



# LEGAL ALERT

Volume 1 Issue 3

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— A Publication for Community Associations —

**A strict collection policy is the underpinning of a successful program for avoiding financial defeat from homeowner defaults.**

**Please be sure to check with your attorney when creating your collection policy.**

## COLLECTING ASSESSMENTS—THE LIFE BLOOD OF THE COMMUNITY ASSOCIATION

Assessments are vital to the proper operation of the community association. The Association board has a fiduciary duty to make certain that assessments are received on time. Violating this duty of trust will prevent the board from fulfilling its responsibilities of administration of the Association and the preservation, maintenance, and enrichment of property values. Even more distressing, the failure to do so may result in liability to the board members for breaching this duty. A strict collection policy is the underpinning of a successful program for avoiding financial defeat from homeowner defaults. An organized approach to delinquencies can be accomplished in most cases without owner approval.

### Adoption of a Uniform Collection Policy

The adoption of a collection policy will accomplish a number of goals. First and foremost, it will educate owners about their obligations as well as the consequences for failing to meet those obligations in a timely fashion. In addition, owners will understand the board's expectations. A well-drafted policy is often the best deterrent to delinquencies. Of course, collection policies will differ from community to community. A generic collection policy is as follows:

- 1) Assessments are due on the first of the month.
- 2) After a ten (10) day grace period, a \$25.00 late charge will be added to the account.
- 3) A collection letter indicating a notice of intent to lien is sent to owners who are more than sixty (60) days late.
- 4) A lien is recorded against any owner who is more than ninety (90) days delinquent.
- 5) Acceleration of assessments to the end of the fiscal year (If provided by your governing documents).
- 6) Lien foreclosure is directed for delinquencies of more than 150 days (5 months).

(After institution of lien foreclosure action, all payment plans or settlements require board approval.)

What is critical is that the policy be memorialized, enacted by the Board, disseminated to all owners, and most important, that it be timely and consistently enforced.

### Collection Procedure

Collection Letter—A collection letter, as prepared by your attorney, with notice of intent to lien is the first step to ensuring a solvent association. Most delinquencies will be paid at this point in the process. A well-drafted letter will place an owner on notice of not only the current delinquency to the Association, but the charges which will be borne by the owner should they fail to bring their account current. Most, but not all, Association Declarations provide for the recoupment of legal fees and costs of collections. This includes, but is not limited to, the cost of the initial collection letter, lien costs, filing fees and ultimately the foreclosure lawsuit costs. If your governing documents do not provide for the recoupment of legal costs, contact your Association attorney in order to have this important provision added. When faced with the prospect of paying these costs, most owners will find a way to pay their arrearage to the Association.

Lien Recording—The recording of a lien against the delinquent owners' property is a significant action that the Association can take. The lien secures the debt and helps to ensure that the property will not be transferred without payment to the Association. Furthermore, the next step of foreclosure cannot be accomplished without the filing of a lien. Given that there are strict legal requirements associated with the preparation and filing of the lien, this step needs to be handled by legal counsel.

### Acceleration of Assessments

Many governing documents provide for the acceleration of monthly assessments. This will allow the Association to accelerate the balance of the fiscal year's assessments in case of default. An Association should consistently apply this powerful tool pursuant to the collection policy. If your governing documents do not allow for the acceleration of assessments, they would need to be amended pursuant to the procedure outlined in the Declaration.

### Foreclosure

Foreclosure of a lien is the process whereby the Association will file a lawsuit in order to have a property sold with the aim of recovering past due assessments. When faced with the prospect of losing their home in foreclosure, most owners will find a way to pay their debt to the Association.

The primary purpose of foreclosure is to "stop the bleeding". When one neighbor unilaterally opts out by refusing to join their neighbors in funding the Association, their neighbors must carry the financial burden for the unwilling owner. This is simply not just.

It is recommended that foreclosure action be instituted based on a number of months (for example 150 days (5 months), rather than an arbitrary dollar amount.

### Attorneys' Fees

Many Associations are hesitant to pursue delinquent assessments due to the costs incurred in legal fees. However, most Association governing documents provide for the recovery of attorneys' fees. It is important to understand that when a homeowner is delinquent in his or her assessments, it becomes his or her responsibility to pay all legal fees and costs.

Above all, the Association must be aggressive in pursuing its collection policy, show no favoritism, and show the owners that it will act consistently and quickly in its collection efforts.



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**An Association must be aggressive in pursuing its  
collection policy.**

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## INSIDE STORY HEADLINE

This story can fit 150-200 words.

One benefit of using your newsletter as a promotional tool is that you can reuse content from other marketing materials, such as press releases, market studies, and reports.

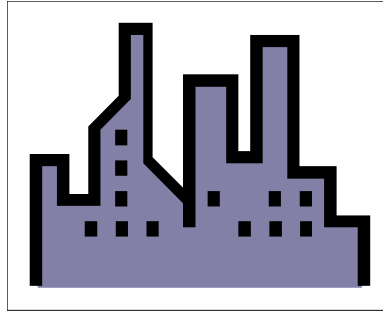
While your main goal of distributing a newsletter might be to sell your product or service, the key to a successful newsletter is making it useful to your readers.

A great way to add useful content to your newsletter is to develop and write your own articles, or include a calendar of upcoming events or a spe-

cial offer that promotes a new product.

You can also research articles or find "filler" articles by accessing the World Wide Web. You can write about a variety of topics but try to keep your articles short.

Much of the content you put in your newsletter can also be used for your Web site. Microsoft Publisher offers a simple way to convert your newsletter to a Web publication. So, when you're finished writing your newsletter, convert it to a Web site and post it.



Caption describing picture or graphic.

## INSIDE STORY HEADLINE

This story can fit 100-150 words.

The subject matter that appears in newsletters is virtually endless. You can include stories that focus on current technologies or innovations in your field.

You may also want to note business or economic trends, or make predictions for your

customers or clients.

If the newsletter is distributed internally, you might comment upon new procedures or improvements to the business. Sales figures or earnings will show how your business is growing.

Some newsletters include a column that is updated every issue, for instance, an advice

column, a book review, a letter from the president, or an editorial. You can also profile new employees or top customers or vendors.

**“To catch the reader's attention, place an interesting sentence or quote from the story here.”**

## INSIDE STORY HEADLINE

This story can fit 75-125 words.

Selecting pictures or graphics is an important part of adding content to your newsletter.

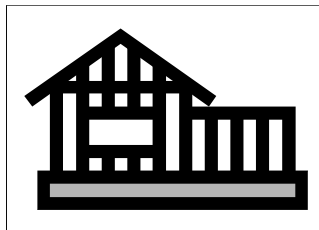
Think about your article and ask yourself if the picture supports or enhances the message you're trying to convey. Avoid selecting images that appear to be out of context.

Microsoft Publisher includes

thousands of clip art images from which you can choose and import into your newsletter.

There are also several tools you can use to draw shapes and symbols.

Once you have chosen an image, place it close to the article. Be sure to



Caption describing picture or graphic.

place the caption of the image near the image.

Primary Business Address  
Your Address Line 2  
Your Address Line 3  
Your Address Line 4

Phone: 555-555-5555  
Fax: 555-555-5555  
E-mail: someone@example.com



Your business tag line here.



Mai l i n g   A d d r e s s   L i n e   1  
M a i l i n g   A d d r e s s   L i n e   2  
M a i l i n g   A d d r e s s   L i n e   3  
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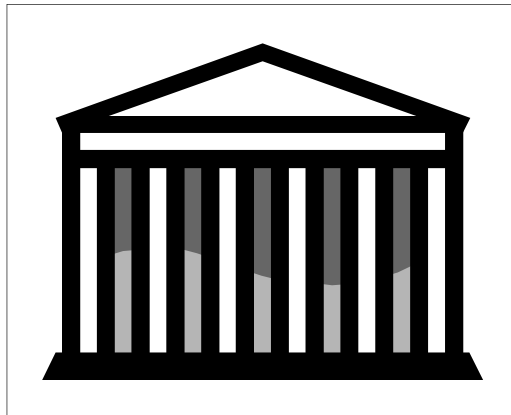
## BACK PAGE STORY HEADLINE

This story can fit 175-225 words.

If your newsletter is folded and mailed, this story will appear on the back. So, it's a good idea to make it easy to read at a glance.

A question and answer session is a good way to quickly capture the attention of readers. You can either compile questions that you've received since the last edition or you can summarize some generic questions that are frequently asked about your organization.

A listing of names and titles of managers in your organization is a good way to give your newsletter a personal touch. If your organization is small, you may want to list the names of all employees. If you have any prices of stan-



Caption describing picture or graphic.

such as a breakfast meeting for vendors every third Tuesday of the month, or a biannual charity auction.

If space is available, this is a good place to insert a clip art image or some other graphic.

dard products or services, you can include a listing of those here. You may want to refer your readers to any other forms of communication that you've created for your organization.

You can also use this space to remind readers to mark their calendars for a regular event,