys Fees
\$233.74	Costs of Collection
<u>\$227.71</u>	<u>Court Costs</u>
<b><u>\$9,630.01</u></b>	<b>Total</b>

SO ORDERED, this 9 day of Sept, 2017.

  
\_\_\_\_\_  
Judge, Superior Court of Cobb County

IN THE SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
CLERK SUPERIOR COURT  
GWINNETT COUNTY, GA

2017 SEP 20 PM 3:29

RICHARD ALEXANDER, CLERK

	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	
	)	
	)	
	)	
	)	
	)	
Defendant.	)	
	/	

CIVIL ACTION  
FILE NO.

**FINAL ORDER AND JUDGMENT**

The above-styled matter came before the Court for a final hearing by non-jury trial on September 8, 2017. The Defendant, (the "Defendant"), failed to appear at the scheduled and duly noticed non-jury trial. The Court having read and considered the pleadings, the evidence, and the entire record, adjudicates this case in favor of the Plaintiff, and judgment shall be entered as follows:

It is **ORDERED** that Plaintiff have judgment in its favor on its Complaint as a matter of law.

It is further **ORDERED** that:

- 1) Within 30 days of the entry of this order, Defendant shall apply fresh mulch to the landscaping beds on her property located at \_\_\_\_\_, Lawrenceville, Georgia (the “Subject Property”), so as to bring the landscaping beds into compliance with the maintenance obligations in Article VI, Section 6.02 of the Declaration of Covenants, Conditions and Restrictions for \_\_\_\_\_, which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, et seq. of the Gwinnett County, Georgia records, as amended and supplemented (the “Declaration”);
- 2) Within 30 days of the entry of this order, Defendant shall remove any visible weeds from the landscaping beds on the Subject Property so as to bring the landscaping beds into compliance with the maintenance obligations in Article VI, Section 6.02 of the Declaration;
- 3) Within 30 days of the entry of this order, Defendant shall remove any visible weeds from the lawn on the Subject Property so as to bring the lawn into compliance with the maintenance obligations in Article VI, Section 6.02 of the Declaration;

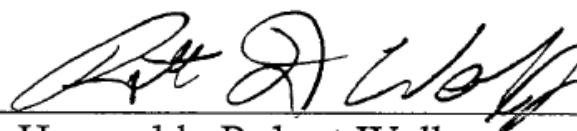


- 4) Within 30 days of the entry of this order, Defendant shall correct the bare spot in the front lawn of the Subject Property by installation of grass or sod to such bare areas in the front lawn, so as to bring the Subject Property into compliance with the maintenance obligations in Article VI, Section 6.02 of the Declaration;
- 5) Within 30 days of the entry of this order, Defendant shall repair the dent in the garage door (including, if necessary, repainting to match the existing color) on the Subject Property so as to bring the Subject Property into compliance with the maintenance obligations in Article VI, Section 6.02 of the Declaration;
- 6) Defendant shall maintain the Subject Property in accordance with the Declaration, including, but not limited to, the continuing obligation to keep the landscaping beds freshly mulched, treating the landscaping beds and lawn to prevent weeds, and maintaining the front lawn so as to prevent future bare spots;

It is further **ORDERED** that Plaintiff have a **Money Judgment** against Defendant in the following amounts:

\$2,800.00	Regular Annual Assessments and Late Fees through September 15, 2017
\$1,000.00	Fines for corrected violations through September 15, 2017
\$5,475.00	Fines for uncorrected violations at \$25.00 per day per continuing violation through September 15, 2017
\$6,802.50	Reasonable Attorney's Fees through September 8, 2017
\$152.53	Collection Costs through September 15, 2017
<u>\$270.28</u>	<u>Court Costs through September 15, 2017</u>
<b>\$16,500.31</b>	<b>Total</b>

SO ORDERED AND ADJUDGED, this 19<sup>th</sup> day of September 2017.



\_\_\_\_\_  
The Honorable Robert Walker  
Judge, Superior Court of Gwinnett County  
By Designation

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Plaintiff,	:	
vs.	:	CIVIL ACTION
	:	
	:	FILE NO.
	:	
Defendant	:	
_____	:	

**FINAL ORDER AND JUDGMENT**

Plaintiff moved for Default Judgment against Defendant \_\_\_\_\_ in the above-styled action for Permanent Injunctive Relief, Damages and Judicial Foreclosure of its lien against Defendant on the basis that Defendant did not file an answer to Plaintiff's complaint within the statutory response period. This matter first came before the Court on February 3, 2017 at which Defendant appeared and stated that he did not reside at \_\_\_\_\_, Alpharetta, Georgia 30022 with his wife, that he resided at \_\_\_\_\_, Roswell, Georgia 30076 (the "Subject Property") and therefore, that service of the complaint on his wife at the \_\_\_\_\_ address was not proper. Defendant then filed a motion to dismiss the complaint on that basis. Plaintiff filed a brief and affidavit in opposition to Defendant's motion to dismiss.



The matter came before the Court again on March 29, 2017 for a hearing on the Defendant's motion to dismiss and the Plaintiff's motion for a default Judgment. Defendant failed to appear. The Court hear testimony from the Plaintiff's process server [REDACTED], its community manager [REDACTED] and its attorney [REDACTED].

The Court has reviewed all of the pleadings and all documents filed in this case and the evidence tendered at the March 29, 2017 hearing and the entire record. The Court hereby finds that the Summons and Complaint herein were properly served on the Defendant on November 12, 2016, by delivery to his wife [REDACTED] at [REDACTED], Alpharetta, Georgia 30022, which the Court finds was Defendant's residence at that time. More than forty-five (45) days have elapsed since Defendant was served, and no Answer has been filed by Defendant. Defendant had notice of this proceeding as evidenced by his appearance at the February 3, 2017 hearing. Plaintiff's attorney certified to the Court that all criteria for default judgment pursuant to Uniform Superior Court Rule 15 have been met.

Plaintiff is a property owners association under the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.* (the "Act") and is authorized to enforce the terms and provisions of the Declaration of Covenants, Restrictions and Easements for \_\_\_\_\_, which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, *et seq.* of the Fulton County, Georgia real property records, as amended (hereinafter the "Declaration"). See, Complaint ¶¶ 1 and 2. Defendant is the present owner of real property located in the \_\_\_\_\_ community, subject to the Declaration, being commonly known as \_\_\_\_\_, Roswell, GA 30076.

The Association filed its Complaint for Permanent Injunctive Relief, Judicial Foreclosure and Damages seeking an order requiring Defendant to (i) replace the garage doors on the Property with an Association approved door; (ii) provide adequate grass coverage consistent with other lots in the community; (iii) remove dead plants and weeds from the Property; (iv) remove bamboo and spray the roots to prevent future



growth of bamboo; (v) wash and complete all necessary repairs for and paint the back deck with Association approved color; (vi) repair and replace the broken window over the Property's front door; (vii) re-varnish and stain the front double door of the Property; and (viii) move the inoperable, unregistered vehicle from the driveway to the garage or from the community

The Association seeks a money judgment for fines assessed against Defendant for certain violations of the Declaration, a money judgment for past due assessments, late fees, interest, charges and attorney's fees actually incurred in this action, and an order of foreclosure of Association's statutory lien on the Property:

The Court finds that Plaintiff has presented sufficient evidence to prove the amount of assessments, late fees, interest, charges and fines sought in the Complaint and that Defendant committed the violations of the restrictive covenants as alleged in the Complaint, for which the Plaintiff assessed reasonable fines, and that two (2) of the violations remain. Based upon the evidence of record, Defendant's motion to dismiss is hereby **DENIED** and Plaintiff's Motion for Default Judgment is hereby **GRANTED**.



Accordingly, it is hereby **ORDERED** that Plaintiff have a money judgment against Defendant \_\_\_\_\_ for the following amounts through March 29, 2017, including post-judgment interest at the legal rate:

\$5,536.00	Assessments
\$452.00	Late Fees
\$400.00	Charges (Bamboo Removal)
\$353.65	Interest
\$28,075.00	Fines
\$7,102.50	Attorney's fees through 3/28/17
\$822.73	Court Costs and Service Fees
\$550.00	Additional Service Fees since 2/3/17
<b><u>\$43,291.88</u></b>	<b>Total Money Judgment</b>


It is hereby further **ORDERED** that Plaintiff have a **judgment of foreclosure** of its statutory lien established as of March 29, 2017 in the amount of \$43,291.88 (including post-judgment interest at the legal rate) on the property located at

, Roswell, Georgia 30076 (the "Subject Property"), subject to all superior liens and encumbrances as provided by O.C.G.A. §44-3-232 and that the Sheriff of Fulton County, his lawful deputy or other duly authorized officer, shall proceed with the sale of the Subject Property to satisfy the Plaintiff's lien, and that Plaintiff shall be entitled to credit bid up to the above referenced amount at the foreclosure sale without tendering payment.

It is hereby further **ORDERED** that:

1. Within 60 days of the date of this order, Defendant shall plant grass or lay sod, and maintain same, consistent with other lots in the | community;
2. Wash and complete all necessary repairs for and paint the back deck with Association approved color.

SO ORDERED, this 29th day of March 2017.

  
\_\_\_\_\_  
Hon. D. Todd Markle, Judge,  
Superior Court of Fulton County



# Collecting on Your Judgment

- ☐ Open Eyes/Open Ears
- ☐ What kind of car do they drive/tag #
- ☐ Where do they work?
- ☐ Do they have a renter in the unit?
- ☐ Where do they bank?





# Garnishment

## □ Types of Garnishments

- Bank
- Wage
- Rent

## □ Exemptions

- Social Security
- Most Pension/Retirement Income
- Most life insurance benefits



# Garnishment

## How It Works



# Foreclosure

- Requirements for requesting foreclosure
- Procedure
- Potential Issues & Outcomes



*Thank You*

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