

Prepared by NowackHoward, LLC
www.NowackHoward.com

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Community Association Collections Board Education Course Materials

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I. Course Overview and Goals

The objective of this NH Board Education Course is to provide board members information on the most important aspects of community association collections. There is also plenty of information covered in this course and this document that will serve as a convenient point of reference.

The depth of coverage of each topic is presented with the intent to convey enough detail to provide an understanding of the fundamentals of each topic, but is not all-inclusive of all issues related to each topic. Some of the topics, particularly those regarding post-judgment collection efforts, could be courses themselves. Those topics are covered periodically at other NH education events, so please be on the lookout for those course announcements.

Finally, the entirety of this course material assumes that a collection file is a standard collection matter and not an enforcement action, fine collection, or specific assessment (assessed against one owner only) matter. If any of those types of claims or assessments are involved, the matter cannot be treated as a standard collection matter and much of the below information, especially related to processes, will not apply.

II. Steps for Collecting a Delinquent Account

- Step 1: Set up collection account
- Step 2: Send demand letter
- Step 3: File lien or notice of lien
- Step 4: File lawsuit
- Step 5: Serve owner with lawsuit
- Step 6: Hearing / Obtain Judgment
- Step 7: Collect judgment

III. Pre-NH Best Practices

a. Collection Policies

It is prudent for a Board of Directors to develop a collections policy that it can implement to ensure all delinquent accounts are handled effectively and consistently. Ideally, an association's Board will develop and adopt a written resolution detailing the policy. For example, the content of the policy should address items such as:

- When to send an account to legal. This can be based on a balance threshold, a specific period of time for assessments to remain unpaid, or both.
- General payment plan parameters, such as the length of any payment plan, whether the association will consider waiving any late fees or interest if an owner complies with a payment plan. Example: the maximum length of a payment plan will be 12 months; the association will consider waiving interest and/or late fees if the payment plan term is 6 months or less).
- Specific authorization and parameters for NH action that is different than the default parameters set by the NH Community Association Retainer Agreement.

There are additional issues and terms that can be included in your association's collection policy than what is listed above. Your NH attorney would be happy to assist your Board with developing a collection policy that is uniquely tailored to your association.

b. Communicating with Homeowners

Prior to sending a delinquent homeowner account to NH to initiate legal collections efforts, it is best for the association to first communicate with the homeowner regarding the delinquency. Most management companies have procedures they follow before involving attorney collection action.

There is not a steadfast rule for this procedure, unless it is specifically set forth in your association's Declaration of Covenants and/or Bylaws. The general rule of thumb we recommend is simply that the first letter an owner receives regarding the delinquency should not come from NH, but rather the association. The primary reason for this is that if the homeowner's first notice of delinquency is from a lawyer, and includes additional attorney fees, it can escalate the situation unnecessarily. We are sensitive to the fact that the debtors are also your neighbors and sometimes it is simply an innocent mistake on the owner's part, or the association's, that an account is determined to be delinquent. In those situations, it is likely easily resolved directly with the owner without involving an attorney. Also, even if the delinquency is legitimate, as most are, it is still the practical course of action for the association to notify the homeowner that their account is delinquent and provide them with the opportunity to bring the account current before involving an attorney.

Many of our clients and management companies send two letters to the owner before involving NH. The first letter is usually the notice of delinquency and has a cordial tone. The second letter is a notice informing the owner that unless they bring their account current within a certain amount of time, their account will be referred to the association's attorney for collection. As noted above, some Declarations of Covenants and association Bylaws set forth specific notice requirements and procedures, so it is important to review those provisions.

IV. Pre-Suit Process

a. Logistics of Referring an Account to NH

In order for NH to begin work on a collection matter, the association or its management company sends a written communication to our collection team instructing us to open a collection file for a particular property. We have a formal work request form that can be utilized to ensure we are provided all of the relevant information to begin working the file. While it is not necessary to use the work request form, it can help expedite the file opening process. The minimum information we need is the property address, the owner's name based on the association's records, and direction on whether the association wants only a lien filed or our full collection service. Additionally, if your association account statements are not available online through a management company, we need a detailed account statement itemizing all charges associated with the property and all payments received on the account.

b. Types of Associations

With very few exceptions, community associations in Georgia are formed as non-profit corporations and governed generally by the Georgia nonprofit code.

There are three types of community associations in Georgia:

HOA – Homeowners Association. This is the “common law” form of a community association. Meaning, its existence is based in the general property laws of Georgia as a covenanted community. The Declaration of Covenants and Bylaws establish the association's authority to levy assessments and its collection powers and procedures. No matter what the covenants state, in the case of an HOA, a lien must be recorded in the county land records in order to secure the debt owed by a homeowner as an encumbrance against the property. This type of association is most commonly seen in single-family, detached home communities.

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GCA – Georgia Condominium Association. This is a form of an association expressly submitted to the Georgia Condominium Act (GCA) and is most commonly used for mid-rise and high-rise buildings, but can be used in all types of communities. The GCA provides many benefits created by statute, most notably a priority “automatic” lien for unpaid assessments against the property. The lien is referred to as “automatic” because it is not necessary to record an additional paper lien in the land records in order for the association’s lien for unpaid assessments to exist and secure the debt against the property. Pursuant to the statute, the lien for unpaid assessments is subordinate only to liens for ad valorem taxes, first mortgages, and second mortgages. There are some additional types of encumbrances that take priority over the association’s lien, but they are rarely encountered. The GCA is codified in state statute O.C.G.A. § 44-3-70, et seq.

POA – Property Owners Association. This is a form of an association expressly submitted to the Property Owners Association Act (POAA) and is most commonly used for detached single family home communities, but is often seen in townhome communities. The POAA provides many of the same advantages of the GCA, including the same “automatic” statutory lien with the same priorities. The POAA provides most of the same collection powers as the GCA and also contains fewer restrictions. A common law HOA can submit itself to the POAA at any time so that it may benefit from the provisions of the Act.

This submission must be done by way of an amendment to the association’s Declaration of Covenants. Your NH attorney would be happy to discuss this process with you if your association is interested in exploring this option. The POAA is codified in state statute O.C.G.A. § 44-3-220, et seq.

c. Demand Letter and Liens

Once an account is referred to NH for collection action, assuming we have all of the information we need in the initial work request, we open an electronic collection file in our collection software. We then review the online title records to confirm accurate record title owner information, perform a “skip trace” (exhaustive location search) for alternate addresses or places of residence of the owner(s), search the federal court system for any bankruptcies filed by the owners that might affect collection action, review the foreclosure records to find out if the property has been advertised for lender foreclosure sale or already been foreclosed, check whether the owner is active military, create an account ledger breaking out charges by type, and then prepare the demand letters and lien. By law under the relevant statutes of limitation, we cannot demand and pursue delinquent assessments that are older than 4 years except in rare circumstances.

All demand letters sent by NH are sent by USPS Certified Mail, Return Receipt Requested and regular USPS First Class Mail to the property address, and to any other alternate addresses provided by the association, or any addresses NH finds as probable alternate addresses in our initial skip trace. In the case of GCAs and POAs, we prepare and record a Notice of Statutory Lien and record that in the county records. As mentioned above, for GCAs and POAs, a “paper” or “hard” lien is not required under the GCA and POAA, but it is good practice to record the notice so that it will appear in any title searches conducted by a closing attorney or other lien holders.

d. Pre-Suit Payments and Payment Plans

Owner Communications

Once an account has been turned over to NH for collection action, if an owner contacts the Board or manager regarding the debt, they should be directed to NH for all communications related to the delinquent account. This is very important since we will have the most current legal status and any associated attorney fees and expenses. Additionally, if a Board member or manager incorrectly states the amount owed and the homeowner pays that amount, an unintended consequence can occur because the quoted amount and subsequent payment likely creates a legally binding agreement. Any amounts not included in that payment would likely have to be written off by the association.

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It is important to realize that NH is a “debt collector” as defined by the Fair Debt Collection Practices Act (FDCPA). The FDCPA is a federal law that sets forth regulations to be followed by debt collectors acting on behalf of creditors. It applies to debts being collected from consumers and includes community association debts. The details of those regulations and the relevant case law is quite vast and outside the scope of this course. However, the key take-away is that the FDCPA dictates rules and regulations that must be followed by NH, in addition to state laws and compliance with each association’s covenants and bylaws. These regulations are particularly important in the pre-suit stage of a collection file because the FDCPA imposes many rules limiting the initial communication a debt collector has with homeowners.

The FDCPA does not apply to the association itself because it is the original creditor, nor does it apply to non-natural person homeowners (i.e. corporations, LLCs, trusts, etc.). The question of whether it applies to management companies is split among the federal courts, but in Georgia’s circuit a management company is likely considered an agent of the association and therefore treated as an original creditor, just like the association. It should be noted that the federal case law provides an analysis test that is fact specific, but most roles of association management companies meet the test.

Payment Plans

A portion of owners respond to our demand letters by contacting us and paying the balance in full. This is the best result that can be expected and NH has the ability to accept payments online via credit card in order to facilitate this result. A larger portion of owners will want to make payment arrangements and most typically we find owners want to make monthly payments. Other owners propose a single lump payment in an amount less than the full balance owed. Any agreement approved by the Board is memorialized in a letter prepared by NH setting forth the terms of the payment plan. A formal payment plan contract can be drafted if the association would like us to do so. Such agreements are generally not needed and may later complicate the situation, but in certain circumstances they make sense. A collections policy adopted by the Board is very useful when it comes to negotiating payment plans and can make the negotiations proceed more efficiently.

It is very important to consult with NH before accepting an owner payment made directly to your association or management company. Some owners will include what is called a restrictive endorsement with their payment. A restrictive endorsement is an instruction by a debtor to a creditor as to how to apply the payment. Under the law, a debtor has the right to tell the creditor how to apply their payment to their debt. For example, if an owner has failed to pay multiple annual assessments, they can write on the memo line of their check “payment for 2015 assessment.” Such a statement is a restrictive endorsement and the payment must be applied to the 2015 assessment, or the payment must be rejected. Beware that a debtor can write something on the check to the effect of “this payment satisfies the debt owed to the association” or even simply “payment in full” and make the payment in an amount less than the full balance owed. If that check is deposited, the owner would have a strong argument under Georgia law that the debt is satisfied. There is a very fact-specific analysis the court would apply, but we would like to avoid having to defend that argument at all.

Finally, a restrictive endorsement does not have to be written on a check. It can be in a letter accompanying the payment and can even appear in the notes section when owners submit payments through NH’s online payment system.

V. Lawsuits

a. Logistics of Filing a Lawsuit

A lawsuit consists of multiple documents that must be prepared in order to move forward with litigation. Generally, these documents consist of a Complaint, Summons, Entry of Service, Case Initiation Form, and in the case of foreclosure lawsuits, a Verification to be signed by a Board member or property manager. NH prepares all of these documents and then sends them to the clerk of court of the appropriate county, along with a check for the filing fee.

The Complaint is the “lawsuit” and is the document that sets forth all of the allegations and underlying facts to put the defendant, and the court, on notice of what the case is about. The Association is the Plaintiff and the owner is the Defendant. The Summons is a document signed by the clerk of court that must accompany the Complaint and is the document that actually invokes the power of the court to exercise jurisdiction over the defendant.

b. Jurisdiction and Venue

Jurisdiction

Jurisdiction is the constitutional power, both federal and state, that allows a certain court to tell a particular defendant what to do. In the case of community associations, the courts in Georgia have jurisdiction over an owner in primarily two ways: 1) the fact that the Defendant resides in Georgia and; 2) the fact that the subject property is located in Georgia. When an owner resides in another state, but owns the subject property in Georgia, the association can sue them in Georgia. In cases where the property is no longer owned by the defendant and the defendant resides outside the state of Georgia, a Georgia Court would lack jurisdiction (with a few potential exceptions) and the owner would need to be sued in the state in which they reside.

Venue

Venue refers to the county within Georgia that is proper for filing the lawsuit. It is governed by where the defendant resides, so most often it is the same county in which the association is located. If an owner resides in a county other than where the association is located, then venue is proper in that county and the lawsuit should be filed there. There are various exceptions and rules, both federal and state, that can impact where proper venue lies, but the above summary covers the majority of collection cases.

c. Service of Process

In order for a lawsuit to move forward once it is filed, the defendant must be served with the lawsuit and summons. This involves a county Sheriff, or a private process server, to locate the defendant, verify their identity, and hand them a physical copy of the Summons and Complaint. This is the stereotypical “you’ve been served” part of the process. This is called “personal service” and is the preferred method of serving a defendant. The defendant can also be served by the process server delivering the Summons and Complaint to a co-resident at the defendant’s home. This is typically a spouse, child, or roommate.

Another method of service that is potentially available is known as “service by publication.” This method is not favored by the courts and the association must file a motion requesting permission to proceed with service in this manner. We must demonstrate to the court why the defendant cannot be personally served, and in cases where good cause is shown, the court will permit us to serve by publication. A notice of the lawsuit is published in the county newspaper for four weeks following the order for service by publication.

However, in order to proceed with obtaining a personal money judgment against an owner, the association must be able to present evidence to the court that the owner is willfully evading service of process and that they are located within the jurisdiction of the court (i.e. the state of Georgia). This is difficult to prove and should be

reserved only for very specific circumstances. On the other hand, service by publication without demonstrating a defendant is evading service is sufficient to proceed with obtaining an order for judicial foreclosure of the association's lien without obtaining a money judgment against the defendant. (Only associations subject to the POA and GCA may benefit from this option). An order for foreclosure without the money judgment is only recommended in very specific circumstances and should be evaluated on a case-by-case basis.

d. Homeowner Response to Lawsuit and Default

Default

Georgia law requires a defendant in a lawsuit to file a response, formally called an "Answer," within 30 days of the date they are served with the Summons and Complaint. The Summons specifically informs the defendant that they must respond to the lawsuit within 30 days. If a defendant does not respond to the lawsuit within the 30-day period, the defendant is considered to be in "default." There is a 15-day grace period allowing the defendant to file a late answer on or before day 45, so long as they pay court costs.

When a defendant is in default, they are deemed by the court to have admitted all of the allegations in the Complaint and the only remaining question for the court is to determine the amount of "damages." In association collection lawsuits, "damages" is the amount of money sought by the association. NH, on behalf of the association, must file with the court a Motion for Default Judgment along with a proposed final order and judgment. Many judges will enter the final judgment without a hearing, but some judges require a hearing on the damages. During the hearing, the association's property manager or a Board member will testify as to the amounts owed. The court will also hear testimony from your NH attorney regarding the attorney fees incurred pursuing the debt.

Answer and Other Responses

If the defendant chooses to respond to the lawsuit, then the process for obtaining judgment is different from the above default process. An answer filed by a defendant must admit or deny each allegation of the lawsuit and set forth any legal defenses they have to the lawsuit. Most of the time, defendants respond by denying the claims in the complaint and/or asserting defenses that are not legal defenses. In Georgia, "[t]here is no legal justification for condominium owners who fail to pay valid condominium assessments," pursuant to *Forest Villas Condo. Association, Inc. v. Camerio*, 205 Ga. App. 617 (1992). That legal precedent is generally strictly interpreted by the courts. By far, the most common defenses raised by owners are financial or personal hardships and those are not legal defenses for non-payment of association assessments. In these instances, NH can file a Motion for Summary Judgment and obtain a judgment without a trial.

Another type of response to a lawsuit that an owner can file is a "Counterclaim," which is filed with the answer. A counterclaim is a separate and independent claim against the association for a cause of action brought by the defendant, as though the homeowner filed a lawsuit against the association. Most of the time, these counterclaims are without merit, but they still need to be defended to avoid liability. If a homeowner files a counterclaim against your association, your NH attorney will notify the association that a counterclaim has been filed and your board or property manager will need to notify your insurance carrier.

In the rare event that this happens, we will notify you via email and provide instructions to forward a copy of the counterclaim to the association's general liability insurance carrier as well as the directors and officers liability carrier. The insurance company will open a claim and evaluate whether the basis of the counterclaim is covered under the appropriate policy. If so, the insurance company will appoint a law firm to defend the counterclaim. Many times the insurance carrier appoints NH, but sometimes it is another law firm the insurance carrier dictates. In the latter case, your NH litigation attorney will work with the insurance-appointed co-counsel to bring the case to conclusion. If the insurance carrier accepts coverage, it will pay for the attorney fees incurred to defend the counterclaim, minus any deductible owed under your policy.

If a lawsuit cannot be resolved by way of Motion for Default Judgment, or Motion for Summary Judgment, we must proceed to trial. The trial can either be in front of a judge, called a “Bench Trial,” or it can be in front of a jury if the defendant or their attorney demands a jury trial. The vast majority of collection lawsuits are resolved without the need for a trial. Should a collection case require trial, especially a jury trial, your NH attorney will provide legal advice and strategy recommendations accordingly.

e. Judgments

Final Order and Judgment

A lawsuit is concluded when the court enters a Judgment. A judgment is the court’s final determination as to the amounts owed to the association by the defendants, in an itemized fashion (i.e. principal, interest, attorney fees, court costs). In the case of a foreclosure lawsuit, the Final Order and Judgment will also include a section giving the association the power to foreclose its lien against the property. The judgment is prepared by NH to ensure the proper language is included. A defendant has 30 days from the entry of final judgment to file an appeal to the Georgia Court of Appeals. In a standard collection case, there is almost never a basis for appeal and the appeal is usually disposed of relatively quickly if one is filed, which rarely happens.

Attorney Fees

Declarations of Covenants almost always provide that the association is entitled to recover the attorney fees incurred in pursuing a delinquent homeowner. Most Declarations provide that the association is entitled to recover “reasonable attorneys fees actually incurred.” The judge still has some amount of discretion in determining the reasonableness of the fees, so it is possible that the judge will not award all of the fees. That being said, regardless of the type of association your community is (HOA, POA, GCA), there are statutes and case law supporting the mandatory award of attorney fees in assessment collection lawsuits. Some of the older Declarations, or recent ones that are poorly written, provide only for “reasonable attorney fees.” Note the omission of “actually incurred.” In this instance, the judges have more discretion than in the former instance. Based on experience, that wording is not often an issue and most of the time the full amount of attorney fees sought is awarded in the judgment.

Consent Judgments

Once a lawsuit has been filed, it is still possible to negotiate a payment plan with an owner. The primary difference between pre-suit payment plans and post- lawsuit payment plans is how the payment plan is formally written. Because of the pending lawsuit, the court requires the lawsuit to be resolved and not languish perpetually. If an owner is proposing a payment plan that the association is willing to accept, NH will prepare a “Consent Judgment” setting forth the terms of the payment plan. The defendant signs the consent judgment, as does an NH attorney, and then submits it to the judge for review. The judge will then sign the judgment and file it in the court’s file, making it a final order and judgment of the court and legally binding. A typical consent judgment payment plan will stop interest accruing, reduce the balance by any amount of late fees or interest the association might have agreed to, with the reduction being contingent upon the defendant remaining current on the payment plan. Typically the actual judgment is entered for the full amounts owed to the association, including any amounts waived by the association as part of the payment plan. The biggest advantage of a consent judgment is that in the event the owner defaults on the payment plan, the association can then begin post-judgment collection efforts immediately since the judgment is already in place.

VI. Post-Judgment Collection Efforts

a. Writs of Fieri Facias (FiFa)

Once a final judgment is entered by the court, a plaintiff can request the clerk of court issue a document known as a FiFa. In Georgia, this is the document that provides record notice of the judgment by being recorded in the county land records similar to the process for liens. We will request the FiFa for your association once we have obtained the judgment. The FiFa includes all of the information relating to the parties to the lawsuit, the amounts awarded in the judgment, and the date the judgment was entered.

It is the issuance and recording of the FiFa that secures the judgment against all property owned by the defendant, real and personal, in any county in Georgia where the FiFa is recorded. For instance, if the defendant owned multiple properties in multiple counties, the FiFa would need to be recorded in each county in order to attach it to those properties. The FiFa would have to be satisfied at a closing for a sale of *any* of those properties in order for the owner to convey clear title to a buyer.

In Georgia, a judgment is valid for a period of 7 years from the date the FiFa is recorded. The judgment can be renewed prior to its expiration through a process called a “Nulla Bona” that is executed by the Sheriff in the county where the judgment was entered. That process entails a letter to the Sheriff from your NH attorney, along with the original FiFa and a small fee (usually \$20.00), and the Sheriff will stamp and sign the FiFa and then re-record it in the land records. The judgment will then be valid for another period of 7 years from the new date of recording.

If a judgment is allowed to expire, there is still the option for the association to revive the dormant judgment, so long as we do this within 10 years of the recording of the FiFa. This process is more involved than the Nulla Bona process and requires the payment of a new filing fee be paid to the court and service perfected upon the defendant of the petition to revive the judgment. The court will then conduct a hearing to allow the defendant to show cause as to why the judgment should not be revived. Other than providing evidence the judgment has been paid, a defendant has very little argument and the judgment will be revived.

b. Garnishments

Types of Garnishments

There are two types of garnishments under Georgia law, a Regular Garnishment and a Continuing Garnishment (commonly known as a wage garnishment).

Garnishments are used to collect judgments after they are entered and the defendant has not voluntarily paid. Garnishment can be used to collect on the judgment only. Any post-judgment balance accrued cannot be recovered through garnishment unless and until it is reduced to a separate judgment through litigation.

Regular Garnishment – This is the type of garnishment primarily used to garnish bank accounts, but can be used to attach any property, money, or effects of the defendant in the possession or control of an entity or person (“Garnishee”). A garnishment is a legal filing separate and distinct from the underlying lawsuit. A garnishment must contain an Affidavit of Garnishment, Summons of Garnishment, setting forth the amounts due on the judgment, and other administrative forms required by the most recent legislative updates.

Along with other required administrative forms, the Affidavit and Summons are filed in a court where the garnishee (the bank) has a branch or registered agent. Once the garnishment is filed, all of the requisite documents are served on the bank by a process server, just as in a lawsuit.

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After the bank has been served, the bank immediately freezes the owner's bank account(s) and must keep them frozen for a period of 5 days from the date of service of the garnishment. This ensures that any funds that come into the bank account with the 5-day period, such as automatic payroll deposits, are withheld by the bank. It also prevents the owner from withdrawing any money from the garnished account(s). After the 5-day period has run, the bank must file an Answer of Garnishment with the court specifying the amounts captured in the garnishment and pay those funds into the court's registry. Once the funds are paid into the court registry, NH must file certain documents to cause the court to disburse them to our firm.

This form of garnishment can also be utilized to garnish rent from tenants who are leasing property from the defendant. To file a rent garnishment, we must know the name of the tenants in order to name them in the garnishment action. Often, associations do not know the name of tenants in a property, especially if it is an unauthorized lease, and that can be a hurdle in the process. If the tenant names are known, or can be discovered, they would be subject to the same garnishment process as a bank and be required to pay the rent into the court registry. Usually, rent garnishments are effective in recovering the judgment balance because the tenant calls the landlord (our owner/defendant) in a panic. The owner then realizes there is a real threat to his income stream generated by the rent payments and reaches out to NH to arrange payment of the outstanding debt.

Continuing Garnishment (Wage Garnishment) – A Continuing Garnishment is served on an owner's employer in the same manner as described above for a Regular Garnishment. The primary difference between the two types of garnishments is that a Continuing Garnishment is reserved for wages only and lasts for a period of 179 days from the date of service on the employer. The employer is required to file an answer every month setting forth the dates of the pay period subject to garnishment, the wages the defendant earned during that period, and the amount subject to garnishment after deductions as provided by federal and state law.

The amount of earnings subject to a wage garnishment is 25% of the defendant's disposable income as defined by law. NH must file the same documents as in a regular garnishment to cause the court to disburse the funds. Some clerks of court disburse funds from wage garnishments monthly, others wait until the 179 day period has run and disburse them all at that time in one check. If the judgment is not recovered in full by the end of the 179 day period, a new garnishment must be filed, and so on until the entire amount of the judgment is recovered.

c. Post-Judgment Discovery

Post-judgment discovery is a term that includes several methods of obtaining information from the judgment debtor. Among them are Post Judgment Interrogatories, Requests for Production of Documents, and Subpoenas for Post- Judgment Depositions. The interrogatories are written questions asking the owner to identify all of their assets, sources of income, and other related information. A deposition has the same purpose, but is conducted live in NH's offices, under oath in front of a court reporter, with the association's attorney questioning the defendant. These options are not often utilized in community association collection matters because they are costly and relatively inefficient.

Most of the time, if a defendant is served with post judgment discovery requests or deposition subpoenas, they do not respond to the written requests, or they fail to appear for the deposition. When that occurs, there is motion practice that allows your attorney to ultimately obtain an order of contempt of court and a warrant for the defendant's arrest. As you can probably imagine, such a drastic tact requires many steps before a court will issue such an order. Further, most county Sheriffs cannot make such a warrant a priority, so it often only comes into play if the defendant is stopped for a traffic infraction, or otherwise detained by law enforcement.

Even when a defendant does respond to written discovery requests, they are either incomplete responses or untrue. Additionally, even if they respond truthfully, by the time they mail the responses to us and we receive them, they have changed banks, or transferred other property out of their name. There is a law to prevent a defendant doing that, but the size of an association judgment would almost never warrant filing such a lawsuit. Post-judgment discovery methods are only recommended when the specific facts of a collection file justify the cost and resource allocation. When utilized under the right circumstances, these tactics can ultimately be successful in recovering the judgment from the defendant.

d. Foreclosure of Association of Liens

As mentioned in Section 4(b), associations that are submitted to the Georgia Condominium Act (GCA) and the Property Owners Association Act (POAA) enjoy liens that have a higher priority than a common law Homeowners Association (HOA). In the case of a GCA or POA, the lien created by the statutes can be foreclosed by the association without having to pay off the superior liens, including the mortgage. In contrast, and HOA lien has the standard priority of liens that would require any superior liens attached to the property to be paid off before the association could foreclose its lien. This is obviously extremely cost-prohibitive in most cases.

Procedure to Foreclose a GCA or POAA Lien

The foreclosure of a GCA or POAA lien requires an order from the Superior Court be entered as part of a Final Order and Judgment. After obtaining that order for judicial foreclosure, the association can proceed with the foreclosure process.

The order provides the association with the *right* to foreclose its lien, but not the *obligation*. In other words, the association does not have to decide whether it wants to proceed with a foreclosure sale until after the order is issued by the court and, ultimately, can choose to never foreclose.

Once the order is obtained, the foreclosure sale process is conducted by the Sheriff of the county in which the property is located. Your NH attorney orders a complete title exam and reviews it to obtain a better picture of the status of the title of the property. The full title report is also required by the county Sheriff. We then prepare a package of numerous documents to submit to the Sheriff to initiate the sale procedure. Each county has its own unique requirements for the documents and procedure, but fundamentally they are all similar. Once the package is submitted to the Sheriff, they send out notices to all parties who have a title interest in the property and all lien holders, as well as advertise the sale for 4 consecutive weeks prior to the first Tuesday of the next month. The Sheriff then auctions the property on the courthouse steps on that first Tuesday of the month to the highest bidder.

The strategy and options for the association's actions and representation by NH at the foreclosure sale vary greatly depending on the association's goal and the specific facts of the collection matter. The main question to answer is whether the association wants to bid on the property or simply allow third parties to bid on the property. Each foreclosure sale should be evaluated on a case-by-case basis with your NH attorney to develop a strategy that meets the association's goals.

After the Sale

The purchaser of the property at the foreclosure sale, whether it is the association or a third party, takes title to the property by way of a Sheriff's Deed. We will assume that the association was the winning bidder at the foreclosure sale. The association then has title to the property, subject to any tax liens, first or second mortgages. All other liens, even if they were recorded before the association's lien, are extinguished by the foreclosure sale. The association is not obligated to assume the future mortgage payments because the loan is a contract between the former owner and the lender. However, the bank could foreclose its mortgage (secured in Georgia by a Security Deed) at any time after the association's foreclosure sale because its Security Deed is still attached to

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the property and is superior to the association's lien. The same is true for any delinquent property tax liens, except that the association will be responsible for paying future taxes so long as it holds title to the property.

Finally, the association would have the right to file an eviction action against the former owner and evict them from the property. This drastic remedy should be reserved for extreme circumstances such as long-time delinquent offenders, or problem owners. Again, each specific matter should be evaluated with your NH attorney on a case-by-case basis when deciding whether to pursue the foreclosure option.