



# DELAWARE COMMON INTEREST COMMUNITY

## COLLECTING DELINQUENT ASSESSMENTS

Second edition

*A Guide to  
Homeowners  
Associations*

Focusing on  
personal debt  
lawsuits in  
Justice of the  
Peace Court  
without hiring a  
lawyer

## MESSAGE FROM THE OMBUDSMAN

The most common issue that self-managed communities report to the Office of the Common Interest Community Ombudsperson is the expense and difficulty collecting delinquent annual maintenance assessments. In some communities, collections declined for years until only a minority of owners paid. This increases the amount the paying minority must pay. In one community, assessments to maintain the septic system fell-off. When the septic system began to fail, the community risked closure by the Division of Public Health when sewage surfaced after rainstorms. The Ombudsman's Office arranged for a lawyer to teach community members to use the Justice of the Peace Court to file *Personal Debt Lawsuits* and take them to trial. Once they knew how, the community rebounded.

I hope this Guide will encourage Community Associations to understand the processes for collecting assessments and encourage use of Justice of the Peace Court to do so. Once Homeowners Associations (HOAs) understand the process, they may consider consulting a lawyer experienced in Community Association Law to assist in the first few cases until comfortable with handling collections themselves.

Christopher J. Curtin Deputy Attorney General  
Common Interest Community Ombudsman  
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*Much of the material in this Guide was adapted from the excellent website of the Justice of the Peace Court, which we edited to focus on Personal Debt actions, which should interest Homeowners Associations collecting delinquent assessments, and those defending.*

*The Honorable Alan Grant Davis, Office of the Chief Magistrate, was especially helpful and supportive in the preparation of this Guide.*

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## USING THE LINKS IN THIS GUIDE

Use this Guide online for one-click access to linked websites, information, and forms. “Control-Click” on a highlighted link and you will go directly to a website or an open form. Sometimes the screen will flash, but not open the document. The document will be open in a browser. Just click on the browser icon at the bottom of your screen.

The online version is available on the Common Interest Community Ombudsman's Website home page among the “*Helpful Resources.*”

- ! Search for the Delaware Attorney General's Home Page
- ! Click on the link for “*Initiatives*”
- ! Click on the link for “*Common Interest Community (HOA) Ombudsman*”

There you can read, download, or print a PDF copy of the Guide. To request a hard copy, click the “**Sign up for email**” link.

## INTRODUCTION

Many community Associations face the difficult task of managing communities without properly funded budgets. Shortfalls often result from homeowners who do not pay their assessments. These unpaid assessments are “*Delinquencies*” with negative impacts on each Association.

This Guide should help Homeowners Associations and Condominium Councils pursue a cost-effective collection strategy against delinquent owners. This Guide will also aid homeowners in understanding “*their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community,*” [29 Del. C. §2544](#) (2), i.e., their community Association. “Governing Documents” include the “Declaration of Deed Restrictions,” Certificate of Incorporation, Bylaws, and Rules.

The term, “Association,” in this document refers to Homeowners Associations, Maintenance Corporations, and Condominium Councils. Other words used in this document are capitalized or in quotation marks because they have special legal meaning. They are explained in this Guide, or their use/explanation is clear from the online references or Appendices provided.

## **LEGAL OBLIGATION AND RESPONSIBILITY**

The requirement to pay assessments is a legal obligation stated in the Governing Documents of every Association given to each homeowner prior to purchase of a home. The Association has the duty to enforce this legal obligation since the annual assessments are essential for maintenance of common areas and infrastructure as well as the source of reserves for emergency and routine repairs. In some Associations, assessments pay for services on homeowner lots. When an owner does not pay as agreed in the Governing Documents, the Association has a responsibility to collect all delinquent assessments quickly.

## **LIEN ON HOME OR PERSONAL DEBT LAWSUIT**

In Delaware, there are several strategies an Association can use when collecting delinquent assessments. This Guide provides two main strategies used by Associations for collecting delinquent assessments. These two collections strategies include the “Lien Process” and the “Personal Debt Lawsuit.” Also included in this Guide are helpful considerations/details that every community Association should include throughout the collections process itself.

This Guide explains an effective, often overlooked, lower-cost option for collection of delinquent assessments--a personal lawsuit against delinquent owners to collect assessments as a Debt, in Justice of the Peace Court, without hiring a lawyer. Many smaller or self-managed Associations do not consider this option.

Those who are defending against a suit to collect delinquent assessments will also find this information useful.

## **I. COLLECTIONS POLICY**

It is a recommended “Best Practice” that each community Association adopt a “Collections Policy” that provides a checklist for the Board/Council and transparency for residents. This policy should include the elements listed below.

### **A. Mission statement**

This statement should include the purpose of the policy that includes sound budgeting, adequate notice to owners, maintaining property value, and consistency in application.

### **B. Source of authority for the collection of assessments**

Reference and language can be taken directly from the Governing Documents of the community Association.

### **C. Basic payment information for homeowners**

1. Date when assessment is due.
2. Date when an assessment becomes delinquent.
3. Amount of late fees/interest for delinquent assessments. (The authority to set the amounts must be stated in the Governing Documents of the Association.)

### **D. Collection procedures and information**

1. **Home ownership records for each Association must be up to date and are available from each County.** The contacts are:

#### **New Castle County**

<https://www3.newcastlede.gov/parcel/search/>

#### **Kent County**

<https://kcpms.co.kent.de.us/>

<https://co.kent.de.us/planning-dept/planning/homeowners-association.aspx>

<https://www.co.kent.de.us/Apps/KentCountyMapping/>

#### **Sussex County**

<https://property.sussexcountyde.gov/PT/forms/htmlframe.aspx?mode=content/home.htm>

2. **The Association's financial and assessment records must be up to date.**

**3. The Association must provide homeowners notice of assessment information and potential penalties for not paying** that includes the information listed below:

a, Assessment amount.

b, Due date.

1) Date when an assessment becomes delinquent.

2) Rate of interest and the penalties for assessments that have become delinquent (as authorized in the Association's Governing Documents).

3) Method(s) of payment permitted by the Association (e.g., mail, online, payment coupons, monthly payments, or other plans, etc.). If payment may be made online, include the online link.

**4. The Association must follow delinquency procedures provided to the homeowner.**

a Provide a Reminder Letter when any payment is late; include applicable late fees and interest, and the date when the final payment is due to prevent Collection Action beginning.

b. Send a Warning Letter when the assessment is delinquent.

c. Offer an opportunity to discuss the reason for delinquency with the homeowner to consider special circumstances justifying reasonable accommodation.

d. State the conditions for a payment plan, if reasonable, with understanding that Collection Action will commence if payments are missed.

**5. The Association itself could feel the consequences of delinquencies not addressed quickly.**

If any delinquency is not paid within the expected time line, the Association has a responsibility to the rest of the community to promptly act to protect all homeowners. The burden of delinquencies falls on the rest of the homeowners since all Associations must still pay bills even if any homeowner were delinquent in assessments. For example, if one or more homeowners were not to pay assessments, other homeowners might also decide not to pay their assessments if no action were taken by the Association. Then, the homeowners paying their assessments are shouldering the additional costs of those homeowners who are not fulfilling their financial obligations. Timely action by the

Association is critically important whenever any assessment is late or falls into Delinquency.

## **II. BEST PRACTICES IN DELAWARE COLLECTIONS**

Before you, the Board/Council of the Association, start Collections yourself in Justice of the Peace Court, consider these ideas to help determine the success of your efforts:

### **A. Decide whether the cost to pursue collection of any delinquent assessment makes sense.**

- 1. What is the likelihood and cost of collecting the money owed?**
- 2. What is the likelihood you can collect money from this delinquent owner?**

If a homeowner is insolvent or “Judgment Proof” (having little money or assets) because of a hardship, prior-judgments, a Bankruptcy or Foreclosure action, it may not be worth the expense to pursue it yourself in Justice of the Peace Court.

- 3. What can you do in the case of Bankruptcy or Foreclosure?**

Sometimes, as in the case of Bankruptcy or Foreclosure, it may be best to give the Claim to a law firm or a collection agency.

### **B, Determine the financial history of the homeowners.**

- 1. Have they been indebted to the Association before?**
- 2. Are they going through a hardship?**

Delaware State Court Connect has free Court Docket searches on past or present Civil Actions (lawsuits) in Justice of the Peace Court, Court of Common Pleas, and Superior Court. You can obtain information and any foreclosure actions against the property through this link: <https://courtconnect.courts.delaware.gov/>

Discuss with a delinquent owner if there is financial hardship. They may notify the lender and the lender may make an accommodation to pay the assessments and add the payment to the end of the Mortgage. Lenders may be willing to do this to protect their position of first to collect, or the expense of Foreclosure.



Discuss with a delinquent owner whether they are willing to enter a payment plan.

**C. Learn the appropriate time limit if you sue.**

The Statute of Limitation in Delaware is typically three (3) years after Default. However, a decision in the Court of Common Pleas explained that the Common Law Statute of Limitations may apply to assessments required by Declarations, if they are “Documents under Seal” allowing use of the “Common Law” period limitations – 20 years. This may not apply to every situation and has not been appealed. ([Sea Villa Homeowners Association, Inc., v. Lavine, Ct. Com. Pl., CPU6-14-000330 \(Feb 24, 2016\)](#)). (Click on link.) [Appendix 31](#).

**D. Search for any bankruptcy of the homeowner.**

Public Access to Court Electronic Records (**PACER**) is an electronic public access service that allows users to get case and docket information online from Federal Appellate, District, and Bankruptcy Courts. Anyone can register for a PACER account to conduct a bankruptcy search by retrieving information here: [https://www.pacer.gov/reg\\_nonatty.html](https://www.pacer.gov/reg_nonatty.html). If you find an owner filed bankruptcy, it is strongly recommended that you consult with an attorney before proceeding.

**E. Prepare a “Demand Letter” to the owners of the property if it makes sense to attempt Collection for the amounts owed.**

**1. The Demand Letter serves several purposes.** First, it is a formal, legal demand and alerts the owners that you are pursuing their account for Collection by any process available, including, filing a Personal Lawsuit for the Debt, or a Lien against the property, or both. A Demand Letter can also give notice to the delinquent owner/s of the potential “Acceleration” of assessments, if authorized by the Governing Documents. Most community Governing Documents (Declaration, Bylaws) empower community Associations to “Accelerate” the entire fiscal year's assessments if an owner misses one or more payments. This Acceleration can be secured by recording a Lien and claimed in a lawsuit. The Demand Letter should be sent by certified mail with a return receipt requested and by regular mail, or by United States Post Office (USPS) Priority Mail with Delivery Tracking. Delivery Tracking avoids refusal of mail, yet allows you to print proof of delivery from the Post Office website, without a signed “green,” certified-mail card.

**2. Record the date you mail the Demand Letter and keep a copy of the tracking number.**

3. **If you receive no response in thirty (30) days, consider recording the Lien in the Office of the Recorder of Deeds or suing in Justice of the Peace Court. Recorders of Deeds in each County offer free notification to those who register for notice of recording documents affecting title, like a lien to the Owner. Inform the owner they can expect this notice.**

### **III. COLLECTION OPTIONS**

There are several options available to Associations when taking Collection Action for delinquent assessments by homeowners.

#### **A. Liens and Foreclosure**

The actions that most community Associations consider after a letter campaign (Reminder Letter, Warning Letter, Payment Conditions, and Demand Letter) include:

1. **Recording a Lien against the home at the Office of the Recorder of Deeds** where it will often remain unpaid until the sale of the property, voluntarily or involuntarily, which can take years. Appendix 27 provides sample Lien forms.
2. **Forcing the sale of the home by Foreclosure on the Lien**, as authorized in the Governing Documents, and sale of the home out from under the owner. That is a harsh and expensive last resort better left to a lawyer experienced in community Association law.

#### **B. Personal Debt Lawsuit in Justice of the Peace Court**

Governing Documents for most Associations also make the assessment the “personal contract obligation” of the owners of the home or unit. As a Personal Debt of the owners, you may file a lawsuit that results in a Personal Judgment against the owners which can be used in these ways:

##### **1. Against Real Property**

- a. A Personal Judgment can be transferred to Superior Court where it becomes a Lien against all the real estate of the owner in the County.
- b. A Judgment can be transferred to any other County in Delaware where it also becomes a Lien against all real estate owned there by the owner.
- c. The Judgment transferred to Superior Court can be transferred to other states where a Debtor owns property where it can be enforced.

## 2. Against the Owner Personally

- a. A Personal Judgment can be enforced by “*garnishing*” the wages of the Debtor. Garnishment is a Court Order to an employer to send money to someone else.
- b. A Personal Judgment can be used to ask the Court to order the Sheriff to seize and sell the *motor vehicles* of the Debtor.
- c. A Personal Judgment can be used to ask the Court to order the Sheriff to “Inventory, Seize, and Sell at Auction” the personal property of the Debtor through a “*Sheriff Sale*.” This is the most common use of a Personal Judgment, but the experience of the Court shows the results are often worse than garnishment.

## 3. Notify the Delinquent Owner's Mortgage Servicer of the Delinquency

Many unit owners have a mortgage on their home. Many banks are aware that the DUCIOA ([Delaware Common Interest Ownership Act](#)) creates a “Priority Lien” for assessments on a mortgaged home at 25 Delaware Code §81-316 (b). This priority lien allows a homeowner's association to collect a lien for delinquent assessments by filing a lawsuit for collection and even foreclose on a home for the amount of 6 months of delinquent assessments, usually at far less than the amount due on the first mortgage. This law allows the association to “cut-off” the first mortgage and collect the delinquency ahead of the bank. Banks prefer not to risk losing their position as first mortgagee and may agree to pay the delinquency to protect their mortgage lien, and add it to the end of the mortgage to protect their mortgage lien. Banks may be willing to do so because they know the borrower has equity in the home. This brings the owner-borrower current with their assessments. The DUCIOA's § 81-316 does not apply to every community, or every mortgage.

Notify the delinquent owner they can contact their mortgage company about the delinquent assessments to ask their mortgage company for assistance. They may wish to accommodate by making a modification, or by paying the delinquency and adding it to the end of the mortgage, to protect their right to a first position in foreclosure, or to avoid the expense of foreclosure.

## **IV. ACTION IN JUSTICE OF THE PEACE COURT**

### **A. Type of Claim to file**

The Justice of the Peace Court handles Criminal Cases and Civil Cases. Civil Cases include lawsuits to collect Debts like delinquent Association assessments.

### **B. Using Debt Action**

A Debt Action is a lawsuit to collect a sum of money. An example of “Debt” includes money owed for delinquent assessments owed to an Association. Assessments are Debts because the obligation to pay is created in the Governing Documents, which are considered contracts between all owners who purchase a home in the community. The obligation can be enforced in Court.

Other examples of Debts include money claimed on a loan, money claimed for purchases made, money claimed because work for which payment was made was not completed or properly done, money claimed for unpaid rent, security deposits not returned, etc.

### **C. Maximum Recovery Amount in Justice of the Peace Court**

The Justice of the Peace Court may award up to \$25,000. You may use the Justice of the Peace Court only if you limit your claim to \$25,000 plus interest owed on the contract. If your claim exceeds \$25,000 you will lose the right to the amount over \$25,000. For an amount owed over \$25,000, consider consulting an attorney experienced in Community Association law before filing a Claim.

### **D. Do you need an attorney?**

Any individual may appear in Justice of the Peace Court without an attorney. However, if you are unfamiliar with the legal issues and procedures in your case, consider consulting a lawyer.

If you are a corporation, like most Associations, you may only appear in Justice of the Peace Court *without a lawyer if you file a Certificate of Representation*. Only an Officer of the Association may represent the Association. The Court will not accept a Form 50 from a management company or a debt collector, as that would be the unauthorized practice of law. That requires a Delaware lawyer. [You must file the Certificate with the Chief Magistrate and comply with the other parts of Supreme Court Rule 57](#) in this form: [Certificate of Representation. \(Click here\)](#). You must file this Certificate before you submit your Complaint or Answer. The Certificate of Representation must be renewed annually. The fee (\$20) is on the form.

## E. Naming a Defendant/Owner

It is very important to name the Defendant/Owner correctly because you can only collect from the Party or Parties whose name is the same as the name that appears on your Claim. You must know the full name and correct address of the Party being sued and whether the Party is an individual, sole proprietorship, corporation, partnership, limited liability company, Association, estate, or trust.

Check the property ownership records of your County for the name of the owner, as explained in Section I. "[Collections Policy](#)," above. Sometimes an owner does not live in the home, or a corporation owns it.

Ensure you have the correct name and address of the Defendant so the Court can Serve the Defendant with notice of the lawsuit. Street addresses are preferable to Post Office boxes.

1. **To sue an individual**, write his or her first name, middle initial, if known, and last name on the Court's form for Debt actions, Civil form 1.
2. **To sue both a husband and wife**, write both their full names, e.g., John A. Doe and Mary B. Doe. The Court will serve each separately.
3. **To sue a business owned by one person**, you must write both the name of the owner and the name of the company. Name the owner as an individual to increase your chances of collecting if you win. Write the letters "*dba*," which stands for "Doing Business As," between the name of the owner and the company name. If the owner is doing business under a fictitious name, you might write: John A. Doe, individual, and dba Delaware Donuts.
4. **To sue a corporation**, write the name of the corporation, e.g., John's Donuts, Inc.
5. **To sue a corporation that owns a division or subsidiary**, write it as in this example: Doe Corporation, doing business as "John's Donuts."

## F. Locating a person

If you cannot find the persons you want to sue, this information may help locate them.

1. **If the person moved, address an envelope to the last known address.** The USPS will undertake [Ancillary Service Endorsements](#) providing forwarding and address correction services when possible. Several spaces below your return address, write, "Address Service Requested." If USPS has a change of address for the person, the USPS will take these steps:

- a. Month 1 through 12: The Piece of Mail will be forwarded, and separate notice of the new address provided to you as the sender.
  - b. Months 13 through 18: The Piece of Mail will be returned with the new address attached.
  - c. After month 18: The Piece of Mail will be returned with the reason for non-delivery attached.
  - d. If the USPS has no change of address, the mail will be returned with the reason for non-delivery attached.
- 2. The Office of the County Recorder of Deeds maintains a list of property owners by name and lists the location of the property owned in each County. You can contact them at the addresses below:**

**New Castle County**

800 French Street, 4th Floor Wilmington DE 19801

NCCo Property Search website: <https://www3.newcastlede.gov/parcel/search/>  
(302) 395-7700

**Kent County**

Kent County Levy Court Administrative Complex

555 Bay Road, Dover DE 19901

Kent Co. Property Search website: <https://kcpms.co.kent.de.us/>  
(302) 744-2300

**Sussex County**

2 The Circle, Georgetown DE 19947

Sussex Co. Parcel Search website: <https://property.sussexcountyde.gov/pt/>  
(302) 855-7785

- 3. If the only information about the other party is a telephone number, and that number is listed, the Cross Reference Directory (available at public libraries) will provide the address for the listed phone number.**

**G. Locating businesses**

**1. Corporations**

The Office of the Secretary of State maintains information on Delaware corporations and corporations which have qualified to do business in Delaware. [Click here for the website](#), or contact this office (302-739-3073) for information and ask for a copy of the company's Annual Franchise Tax report. This report should give details such as the address, telephone number of the principal place

of business, the “*registered agent for service of process*,” and may include the names of officers or directors of the corporation. There is a fee for a copy of this report.

## 2. Sole Proprietorships and Partnerships

The Prothonotary's Office (the Clerk of the Superior Court) in each County maintains a list of the names and addresses of owners of businesses operating under a name different from that of the owners. Limited information is available at <https://courts.delaware.gov/tradenames> including some addresses.

The contact for the Prothonotary's Office for each County is below:

### **New Castle County**

New Castle County Courthouse  
500 N. King Street  
Wilmington, DE 19801  
(302) 255-0823

### **Kent County**

Kent County Courthouse  
38 The Green, Dover DE 19901  
(302) 739-1900

### **Sussex County**

Sussex County Courthouse 1  
The Circle, Suite 2  
Georgetown DE 19947  
(302) 856-7055

**(Note:** The Court Clerk cannot help you locate a person or business. This is solely your responsibility.)

## V. HOW TO FILL OUT AND FILE THE COMPLAINT

**To start a lawsuit** in the Justice of the Peace Court, you must fill out a “[Complaint Form.](#)” [CF01](#). A Complaint is the legal paper that you must complete to start a lawsuit in Justice of the Peace Court. The Court supplies the form needed at its Civil court locations and online. Consider adding a “*Statement of Claim*,” [Appendix 4](#), detailing the claim “with particularity” to defend against a motion for a “[Bill of Particulars](#).”

**A. Before filling out your Complaint, [Review Section IV](#), above.**

- 1. Determine whether the Claim you want to file can be handled in Justice of the Peace Court at these links:** [How do I know what type of claim to file?](#) [How much can the claim be for?](#) Remember, you are filing a “*Debt Action*.” This will be important in filling out the Complaint.
- 2. Obtain and use the correct name and address of the Defendant/Owner using information found here:** [How to name a Defendant](#).
- 3. Determine whether you must name anyone other than the Defendant for Service.** This is necessary if you are suing a corporation, a bank, an insurance company, or the State of Delaware, or one of its agencies or officials. Read the information found here: [Service to determine whether any special procedures for Service are required](#).
- 4. A Complaint Form is available at any Civil Court location, or by download here:** [Complaint Form, Civil Form No. 1\(English\)](#), [\(Spanish\)](#) and is also in [Appendix 4](#). Click here for an [Interactive Complaint Form](#) that will ask questions to guide you through filling out the Complaint Form for a Debt.
- 5. Only four (4) of the Justice of the Peace Court locations accept Civil Cases, including Debt Actions.** You must get forms from and use one of these Court locations listed in [Chapter V, Section E](#) below.

**B. Fill out your complaint.**

- 1. The same form is used for many Civil Complaints, including Debts.**

There are specific statutory requirements detailing what must be included for some lawsuits. These Notice requirements and other information are explained in the Court's website linked here: [How Start A Civil Claim In Justice Of The Peace Court](#), or for more detail [How To File And A Defend A Civil Claim In JP Court](#), or in [Appendix 26](#).

- 2. Familiarize yourself with the requirements for the Debt Action you are filing.**

Information on these requirements and sample Complaints that explain and illustrate the information that should be included are available to help you in filling out your Complaint.



- a. A sample Civil Complaint form with instructions is found in [Appendix 5](#) and can assist you in filling out your Complaint. You can also find the form and instructions here: [Sample Form](#) and [Instructions](#).
- b. An interactive interview that will help you fill out a Civil Complaint Form online for a Debt, like a delinquent assessment, can be found here: <https://www.lscd.com/node/438/debt-action-justice-peace-interactive-form>

**C. Take the Next Steps after you complete the Complaint.**

**1. Make copies of your Complaint Form.**

If you are using a Complaint Form that you obtained here: [Complaint Form, Appendix 4](#), make four (4) copies and any attachments. Keep one (1) copy for your records and take, or mail, the original plus three (3) copies to the Court with the [Filing Fee](#) or apply for [Filing Fee Waiver](#). (If you are using a carbonized copy supplied by the Court, you need not make any additional copies, other than one (1) for your own records.) If you mail the Complaint, you must enclose a check or money order for the filing fee.

**2. Pay Filing fees for Debt claims. ([Find updated fees here: Filing Fee](#))**

Current filing fees (2023) are:

Filing fee where the amount in controversy exceeds \$5,000	\$ 45
Filing fee where the amount in controversy equals or is between \$ 1,000 - \$5,000	\$ 40
Filing fee where the amount in controversy is less than \$1,000	\$ 35

**D. Ensure you e-file if your organization is a frequent filer.**

If you file on behalf of a corporation, including a community Association, and file five or more cases a year, the Justice of the Peace Court will require you to “e-file” your Complaint and other Court papers or “pleadings.” If you are required to e-file, you must first obtain e-filing training offered, free, through the Court. Click here for more information: [e-filing and its requirements](#) and view the next training session and sign up to attend a session.

## E. File the Complaint in the correct Court location.

File your Complaint in the Court in the County where the Delinquent Owner resides. Here is the list of Justice of the Peace Court locations that handle Civil Complaints. You must include the Court Number and County to fill in your Complaint Form. Click on the city below for more information.

Justice of the Peace Court 09	<a href="#">Middletown</a>	New Castle County
Justice of the Peace Court 13	<a href="#">New Castle</a>	New Castle County
Justice of the Peace Court 16	<a href="#">Dover</a>	Kent County
Justice of the Peace Court 17	<a href="#">Georgetown</a>	Sussex County

Click here for the most current Information: [List of Justice of the Peace Court and their locations.](#)

**If you are suing for a corporation, like a community Association** (or partnership) and do not plan to use an attorney, find more information here: [Representing yourself.](#) [Click this link for information,](#) and here to fill-out a [Certificate of Representation.](#) (Civil Form 50). [Click here for a copy of form 50 Instructions.](#)

## VI. “SERVE THE COMPLAINT” ON THE DEFENDANT/OWNER

### A. Serve the Complaint on the Defendant/Owner.

Once you file your Complaint with the Court, the documents must be “Served” on or “officially delivered” to the Defendant/Owner. In most cases, you want the Court to make “Service of Process” on the Defendant/Owner. Just check the box asking for “Court Service” on the Complaint Form. The cost of Service by the Court is included in the filing fee.

### B, Hire your own Process Server.

The Court will attempt to Serve (officially deliver) the Defendant/Owner unless you tell the Court you want to hire a special Process Server or if you are suing someone from out-of-state. For either situation, find information here: [Out-of-State Resident \(including a corporation\).](#) Most of the time you will be serving the Defendant/Owner who live in your community, but there may be investor/owners or banks that own the property when you sue. Some owners live out-of-state, also.

### **C. Pay special fees and procedures for out-of-state Defendants/Owners.**

There are additional fees and special procedures involved when suing out-of-state Defendant/Owners. **April 2, 2018, the process for requesting service of process through the Delaware Secretary of State changed:**

1. Filers must provide a completed [JP Court Civil Form 67](#) ([Fill-in Form 67](#)) requesting service on Secretary of State, in addition to all other required documents.
2. Filers will write one check payable to Justice of the Peace Court. Amount of check will include the Secretary of State's \$50 fee as well as the Justice of the Peace Court fees. The Court will transfer the \$50 fee to the Secretary of State. Documents for Secretary of State Service must still be filed in person at the appropriate JP Court location. For more information, please contact the JP Civil Court location in your county.

Click here for information from the Justice of the Peace Court's website, if needed: [Out-of-state resident](#), an [Insurance company](#), or [Corporations or limited partnerships](#).

### **D. Pay an additional fee for a Special Process Server.**

If you use a Special Process Server, find more information here: [Special Process Server](#). You must pay a Court-approved Process Server a fee besides your filing fee.

### **E. Decide actions to take if the Court cannot Serve the Complaint on the Defendant/Owner.**

If the Court attempts to serve the Complaint (or any other Court documents) on the Defendant/Owner and cannot, you will receive a "Notice of Failure to Serve Complaint" (Civil Form No. 9) which will state the reason. (When the Court cannot serve the papers, this is called a "*Non Est*" Return of Service.")

Once you get additional information on the location where the Parties may be Served, you must file an "*Alias*" request for service. ("*Alias*" means the second attempt of Service after the first attempt was unsuccessful.) There is an additional fee for issuing an "*Alias Summons*." You can find the form here: [Complaint Form \(J.P. Civ. Form No. 1\)](#), [Appendix 2](#), to begin the action. ([Spanish version, click here](#).)

The Court explains Service of the Complaint on the Defendant/Owner. You can learn more about this Process and Service here: [How the Defendant is notified of the suit](#).

## F. Special Procedures for Service of Process Issues.

In a few rare cases, the Defendant/Owner may be a corporation or live in a state other than Delaware. These are such unusual circumstances they are not covered in this Guide. However, further information is available on the [Justice of the Peace Website home page](#), and the links in [Section VI E](#).

Click on these links for Court information on Special Procedures that apply when suing:

1. [Corporations](#)
2. [Defendants Not Located in Delaware](#)
3. [Hiring or using Special Process Servers](#)

## VII. WHAT TO EXPECT AFTER THE DEFENDANT RECEIVES THE COMPLAINT

### A. After you filed and Served the Complaint ...

Several different things may happen, depending on what the Defendant/Owner does, as explained later in Chapter VIII, and in [Appendix 26](#).

The Defendant/Owner must respond to the Complaint within fifteen (15) days after receiving it. There are only a few ways to respond.

1. **Sometimes the Defendant/Owner will ignore the Complaint and not answer it.** If that happens, the Court will send the Plaintiff/Association a form asking for additional information before the Court issues a “*Judgment by Default*” against the Defendant/Owner. If you get one, fill it out and return it to the Court.
2. **Sometimes the Defendant/Owner will file an “[Answer](#)” to the Complaint,” [Form 7](#), found in [Appendix 9](#), and “*Admit*” owing the amount stated.** The Court may issue a Judgment awarding the money requested in the Complaint.
3. **Sometimes the Defendant/Owner will file an Answer to the Complaint stating facts to support a defense to the assessment.** When the answer to a Complaint states a defense, the Court usually issues an Order setting the date, time, and place for a trial. Both Parties must attend.
4. **Sometimes the Defendant/Owner will use the Answer Form to request that the Plaintiff/Association file a “[Bill of Particulars](#)” instead of admitting the Debt, or stating a factual defense.** The [Demand for a Bill of Particulars](#) may also be filed as a separate form. **BE AWARE:** You, as the Plaintiff/Association,

must answer a request for the Bill of Particulars in fifteen (15) days. This is explained in [Rule 26](#), found here and in [Appendix 12](#), and is discussed in Chapter VII, Section D below. If you do not file the [Bill of Particulars](#) in the time allowed, the Justice of the Peace can dismiss your case. The Court can also order additional discovery if either party files a motion under [Rule 26](#) before trial.

You will receive a Notice from the Court giving the time and date set for Trial (unless the Defendant/Owner in a Debt Action admits to the amount owed). If you do not go to the trial on the day and time given by the Court, or if you do not file a notarized “Bill of Particulars” within the fifteen (15) days allowed, the Court may enter a Judgment of “*Nonsuit*.” This is a way of dismissing the lawsuit of the Plaintiff/Association.

### **B. Inability to appear at the date and time set for Trial**

You must notify the Court immediately and request a Continuance, a rescheduling of the Trial. This request should be in writing and should explain why you cannot attend at the scheduled time. If you wish, you may fax this request to the Court instead of mailing or delivering it in person.

### **C. IMPORTANT! BE PREPARED!**

The Defendant/Owner may file and require you to answer the form found here: [Demand for Bill of Particulars, Form 10C](#), which is also in [Appendix 12](#).

A “*Bill of Particulars*” (BOP) is a statement that a Defendant/Owner can request to get more or specific information about a Debt. [JP Court, Rule 26](#) allows this. The Court can order more discovery if a party files a Motion before trial.

The Court created a new form you may complete for a [Bill of Particulars](#). The new form, “[CF10BP](#)” is available in “*fillable*” or “*Print Only*” CF10c format. You will also find a copy of each in [Appendix 12](#).

You must state the reason and basis for your lawsuit against the Defendant/Owner, to include the following:

- 1. Include a citation and quotation of your Declaration or other Governing Documents authorizing the Association to set and collect assessments for maintenance of common areas and other purposes as a personal obligation of an owner.**
- 2. Attach a copy of the portion of the Declaration that authorizes collecting assessments and suing if they are not paid.**

**3. Explain how you calculated the amount claimed, including:**

- a. State the amount of the delinquent assessment.
- b. State the amount of any late charge authorized in your Governing Documents.
- c. State the amount of any interest authorized in your Governing Documents and how it is calculated. (Documents usually state interest rate as “*per annum*” or “*each year.*” Most interest “*accrues*” monthly, or 1/12 of the annual rate. Do not use the annual rate as the charge each month, a mistake that the Court will not allow.)
- d. State any penalty authorized in your Governing Documents.
- e. State the date the Declaration was recorded and whether it contains the word “*Seal*” next to the signatures. Attach a copy of that page.

**4 Include a Notarized Affidavit verifying the information in the Bill of Particulars, and stating how you delivered it to the Defendant/Owner.** Use JP Court Form Misc. 27 for your [Certificate of Service](#), found in [Appendix 29](#).

**5. See more information on the Bill of Particulars in on the JP Court Website by clicking here for [Rule 26](#), which is also in [Appendix 12](#).**

**6. Consider putting this information in a “Statement of Claim” like that in [Appendix 2](#), to oppose a motion for a Bill of Particulars.**

## **VIII. THE RESPONSE PROCESS: FOR DELINQUENT OWNERS / DEFENDANTS**

The Governing Documents of the Association, especially the Declaration of Deed Restrictions (or Covenants, Conditions, and Restrictions, “CC&R’s”) give the Association the power to collect assessments. These documents were recorded in the Office of the Recorder of Deeds. Courts consider them Legal Notice to everyone.

Judges enforce them the same as contracts between the owners. Because they are recorded in the Office of the Recorder of Deeds, everyone who purchases property in the community is “*Deemed*” to have known, or presumed to know, about the obligation to pay assessments.

There are only a few defenses to failure to pay the assessment of a common interest community Association, and they usually involve a failure of the Board to follow procedures in the Bylaws or other Governing Documents. Courts hold lawful

assessments are “*unconditional.*”) Park Centre v. Epps, [Appendix 31](#). **When sued, notify your mortgage company immediately. It may be able to help.**

#### **A. Payments of Assessments are the Responsibility of each Owner.**

1. The Association's right to collect assessments does not depend on the Board fulfilling its other responsibilities if the assessment is for legitimate Association expenses.
2. Virtually all Declarations make the Owners of a unit “personally” responsible for paying assessments and costs of collection, usually including interest and lawyers' fees.
3. Owners who abandon a unit or do not use the common areas are still obligated to pay assessments.
4. Owners may not legally withhold assessment payments, even if the Association is not providing maintenance or other services required by the Governing Documents. Judges hold that Owners have other ways to force an Association to perform its duties, including elections.
5. It is no defense that you disagree with something the Board did or failed to do.
6. It is no defense that you did not know you had to pay an assessment.
7. The Court will presume that you know of your obligation to pay.
8. If stated in the recorded Declaration, the Association has the authority to impose the assessment, late charges, interest, and costs.
9. It is no defense that the board increased the assessment.
10. Some of the possible defenses include:
  - a. The board that made the assessment or increased it, violated a requirement in the Bylaws for elections, such as:
    - 1) Did not follow the Bylaws requirement for notice of the election of directors who set the assessment.
    - 2) Did not provide proper notice of the election meeting.
    - 3) The election meeting had no quorum (the minimum number of members required by the bylaws to conduct business or an election).

- 4). The members of the community directly elected officers, but the Bylaws require members to elect Directors, who must elect officers.
- 5) The board ignored the Declaration or Bylaws for setting the assessment:
  - a) Some Declarations require a majority of the owners to approve an increase in the annual assessment, but most do not. The Association must follow its documents.
  - b) For example, click here to read the Chancery Court's 2010 opinion in "[Adams v. Calvarese Farms Maintenance Corporation](#)," where failure to follow election bylaws made the assessment from the improperly elected board "voidable." [Appendix 33](#).
- b. Consider discussing your defense with a lawyer experienced in Community Association law. Discuss possible defenses, whether they are likely to succeed, and at what cost. Also see the Community Associations Institute's booklet: "*Delinquencies: How Community Associations Collect Assessments*." Contact your local library to learn if this booklet is in your local library or to ask that it be sent there. Click here for the [State Library card catalog](#) for a listing of the Community Associations Institute's publications available.

## **B. Defendant/Owner Response to a Complaint if Assessments are Delinquent.**

When you receive the Complaint, you will also receive a "Summons" which will direct you to the next step that you must take to avoid a Default Judgment. A Summons is a form issued by the Court informing a Defendant/Owner they were sued. If Owner does not respond, plaintiff can request a Default Judgment, a Court Order to a Defendant/Owner to pay the amount stated in the Complaint without a Trial. For more information click here: [Default Judgment](#). The Defendant/Owner must appear in Court by a date stated.



## 1. Each Defendant/Owner Must File an Answer to the Complaint.

- a. A Complaint for a delinquent assessment is called a [Debt Action](#). The Summons tells you to complete and return the form found here: [Answer](#) (J.P. Civ. Form 7), also found in [Appendix 9](#), **within fifteen (15)** days after getting the Summons. The Court delivers a copy of the Answer form with the Complaint/Debt Action, and you must complete it. In your Answer, you must check one of the following three (3) choices:

- 1) Check line A if you admit that you owe the Debt/Assessment and want no Trial. If you check this, you are agreeing to the Court entering a Judgment against you for the amount claimed plus interest and costs. After the Court receives your Answer, the Court will send you a judgment, which states the amount you owe. You must pay any money you owe directly to the Plaintiff/Association, not to the Court.

If you pay the Plaintiff/Association the amount claimed, **BE AWARE** the Plaintiff/Association must notify the Court within 90 days that you paid or “*Satisfied*” the Judgment. If the Plaintiff/Association does not do so, a statute allows you to ask the Court for an award of up to one-half the amount of Judgment ([10 Del. C. § 9567](#)).

- 2) Check line B if you want a Trial.
- 3) Check the line, “DEBT ACTIONS ONLY” if you want the Plaintiff/Association to provide you with a more detailed statement of the Claim called a [BILL OF PARTICULARS](#). The Plaintiff/Association must file the Bill of Particulars in the Justice of the Peace Court listed at the top of the Complaint if it filed no “Statement of Claim.”
- b. Bill of Particulars is used only in Debt Actions like collecting delinquent assessments. It provides the Defendant/Owner with more information on the Claim of the Plaintiff/Association. A Plaintiff/Association need not file the Bill of Particulars unless the Defendant/Owner demands one, by filing an [Answer using Form 7](#) found in [Appendix 9](#). The Justice of the Peace Court allows a [Demand for a Bill of Particulars](#) to be filed as Form 10C, found also in [Appendix 12](#).
- 1) The Defendant/Owner must use Justice of the Peace Court [Civil Form 10C](#), to “*Demand*” the Bill of Particulars. The Demand should contain the current mailing address of the Defendant/Owner, if different from the address provided in the Complaint. The Defendant/Owner must file the Demand for the Bill of Particulars with the Court where the case is filed. The Court will serve the Plaintiff/Association with the “*Demand*” for the Bill of Particulars.

2) The Plaintiff/Association should prepare and Serve (Deliver) to the Defendant/Owner the [Bill of Particulars](#) or the [Answer to the BOP](#) within fifteen (15) days counting the date of mailing as the first day. The Bill of Particulars can be Served (Delivered) by the Plaintiff/Owner in either of two (2) ways:

(a) Mail the original to the Court where the Action is pending, with a **notarized** [Certificate of Service \(Misc 27C\) Appendix 29](#), explaining how the Bill of Particulars was Delivered to the Defendant/Owner. If the Plaintiff/Association is a corporation, an officer of the corporation must sign the affidavit. If the Plaintiff/Association is a partnership, a partner must sign the affidavit.

**Or**

(b) Mail a copy to the Defendant/Owner or the attorney of the Defendant/Owner if named in the Answer.

3) The Bill of Particulars must be in writing and should state in detail the basis for the Claim by the Plaintiff/Association and the manner in which the sum demanded was determined. Click here for a “fillable” Form, “[CF10BP](#),” which is also included in [Appendix 12](#), or a Statement of Claim.

4) If the Plaintiff/Association fails to answer the Demand, the Defendant/Owner may file a “*Motion to Compel*,” seeking an Order to force an answer. A [Motion Form](#), Form 11, [Appendix 14](#), must be filed within **five (5) days** after the time for serving the Bill of Particulars elapsed.

5) More information on the Bill of Particulars can be found from the Justice of the Peace Court here: [Civil Rule 26](#), Form 10B, and in [Appendix 12](#).

## **2. The Defendant/Owner must take these important actions.**

- a. You must appear at Court at the time and date set for trial or the Court may enter a [Default Judgment](#) against you.
- b. You may file a [Counterclaim](#) if you believe that the Plaintiff/Association owes you money. Sometimes, you must file any Claim you have as a Counterclaim or lose it. Counterclaims are explained in Section C, below.
- c. You may file a [Third Party Action](#) against a Party other than the Plaintiff/Association who may be liable for all or part of the damages that the Plaintiff/Association seeks.

### C, Counterclaims of a Defendant/Owner

1. **A Counterclaim is a Claim made by the Defendant/Owner against the Plaintiff/Association** when the Defendant/Owner believes that the Plaintiff/Association owes him or her money.
2. **A Counterclaim usually must be filed at least five (5) days prior to trial.** (Excluding holidays and weekends).
3. **Defendant/Owners must state in writing why they are Countersuing the Plaintiff/Association.** You may use [Civil Form CF01CC](#) entitled "Counter Claim or Cross Claim." You must file the written statement or [Form CF01CC Appendix 9A](#), and deliver or mail a copy to the Plaintiff/Association. With the Court's copy, you must file a **notarized Certificate of Service, Appendix 29**, stating how and when you delivered a copy to the Plaintiff/Association. You must state the total amount of the Counterclaim and how you calculated it.
4. **At the request of the Plaintiff/Association, the Court may grant a fifteen (15) day continuance of the Trial under certain circumstances** if the Plaintiff/Association has not had enough time to prepare a defense to a Counterclaim.
5. **If your Counterclaim arises out of the subject of the Claim by the Plaintiff/Association against you and your Counterclaim does not exceed \$25,000**, usually you **MUST** file your Claim as a Counterclaim and you may not file it in a separate suit.
6. **If your Counterclaim exceeds \$25,000 or does not arise out of the subject of the Claim against you** by the Plaintiff/Association, you will not lose your right to sue by failing to raise your claim as a Counterclaim in the Debt Action.
7. **If your Counterclaim exceeds \$25,000, you may bring it as a Counterclaim in the Justice of the Peace Court** if you limit any Judgment to \$25,000.
8. **For more information on Counterclaims**, see Justice of the Peace Court [Civil Rule 13](#). (Available online at this link, but not in the Appendix.)

### D. Third Party Action (or Claim)

A Third-Party Action is filed by the Defendant/Owner against a Party other than the Plaintiff/Association who may be liable for all or part of the damages that the Plaintiff/Association may win from the Defendant/Owner. Generally, a Third Party Action (or Claim) must be filed at least five (5) days (excluding holidays and weekends) prior to Trial with a [Filing Fee](#).

For more information on Third Party Claims, see Justice of the Peace Court [Civil Rule 14](#). (Available online at this link, but not in the Appendix.)

**E. Defenses to a Suit by a Plaintiff/Association to collect delinquent assessments.** (Not all inclusive.)

**1. Assessments are usually authorized by the Association's Declaration of Deed Restrictions, or sometimes by the Certificate of Incorporation.**

Assessments are required for common interest communities (Associations) for maintaining the common areas and common elements of a community. Sometimes these assessments also provide services for homeowners lots. The overall care of the community, paid for by the assessments, helps preserve the value of all homes in the community.

**2. By buying a home in a common interest community with a Declaration of Deed Restrictions, and requiring payment of assessments, Owners agreed to the conditions and restrictions.** This agreement includes your obligation to pay the assessments and authorizes the remedies stated in the Declaration. The deed to your property states your ownership is “subject to” the Declaration. Your deed also states that the book and page of the Declaration, a public record recorded in the Office of the County Recorder of Deeds.

**3. The Recorded Deed and Declaration are public notice of their terms and conditions.** Anyone can see them. You should have a copy of all your Governing Documents provided prior to your agreement to purchase your home or not later than settlement.

**4. Courts regard Deed Restrictions as “contracts by and between all Owners” of property purchased in the community Association.** In general, Judges enforce these contracts, as written, since everyone in the community has the same contract.

**5. There are few effective defenses to non-payment of the assessments.**

For example, complaints that “the Board does nothing” or the Board is not enforcing restrictions fairly or equally are usually unsuccessful. Usual contract defenses, like capacity to contract (being over 18 years old and able to understand the contract), unlawful purpose, and others, are not considered issues in the defense of a delinquent assessment.

**6. A Court may accept a few defenses, listed below.**

- a. The Board did not follow the election procedures required by the Declaration or Bylaws. As a result, the Board was improperly elected. Therefore, all

actions taken by the improperly elected Board are void or voidable when challenged. That can include setting and collecting assessments. See, e.g., [Adams v. Calvarese Farms. Maint Corp.](#), [Appendix 33](#).

- b. The Board did not follow the Governing Documents for the procedure for setting the assessment. As a result, the assessment is “void or voidable.”
- c. The penalties, interest, or fines the Association assessed against you are not authorized, or violate, the Governing Documents or are incorrectly calculated.
- d. If you have a defense for not paying an assessment, it is the burden of the Defendant/Owner to both provide evidence and to persuade the Judge. Be sure to bring your evidence and witnesses to trial.

## IX. PREPARING FOR TRIAL IN JUSTICE OF THE PEACE COURT

How you prepare and what you do to prepare for a Trial will vary and depend on the facts and circumstances of your case. These guidelines are not all-inclusive. (As a reminder, Court Clerks may not provide legal advice or recommendations.)

### A. Important elements when preparing for Trial.

1. **Be sure to know the exact date and time of your Trial**, and be there on time. Be prepared to wait your turn to see a Judge.
2. **If you settle your case before the date set for Trial, notify the Court in writing** so the Court may use the time to hear other cases.
3. **Although Justice of the Peace Court is less formal than the Higher Courts, you must still follow most of the appropriate procedures for providing evidence as found here: [Rules of Evidence](#).**
  - a. Familiarize yourself with some of the most important Rules as described here: “[Questions and Answers about the Rules of Evidence](#).” A copy of these rules is also in [Appendix 28.1](#). For more information, see the [Delaware Uniform Rules of Evidence](#). (Available online but not in the Appendix.)
4. **Bring to Trial all papers, documents, materials, or pictures with anything to do with your case.** Bring all written materials, including documents, receipts, bills, and estimates to show the Judge, to help prove your Claim or Counterclaim-both that you lost money and the actual damages (monetary amount) that you have suffered.

**5. Bring the following documents with you in a delinquent assessment case:**

- a. A copy of the Declaration (showing the Recorder of Deeds Markings) and Certificate of Incorporation that state the authority to set and collect assessments, the interest, and penalties authorized and the rule setting the amount.
- b. A copy of the approval of the budgeted assessment.
- c. The invoice sent to the Defendant/Owner.
- d. Copies of any Notice Letters sent to the Defendant/Owner of the Delinquency, any offer of an opportunity to explain the Delinquency, or offer a payment plan.
- e. A detailed and correct copy of a statement detailing the amounts due to the day of Trial, showing how they were calculated.
- f. Four (4) copies of each document to include: one for you, the Court, the witness, and the Defendant/Owner or opposing lawyer.

**6. Bring any other witnesses who can help you explain your case.** Often the representative of the Plaintiff/Association can explain each document, as a person familiar with them. Sometimes an additional witness (e.g., the Treasurer) may be needed to testify.

- a. The Judge will not consider a written statement from a witness who cannot come to Court for you, because of the Rules of Evidence and the inability of the other party to ask questions of any witness not in the courtroom.
- b. Make sure your witness knows the exact date, time, and place of the trial and then make sure the witness appears for trial.
- c. If you are not sure that a witness will show up at Court, you may [Subpoena in a Civil Case, CC58; Appendix 13](#), the witness (have the Court order the person to appear at Court to testify) by filing a request for a [Subpoena](#) with the Court. There is a fee for each Subpoena.
  - 1) Requests for Subpoenas for the attendance of witnesses, production, inspection, or copying of materials, or inspection of the premises should be filed at the earliest possible opportunity following Service of the Complaint on the Parties.

- 2) You must request a Subpoena at least five (5) business days before Trial or the Court cannot guarantee service. Subpoenas which appear to be unreasonable or place an unduly short notice or burden on the witness may be denied by the Court.

**7. Remember, whether you are the Plaintiff/Association or the Defendant/Owner, you must appear at the Trial, or you will lose the case.** A [Non-suit](#) may be entered against a Plaintiff/Association that fails to appear and a [Default Judgment](#) may be entered against a Defendant/Owner who fails to appear.

- a. If there is a valid reason you cannot be in Court on the day of the Trial, write the Court or call, to request a Continuance (postponement) to another date. In your Continuance request, state why you need a Continuance and whether the other Party or attorney agrees with the Continuance request. (If you can, ask their position on your request and include it in your request to the Court).
- b. Please note: The Court will most likely deny any Continuance requested less than 48 hours before Trial or repetitive Continuance requests without an emergency.

## **X. WHAT TO EXPECT AT TRIAL IN JUSTICE OF THE PEACE COURT**

Click here for [videos](#) of Court Civil Procedures and preparing for and presenting evidence at Trial.

### **A. Behavior guidelines for a Defendant/Owner or a Plaintiff/Association while in the Courtroom** (See also [Appendix 27](#).)

1. Arrive early since you must check in with the Clerk and go through the metal detector protocol.
2. Cell phones, pagers, cameras, and other electronic devices are generally NOT permitted in Courthouses or Courtrooms. If there is evidence, such as photos on your device, enter the courthouse without it, alert the clerk to ask the Judge for permission to bring it through the metal detector. It is best to print copies of evidence rather than relying on the device, as the court will allow the opposing party to look at what is on the device, and the court may retain the device until the case is decided.
3. Do not wear a hat unless you must wear one for religious or medical reasons.
4. Do not eat, drink, or chew gum in the courtroom.

5. Always stand when addressing the Judge and always call the Judge, “*Your Honor.*”
6. Act respectfully, reasonably, courteously, and politely to everyone in the Courthouse.
7. Remain calm. It is important to control your emotions and stay focused.
8. Do not talk unless it is your turn to speak. When it is your turn to speak, speak loudly enough so everyone in the courtroom can hear you.
9. Respond to questions verbally, e.g., saying, “Yes” or “No,” instead of nodding your head in response.
10. Do not have side discussions or argue with the other side. Speak directly to the Judge unless you are answering questions or asking a witness questions.
11. Do not argue with the Judge.
12. If you do not understand a question, ask for clarification, or ask to have the question repeated.
13. Always tell the truth.

## **B. Trial in Justice of the Peace Court**

Wait in the lobby until the Clerk or a Bailiff calls your case to the Courtroom. When you are called to the Courtroom, observe the guidelines listed above.

### **1. The Judge calls the Court to order.**

- a. The Judge will call the Court to order and verify the Parties are present.
- b. The Judge will summarize the case as filed to be sure both parties are clear as to the matter before the Court and to confirm that the Defendant/Owner still wishes to contest the Claim. The Judge will decide Motions filed before trial at this time.

### **2. The Parties make Opening Statements.**

- a. An Opening Statement is when a Party tells the Judge what that Party intends to prove through testimony, evidence, and witnesses.
- b. The Plaintiff/Association will make a brief Opening Statement.



- c. The Defendant/Owner may make a brief Opening Statement after the Plaintiff/Association.

### **3. The Plaintiff/Association presents the Case.**

- a. Court will ask the Plaintiff/Association to call the first witness. (Parties may also be witnesses and testify in Court.) All witnesses must swear or affirm (promise) to tell the truth to the Court before they testify.
- b. After the witness finished his/her direct testimony, the Defendant/Owner may Cross-Examine the witness.
  - 1). Cross-examination means asking the witness questions regarding anything about which the witness testified.
- c. The Judge may ask questions of any witness. Answer the Judge's questions clearly and directly.
- d. When the Plaintiff/Association presented all of its witnesses and evidence, the Plaintiff/Association "Rests" the case.

### **4. The Defendant/Owner presents the Case.**

- a. The Defendant/Owner then presents his/her case, calling any witnesses and presenting any evidence the Defendant/Owner may have. The Defendant/Owner can also testify and may call witnesses who testified for the Plaintiff/Association.
- b. The Plaintiff/Association may cross-examine the witnesses of the Defendant/Owner after their direct testimony.
- c. The Judge may ask questions of any witness. Answer the Judge's questions clearly and directly.
- d. If the Defendant/Owner filed a Counterclaim, the Defendant/Owner may call witnesses and submit evidence regarding the Counterclaim.
- e. The Plaintiff/Association may Cross-Examine any witnesses called by the Defendant/Owner.
  - 1) Cross-examination means asking the witness questions regarding anything about which the witness testified.

## 5. The parties make Closing statements.

- a. The Defendant/Owner may make a Closing Statement to the Judge.
  - 1) A Closing Statement lets a Party summarize their case by telling the Court what they think they proved and why the Court should find in their favor.
- b. The Court will give the Plaintiff/Association an opportunity to rebut anything the Defendant/Owner brings up in Summation.
- c. The Judge will decide the Case.
  - 1) The Judge may give an immediate decision.
  - 2) The Judge may call a brief recess to consider the matter alone.
  - 3) The Judge may “*Reserve Judgment*,” in which case both parties will get the Judge's written decision along with the explanation for the decision within 30 days.
  - 4) The Court may enter a Non-Suit Judgment against a Plaintiff/Association who fails to appear at trial.
  - 5) The Court may enter a Default Judgment against a Defendant/Owner who fails to appear at trial.
6. Court is adjourned.

All parties will receive a copy of the Judgment by mail.

## 7. After the Judgment. **IMPORTANT!**

Review “[JP Court Civil Post-Judgment Procedures](#),” Form CF14A by clicking here, and found at [Appendix 15](#) to learn more about Default Judgments, Non-Suit Judgments, Appeals, and Motions for new trial.

Do this quickly because the time for addressing these is limited, sometimes to only **10 days**.

## XI. HOW TO COLLECT AND/OR REVIVE A JUDGMENT IN JUSTICE OF THE PEACE COURT

### A. Judgment in Justice of the Peace Court is good for five (5) years.

After five (5) years, the Court has procedures you may use to attempt collecting a Judgment, but only if the Judgment is Revived by filing a document called “*scire facias*,” a Judicial Order to extend the time a Judgment can be enforced.

### B. How to Revive a Judgment by “*scire facias*.”

The Plaintiff/Association must file an [Application to Revive A Judgment](#) by filing Form 15A, [Appendix 24](#), and a [Request for Motion Hearing](#), Form 11 [Appendix 14](#), and paying a fee as listed here: [Applicable Fee](#). If you are using the Form 11 that you obtained online, make four (4) copies of the Form. Retain one (1) copy for your records and take, or mail, the original plus three (3) copies along with the [Filing Fee](#), to the Court. If you are using a carbonized copy of Form 11 supplied by the Court, you need not make any additional copies other than one (1) for your own records.

### C. The Plaintiff/Association MUST notify the Court when the Judgment is paid.

A Plaintiff/Association that wins a Judgment is called a “*Judgment Creditor*.” A Defendant/Owner who loses the case is called a “*Judgment Debtor*.”

You will see these terms in some of the forms used after the trial. However, for clarity, this Guide will continue to use the terms **Plaintiff/Association**, and **Defendant/Owner**.

Both Plaintiff/Association and Defendant/Owner should know that once a Judgment is collected, the Plaintiff/Association **must** notify the Court in writing when it has been paid (“*satisfied*”). Plaintiff/Association should file [Form 36, Satisfaction of Judgment](#). [Appendix 23](#).

If the Plaintiff/Association does not notify the Court, the Defendant/Owner may, under [10 Del. C. §9567](#), sue the Plaintiff/Association for an amount up to half the amount of the Judgment. File a lawsuit to recover for Failure to File the Satisfaction as a Debt Action following the procedures described here: [Filing a Complaint](#).

### D. The procedures for collecting a Judgment are complicated.

You would be wise to talk to a lawyer to assist you with this. See [How to Collect a Judgment](#) in the JP Court's website for more information.

**E. There are several methods available if you attempt to collect the Judgment yourself.**

**1. The parties can make an agreement.**

The Plaintiff/Association may agree with the Defendant/Owner about collecting the Judgment. The Court will not be involved with this. The Court only determines the sum of money owed and to whom, but not how the Debt is paid.

**2. The Court may provide assistance if the Parties cannot agree.**

If an Agreement cannot be reached or if the Party owing the money does not comply with the Agreement, the Plaintiff/Association may seek the assistance of the Court using any of the procedures listed below.

- a. Wage Garnishment is the request by the Plaintiff/Association for money from the wages of the Defendant/Owner. This is usually the first process you should try, since the Court has found this will often give the best result.

The Plaintiff/Association may request that the money that the Defendant/Owner owes be deducted over time from the wages of the Defendant/Owner by his/her employer. This is called a “*Wage Garnishment*.” Remember that the Court will only do this at the request of the Plaintiff/Association. The Court will not automatically require the employer of the Defendant/Owner to withhold the wages of the Defendant/Owner.

- 1) To request that the wages of the Defendant/Owner be garnished, the Plaintiff/Association must complete a [Civil Form No. 17](#), (Garnishment of Wages/Property), also found in [Appendix 17](#).
  - a) Include the name and address of the employer of the Defendant/Owner in completing the Form 17.
  - b) Note on Form 17 (where it indicates, “*less total credits*”) any previous payment received from the Defendant/Owner.
  - c) The Plaintiff/Association should also fill in the County, Court number, Court address, Civil Action number and Plaintiff/Association and Defendant/Owner information on the top of the [Form 17A](#), Answer to Request for Garnishment of Wages.
  - d) If you are using Forms 17 and 17A that you obtained online, make four (4) copies of each Form. Retain one (1) copy for your records and take or mail, the original plus three (3) copies each with the filing fee, to the Court. (If you are using a carbonized copy of the Form 17

or 17A supplied by the Court, you need not make any additional copies, other than one (1) for your own records.)

- 2) The Court sends the request for Garnishment to the employer of the Defendant/Owner after you file it.

The employer must file an [Answer](#) (Form 17A) [Appendix 17.1](#), with the Court within 20 days. In the Answer, the employer must state whether it currently employs the Defendant/Owner; whether there are any reasons the wages of the Defendant/Owner may not be garnished; and if not, the rate of pay of the Defendant/Owner.

- 3) Special Procedures are necessary if the Defendant/Owner is employed by a corporation not incorporated in Delaware. These Special Procedures are found here: [Garnishing/Serving Foreign Corporations](#) and in [Appendix 20](#). The amount of wages that may be garnished is limited by both Delaware and Federal law. Sometimes none of the wages of a Defendant/Owner may be garnished because the disposable income is below the limit set by law. There are three (3) separate charts for determining the amount that can be garnished from wages, depending on the income of the Defendant/Owner.

[Chart for Determining Amount of Wages Subject to 10% Withholding](#)

[Chart for Determining Amount of Wages Subject to 15% Withholding](#)

[Chart for Determining Amount of Wages Subject to 7% Withholding](#)

See Civil Form 34- Wage Charts, or, all three charts are in [Appendix 18](#).

- 4) There can be only one garnishment of an individual's wages under Delaware law. If the wages of the Defendant/Owner are already being garnished by another creditor, the Plaintiff/Association cannot garnish other wages of the Defendant/Owner. Another garnishment may be filed when the first one is completed.

**b. Collecting from the Property of the Defendant/Owner requires details.**

**Note:** The Court recommends that you first attempt to garnish the wages of the Defendant/Owner before you collect from Property. It is the more effective way to collect your judgment. You can only seize and sell property if your judgment is \$500 or more. The JP Court's [Levy/Constable Sales, "Information for Judgment Debtors"](#) outlines the rules for keeping levied upon property for 3 years or until sold or redeemed by paying the judgment. [Appendix 16](#).) Constable sales

often produce little money. You should be aware of these concerns and cautions. Penalties can include civil contempt and jail time.

A Plaintiff/Association attempting to collect a Judgment from the property of the Defendant/Owner must take the following steps:

- 1) File a request that the Constable “Levy” (or “Seize” property to satisfy a Debt) upon the Defendant/Owner's property.

Complete and file [Civil Form 16](#), “Levy of Personal Property,” [Appendix 21](#), with the required [Filing Fee](#). A “Levy” is a Court Order that the property listed by the Constable must remain available for sale or the Defendant/Owner will face penalties for Contempt of Court. The Constable will not take the property away.

The Party who won the Judgment (the Association) is listed as the Judgment Creditor and the party against whom the Judgment was awarded (the Owner) is the Judgment Debtor. The address you provide for the Judgment Debtor on Civil Form 16 is the address where the Constable will attempt to Serve the Levy.

- 2) List specific property owned by the Defendant/Owner.

If you know specific property owned by the Defendant/Owner, list the property on a separate sheet of paper and attach it to your Form 16. The Constable has discretion to select the items the Levy affects. Attaching a list does not guarantee all these items will be affected by the Levy.

- 3) Certain items are exempt from Levy and sale.

There are certain items that cannot be used in the Levy and sale. These are: the family Bible; school books and family library; family pictures; all the wearing apparel of Defendant/Owner and the family, or tools, implements and fixtures used in the trade or business of the Defendant/Owner up to \$75.00; and sewing machines used by seamstresses or private families. In addition, the Defendant/Owner may have the right to a “head of family exemption” of \$500.00 worth of personal property beyond those items listed above. For more information refer to: [10 Del. C. §§ 4901-4913](#).

- 4) The Constable will appraise all items on which a Levy is made.

This appraisal is an attempt to ensure that a sale will produce sufficient money to pay the Judgment and that the Levy is not excessive. A Defendant/Owner who believes that the Levy was legally excessive may

file a motion with the Court using [Civil Form 11](#), Application for A Motion hearing, [Appendix 14](#).

- 5) List motor vehicles owned by the Defendant/Owner.
  - a) To instruct the Constable to Levy the Defendant/Owner's motor vehicle(s), including a mobile home, the Plaintiff/Association must obtain a Certificate of Lien from the Division of Motor Vehicles for the Defendant/Owner's motor vehicle(s) and attach the Certificate(s) to your filing.
  - b) Obtain a Certificate of Lien.

Contact the Division of Motor Vehicles to obtain a Certificate of Lien.

Department of Public Safety Division of Motor Vehicles  
P.O. Box 698, Dover DE 19903  
Attn: Correspondence Department Phone: (302) 744-2509

- 6) The Court will notify the Plaintiff/Association whether a Levy was made or not.

This notification depends on whether the Constable cannot make the Levy because the Defendant/Owner has no property to Levy or because the Defendant/Owner could not be located. If the Constable could not find any goods upon which to Levy, he will file in Court a “*Nulla Bona*” (meaning “no goods”) report. A Plaintiff/Association that wants the Constable to attempt a Levy at a later time must file an “*Alias*” Execution form found in [Appendix 21](#) and pay an additional [Filing Fee](#).

- 7) The Plaintiff/Association will be notified if the Defendant/Owner refuses entry to the Constable preventing the Constable from making the Levy.

The Court will notify the Plaintiff/Association and ask whether it requests a “Show Cause” hearing at which the Defendant/Owner must show cause, or explain why he or she should not be charged with “Contempt of Court” for failing to permit the entry for Levy.

- 8) Property in the possession of another requires an additional form.

Sometimes the property of the Defendant/Owner is in the hands of another person. Request “Garnishment of the Defendant's property” in the hands of the other person by filing the [Civil Form No.17](#) (Garnishment) also found in [Appendix 17](#). The Plaintiff/Association should also fill in the County, Court number, Court address, Civil Action

number and information on the Plaintiff/Association and the Defendant/Owner on the top of the [Form 17B](#), Answer to Request for Garnishment (Other than Wages). If you are using Forms 17 and 17B that you obtained online, make four (4) copies of each Form. Retain one (1) copy for your records and take or mail, the original plus three (3) copies each with the filing fee, to the Court. If you are using a carbonized copy of the Form 17 and 17B supplied by the Court, you need not make any additional copies, other than one (1) for your own records.

9) Request a Constable's Sale.

If the Constable Levied the property of the Defendant/Owner, the Plaintiff/Association may request a Constable's sale. Complete the "Request for Constable Sale" Civil Form 22A, found here: ["Request for Constable Sale" Civil Form 22A](#), (attached as [Appendix 22](#)) and include the fee listed here: [Applicable Fee](#). This request must include a statement of what the Defendant/Owner continues to owe.

The Court will notify the Plaintiff/Association of the date, time, and place of the sale. After the sale, the Constable will take the proceeds to the Court and the Court will distribute them. Click here for [additional information about Constable Sales from the JP Court](#).

10) File a Lien on Real Property.

A judgment can be used to create a "Judgment Lien" on Real Property (real estate) owned by the Defendant/Owner by filing a "Certified transcript of the docket entries" of the Judgment with the Prothonotary of the Superior Court in any County where property of the Judgment/ Debtor is located. A transferred Judgment becomes a Lien from the date transferred on all the real estate the Defendant/Owner owns in the County where the Prothonotary's Office is located. Request the Justice of the Peace Court to prepare the certified copy of the transcript of the docket entries from the Justice of the Peace Court that ordered the Judgment. File the request with the [Applicable Fee](#).

## F. Other useful Information

1. Justice of the Peace Court Rules:  
<http://courts.delaware.gov/forms/download.aspx?id=39328>.
2. Delaware Uniform Rules of Evidence:  
<http://courts.delaware.gov/forms/download.aspx?d=39388>.



3. Civil Court [videos](#) Series on Civil Court procedures, preparing for and presenting evidence at Trial.
4. [“How to File and Defend a Civil Claim in JP Court”](#) (English)

## XII. THE LIEN PROCESS

### A. In Delaware, an Association may record a Lien against the real estate, a home, any time an Owner is delinquent in paying the annual or monthly dues/assessments.

Assessments are collected and used for maintenance of common areas and in some Associations for services to the individual homeowners' lots or used for any special assessment. This is a right usually stated in the Declarations or the Certificate of Incorporation creating a common interest community, and this right is recognized in [Common Law](#).

### B. The “Delaware Common Interest Ownership Act” (DUCIOA) adds to the Lien process.

The DUCIOA enacted in 2009 has special Lien remedies for some, but not all common interest communities and their Associations. It applies to communities created before or after September 30, 2009, if they have 20 or more homes, and if the annual assessment is more than \$500 in 2009. (The \$500 increases the exemption for by 3% per year, on July 1. (In 2023 it is \$756.30). Communities have a right to amend their Governing Documents to include this part of DUCIOA. (§§81-119; 81-120)

### C. The Statutory Lien explained.

The DUCIOA declares a statutory right to assert a Lien against the home of a Delinquent Owner, even without recording a “Notice of Lien.” 25 *Del. C.* § 81-316 (a). (See the Ombudsman's website for a searchable copy of the [DUCIOA: Click here](#) for an indexed and word searchable copy of the Delaware Uniform Common Interest Community Act,” the “DUCIOA.”) The Lien right under the DUCIOA need not be “Recorded” in the Recorder of Deeds Office. But, the better practice is to record the Lien to give other Creditors notice, and to send a copy to the Owners so they will know about the Lien. These actions can trigger settlement of the Debt.

The DUCIOA's section 81-316 also applies to communities created before September 30, 2009, though to not smaller, exempt communities. (Note: There are 27 other sections of the DUCIOA that also apply to pre-existing communities that have 20 or more units, and higher assessments.) See 25 *Del. C.* . § 81-119. (See the Ombudsman's website for a searchable copy of the [DUCIOA: Click here](#) for an

indexed and word searchable copy of the Delaware Uniform Common Interest Community Act," the "DUCIOA.")

Unless the Declaration states otherwise, § 81-316 (a) allows the Association to include in the Lien, charges for the following:

1. Unpaid Assessments.
2. Late charges.
3. Reasonable attorney's fees and costs.
4. Fines.
5. Interest.

This Lien for unpaid assessments is unenforceable if not enforced within three years after the full amount of the assessments becomes due.

#### **D. "Super-Priority" Lien**

The DUCIOA also states that an Association may record a Lien to secure the six-month, so-called "*Super-Priority Lien*," available to some communities under 25 *Del. C.* § 81- 316 (b). Usually six (6) months of delinquent assessments have a "Super-priority" Lien status, even ahead of a home mortgage. Banks will often pay this rather than lose their mortgage rights. If more than six (6) months of assessments are delinquent, the amount over the six (6) months has no priority, and is usually behind many other creditors.

There are stringent requirements to receive the six-month Super-Priority Lien amount. If the Board is aware a foreclosure is occurring, it should move immediately to record the Association's Lien.

#### **E. Recording a Lien in the office of the county recorder of deeds**

1. The varying requirements for recording a Lien and the fee are found in each county.

##### **For New Castle County:**

<http://www.nccde.org/DocumentCenter/Home/View/72>

Fees for recording a Lien in New Castle County:

\$30 State Document Fee + \$13/page

(Liens are not included in the fee waiver for Association Governing documents)

<http://www.nccde.org/DocumentCenter/Home/View/69>

**For Kent County:**

<http://www.co.kent.de.us/recorder-of-deeds-office/standards-for-recording.aspx>

Fees for recording a lien in Kent County:

<http://www.co.kent.de.us/recorder-of-deeds-office/current-schedule-of-fees.aspx>

**For Sussex County:**

<https://www.sussexcountycle.gov/recording-information-requirements>

Fees for recording a lien in Sussex County:

<https://www.sussexcountycle.gov/recorder-deeds-fee-schedule>

2. The Lien must be signed and notarized by the authorized signer for the Association. That person is usually an officer of the Association, empowered to sign by the bylaws. Take the document to a Notary before signing it. It helps, but is not required, to sign the Lien in blue ink. Take the original, not a copy, to the Office of the County Recorder of Deeds with the required recording fee. Find sample Lien forms in [Appendix 27](#).
3. After a Lien is recorded against the property, if the Owner makes no payment to the Association, the Association must decide whether to proceed with a lawsuit against the homeowner personally for the Debt. Suit for the Personal Debt is the recommended course of action rather than a lawsuit for foreclosure.
4. The Association can also begin a “*Judicial Foreclosure*” of the real property Lien. Judicial Foreclosure is rarely used, but it is not available in certain cases. The Association should consult a lawyer if considering foreclosure. The process is complicated, and it is easy to make an error.

**Note:** It is not required that the Lien process be used as the first attempt at Collection. In certain cases, first filing a lawsuit for the Debt may be more effective.

Again, you would be wise to consult a lawyer experienced in Community Association law and Collection Law in Delaware.

**F. Lender Foreclosures**

The online Court system in Delaware provides an easy, but expensive way, to monitor the status of Lender Foreclosure actions. However, Delaware recently passed a mandatory mediation process for residential Foreclosures. Visit the Attorney General’s website for an explanation of the [Foreclosure Mediation Process](#), important documents, and other information.

The Foreclosure Sale Purchaser, commonly a bank holding the first mortgage, must pay assessments after the foreclosure sale. Banks often seek to avoid paying the assessments and hold the property without foreclosing to avoid owning it, and so avoid paying assessments.

If a bank files a Foreclosure Action during the Lien or lawsuit process, consider whether a Collection Action is worth the cost. Sometimes, the Association may decide to “*Write-off*” the outstanding amounts because the cost of collection may be greater than what it can ultimately recover.

### **XIII. THE FAIR DEBT COLLECTIONS PRACTICES ACT (FDCPA)**

#### **A. The FDCPA is a Federal statute.**

1. The FDCPA is a federal statute in Title VIII of the Consumer Credit Protection Act. Its purpose is to ensure ethical practices in the collection of consumer debts and to provide consumers with a method for disputing and obtaining validation of debt information, to ensure the information is accurate. This Act ensures that Creditors maintain a set of guidelines during Debt collection.
2. All references to Creditor are *recommended* for an Association collecting its own debts, but Debt Collectors must adhere to all the FDCPA requirements.
3. **The FDCPA requires the following:**
  - a. Creditors must identify themselves as Debt Collectors.
  - b. Creditors must provide verification of the Debt if requested by the Debtor.
  - c. Creditors must provide accurate information on the amount of the Debt and actions the Debt Collector may take to enforce the Debt.
  - d. Creditors must limit the hours for making a telephone call to a Debtor.
  - e. Debt Collectors are prevented from speaking with persons other than the Debtor.
  - f. Debt Collectors are required to discontinue collection communications with the Debtor if requested.

#### 4. Who is covered by the FDCPA?

Title 15 U.S.C. § 1692(a) defines a “*Debt Collector*” as “*any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any Debts, or who regularly collects or attempts to collect, directly or indirectly, Debts owed or due or asserted to be owed or due another.*”

Whether a community must comply with the FDCPA depends on certain factors. Unless a property is specifically and verifiably owned as an investment property, the obligation to pay common interest community assessments is a household debt and is subject to the FDCPA. Therefore, a Debt Collector must comply with the FDCPA in any communications with a delinquent owner.

However, because the community Association is owed the debt, the community is considered the original Creditor. If the community Association itself is trying to collect assessments, meaning if letters, notices, or telephone calls to owners are originating from the governing board and not from an outside party, the community Association does not have to follow the FDCPA. A property manager collecting delinquent assessments as an Agent of the association may or may not be considered a Debt Collector.

Regardless, it is still advisable for an Association to follow the FDCPA guidelines regarding the scope and hours of permissible communications to avoid any complaints of inconsistency or favoritism in the collection process. In addition, it is recommended to speak with an attorney about any specific questions regarding a community's obligations under the FDCPA.

For more detail on the Fair Debt Collection Practices Act, visit:

<https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text>

## EXHIBITS

(Materials Enclosed in this Volume.)

See also separate volume of Forms and Materials

1. Sample Collection Policies
- 5.1 Civil Complaint, Form CF01 (plus sample “Statement of Claim.”)
- 11.1 Sample Stipulated Agreement
19. Rule to Show Cause Against Garnishee, Form 19 [No Link]
22. Request for Constable Sale, Form, CF22A [No Link]
26. JP Booklet: “How to File and Defend a Civil Claim in JP Court”
29. Sample Lien Forms-DUCIOA Style and Non-DUCIOA Style
30. Sample Trial Questions-Board to Delinquent Owner
31. Case: Park Centre Condo v. Epps (Assessments are “unconditional.”) [No Link]
32. Case: Sea Villa HOA v. Lavine (20-year Statute of Limitations-documents under seal)

## 2023 APPENDICES

1. Sample Collection Policies ***In Exhibits***
  - 1.1 Short Form Collection Policy
  - 1.3 Sample Collection Demand Letter
2. [Certificate of Representation for Artificial Entity and Instructions, Form 50](#)
  - 2.1 [Questions about how non-lawyers can handle cases in JP Court, CF501](#)
  - 2.2 [Form 50 Credit Card Processing Form, Misc 43](#)
3. [Application for Court Account for E-Filing, Form 30](#)
4. [Sample Civil Complaint Form in Debt Action](#) and [Instructions](#), Form No. 1
5. Civil Complaint Forms ***In Exhibits***
  - 5.1 [Civil Complaint Form CF01](#) (with sample optional “*Statement of Claim.*”)
  - 5.2 [Complaint with Counterclaim or Crossclaim, Form CF01CC](#)
6. [Affidavit of Service on Nonresident Defendant and Instructions, Form CF31A](#)
  - 6.1 [Request for Secretary of State Service, and Instructions, Form CF67](#)
  - 6.2 [Request for Forthwith Summon, CF01FS](#)
  - 6.3 [Affidavit and Bond for Attachment In Lieu of Summons, CF05](#)
  - 6.4 [Affidavit of Service, CF31A](#)
7. [Statement of Plaintiff in Support of Default Judgment & Instructions, Form 13](#)

8. [Addendum-Statement in Support of Default Judgment-Deficiency, Form 13DJ](#)
9. [Defendant's Answer to Complaint, CF7](#)
  9. A [Counter Claim or Cross Claim, Form CF01CC](#)
10. [Judgment by Admission - Debt, Form No. 14 ADT](#)
11. [Stipulated Judgment, Form No. 14AS](#)
  - 11.1 Stipulated Agreement ***In Exhibits***
12. [Demand for](#) and [Bill of Particulars](#) and [Instructions](#), Forms 10C-B & CF10BP
13. [Subpoena in a Civil Case, Form No. 58](#)
14. [Application for Motion Hearing, Form No. 11](#)
15. [J P Court Civil Post-Judgment Procedures, Form No. CF14A](#)
16. [Justice of Peace Court, Levy/Constable Sale Information](#)
17. [Garnishment of Wages and/or Property, CF 17](#)
  - 17.1 [Answer to Request for Garnishment of WAGES, CF17A](#)
  - 17.2 [Answer to Request for Garnishment OTHER Than Wages CF 17B](#)
18. Charts to Determine Amount of Wages Subject to Attachment, Form No. 34
  - 18.1 [Wages Subject to 10% Attachment](#)
  - 18.2 [Wages Subject to 15% Attachment](#)
  - 18.3 [Wages Subject to 7% Attachment](#)
19. Rule to Show Cause against Garnishee, Form No. 19 ***In Exhibits***
20. [Procedure for Garnishing/Serving Foreign Corporations, Form No. 17F](#)
21. [Levy of Personal Property, Form No. 16](#) and [Information for Debtor, Form No. 64](#)
22. [Request for Constable Sale, Form No. 22A](#)
23. [Satisfaction/Dismissal/Withdrawal of Judgment, Form No. 36](#)
24. [Application to Revive a Judgment, Form No. 15A](#)
25. [JP Court Certificate of Service, Form Misc 27C](#)
26. ["How to File and Defend a Civil Claim in JP Court"](#)

27. ["Visiting the Justice of the Peace Court-What You Need to Know"](#)
28. ["Questions and Answers About the Rules of Evidence in JP Court"](#)  
  - 28.1 [Delaware Rules of Evidence](#)
29. [Certificate of Service](#)  
Sample Lien Forms-DUCIOA Style and Non-DUCIOA Style ***In Exhibits***
30. Sample Trial Questions-Board to Delinquent Owner ***In Exhibits***
  - 30.1 Rule 50 Representative (Community Manager) Opening Statement/Testimony
  - 30.2 Alternative: Rule 50 Representative Questioning Community Manager
31. Case: Park Centre Condo v. Epps (Assessments are "*unconditional.*") ***In Exhibits***
32. Case: [Sea Villa HOA v. Lavine](#) (20-year Statute of Limitations for assessments)
33. Case: [Adams v. Calvarese Farms Maint. Corp.](#) (Board errors can void assessments.)



# EXHIBITS

# **1. Sample Collection Policies**

# Sample Collections Policy and Resolution

**CAUTION:** The authority for most of the actions describe in the Policy must be stated in the governing documents. If an action is not described in your governing documents, consult a lawyer experienced in community association law. You may need to amend your governing documents to support a collection policy.

The Board of Directors of  [COMMUNITY NAME]  Association

## Adopting a Collection Policy

Adopted \_\_\_\_\_  
(Date)

This resolution is adopted by the association under  [Declaration ¶] or § of ]  Law, at a regular meeting of the board of directors.

## Recitals

1. The association is charged with certain responsibilities for the care, maintenance, and service of certain portions of the community.
2. The association must have the financial ability to discharge its responsibilities.
3. The board must collect assessments and other charges from delinquent owners.
4. The board intends to adopt a uniform, non-discriminating, and systematic procedure to collect assessments and other charges of the association.

**NOW, THEREFORE, IT IS RESOLVED** that the ASSOCIATION adopts these procedures and policies for the collection of assessments and other charges of the association.

1. **Due Dates.** The annual assessment as determined by the association and as allowed in the declaration, articles of incorporation and bylaws shall be due and payable in  #  installments due on the  #  day of each month.

Assessments shall be the personal obligation of the owner(s) of the unit for which such assessment or installment is unpaid. Assessments or other charges not paid to the association by the  #  day of the beginning month in which they are due shall be considered past due and delinquent.

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*Adapted from: Downloadable Resources for Community Operations and Management, [www.caionline.org](http://www.caionline.org)*

Legal Disclaimer: Community associations are governed by state law which can vary widely from state-to-state. Please note that the content contained in this document is intended to be used for general educational and informational purposes only. Although we try to keep the information contained in these documents up-to-date, it may not reflect the most recent developments and it may contain errors or omissions. CAI has not compared or reviewed this document relative to the law in any state and does not warrant or guarantee that the contents of this document comply with the applicable law of your state. The contents of this document are not intended to be a substitute for obtaining advice from a lawyer, community manager, accountant, insurance agent, reserve professional, lender or any other professional.

## Sample Collections Policy and Resolution

2. **Invoices.** The association may, but is not required to, deliver an invoice an owner as a condition to an owner's obligation to pay assessments or other charges of the association. If the association provides an owner with an invoice for [monthly/annual] assessments, although invoices are not required, the invoice should be mailed or sent to the owner between the   #   and   #   day of the month preceding each due date. Non-receipt of an invoice shall not relieve the owner of the obligation to pay the amount due by the due date.

3. **Late Charges Imposed on Delinquent Installments.** Assessments shall be past due and delinquent if not paid as specified above. The association shall impose a \$   #   late charge on the outstanding or past due balance then due the association. The late charge shall be a "common expense" for each owner who fails to pay an installment of the annual assessment by the due date as specified above.

The late charge shall be the personal obligation of the owner(s) of the unit for which such assessment or installment is unpaid. All late charges shall be due and payable immediately, without notice, in the manner provided by the declaration (and in this Collection Policy) for payment of assessments.

4. **Interest.** The association shall impose interest of   #   % *per annum* on any unpaid balance. The interest shall be a "common expense" for each owner who fails to pay an installment of the annual assessment by the due date as specified above.

The interest shall be the personal obligation of the owner(s) of the unit for which such assessment or installment is unpaid. All interest shall be due and payable immediately, without notice, in the manner provided by the declaration (and in this Collection Policy) for payment of assessments.

5. **Acceleration of Assessment.** Under [Governing Document ¶] or law § ], if an owner's default in paying an installment of any assessment levied against his/her unit continues for   #   (        ) days beyond the due date, the association, at its option, may accelerate (or require immediate payment of) all remaining payment due for the remainder of the [annual?] assessment and declare them immediately due in full.

6. **Returned Check Charges.** In addition to any charges imposed under the declaration, articles of incorporation, and bylaws, the rules and regulations of the association, or this resolution, a \$   #   fee shall be assessed against an owner if any check or other instrument attributable to or payable for the benefit of such owner is not honored by the bank or is returned by the bank for any reason, including but not limited to insufficient funds.

This returned check charge shall be a "common expense" for each owner who tenders payment by check or other instrument not honored by the bank upon which it is

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*Adapted from: Downloadable Resources for Community Operations and Management, www.calonline.org*

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# Sample Collections Policy and Resolution

drawn. A return check charge shall be due immediately, upon demand. Notwithstanding this provision, the association may pursue all additional remedies allowed by law.

Returned check charges shall be the obligation of the owner(s) of the unit for which payment was tendered to the association. Return check charges shall become effective on any instrument given to the association for payment of sums due under the declaration, articles, bylaws, rules and regulations, or this resolution after (date). If two or more of a unit owner's checks are returned unpaid by the bank within any (fiscal) year, the association may require that the unit owner's future payments, for a period of one year, be made by certified check or money order.

**7. Attorney's Fees on Delinquent Accounts.** As an additional expense permitted under the declaration, articles, bylaws, and statutes, the association shall be entitled to recover its reasonable attorney's fees and collection costs in the collection of assessments or other charges due the association from a delinquent owner. The reasonable attorney's fees and costs incurred by the association shall be due immediately when incurred, upon demand.

**8. Application of Payments Made to the Association.** Payments received from an owner will be credited or applied in this order:

1. Charges for legal fees, court costs, and other costs of collection
2. All late charges and interest accrued
3. All other charges incurred by the association because of any violation by an owner, his/her family, employees, agents or licensees, of the declaration, articles of incorporation, bylaws, rules and regulations, or resolutions.
4. The monthly assessment for a unit, including any accelerated or special assessment due; payments shall be applied toward the oldest month(s) then owed.

**9. Collection Letters.** After an assessment installment or other charge due the association becomes # days past due, the association may, but is not required to, send a *late notice* to the unit owner. The association may simultaneously send a copy of the notice to the mortgagee of the unit.

If payment in full is not received within # days, the association may, but is not required to, send notice to the unit owner it intends to begin collection, and may, but is not required to, refer the account to an attorney. The association may simultaneously send a copy of the notice to the mortgagee of the unit.

---

*Adapted from: Downloadable Resources for Community Operations and Management, [www.caionline.org](http://www.caionline.org)*

Legal Disclaimer: Community associations are governed by state law which can vary widely from state-to-state. Please note that the content contained in this document is intended to be used for general educational and informational purposes only. Although we try to keep the information contained in these documents up-to-date, it may not reflect the most recent developments and it may contain errors or omissions. CAI has not compared or reviewed this document relative to the law in any state and does not warrant or guarantee that the contents of this document comply with the applicable law of your state. The contents of this document are not intended to be a substitute for obtaining advice from a lawyer, community manager, accountant, insurance agent, reserve professional, lender or any other professional.

# Sample Collections Policy and Resolution

**10. Use of Certified Mail/Regular Mail.** If the association shall send a collection or demand letter or notices to a delinquent owner by regular mail, the association may also send, but shall not be required to send, an additional copy of that letter or notice by certified mail, or other Postal Service "Delivery Tracking" service.

**11. Liens.** The association may record a notice of lien against the property of any delinquent owner under the terms and provisions of the declaration, articles of incorporation, and bylaws. A copy of the notice of lien shall be mailed to the owner and to the mortgage lender with a request that the lender send a letter to the delinquent owner advising the owner of the lender's option to accelerate the mortgage debt.

**12. Referring Delinquent Accounts to a Representative.** The association may, but is not required to, appoint an officer, full time employee or property manager of the association to represent the community and refer delinquent accounts to the representative for collection in a lawsuit for "Debt" in Justice of the Peace Court without a lawyer, following Justice of the Peace Court Rules. Upon referral to the representative, the representative shall take all appropriate action to collect the accounts referred.

**13. Referring Delinquent Accounts to Attorneys.** The association may, but is not required to, refer delinquent accounts to an attorney for collection. Upon referral to the attorney, the attorney shall take all appropriate action to collect the accounts referred.

**14. Referring Delinquent Accounts to Collection Agencies.** The association may, but is not required to, refer delinquent accounts to one or more collection agencies for collection. Upon referral to a collection agency, the agency shall take all appropriate action to collect the accounts referred.

**15. In Granting Waiver of Policy.** The association may grant a waiver of any provision of this Collection Policy if an owner petitions in writing showing a personal hardship. The relief granted an owner shall be appropriately documented by the association with the name of the person or persons representing the association granting the relief and the conditions of the relief. In addition, the association is authorized to extend the time for filing lawsuits and liens, or to otherwise modify the procedures contained in this Policy, as the association shall determine appropriate under the circumstances.

**16. Notification to Owners.** The association shall notify all owners of this resolution and the late charges, returned check charge, and attorney's fees to be imposed after the effective date of those provisions of this resolution. All other policies and procedures in this resolution shall be effective immediately.

---

*Adapted from: Downloadable Resources for Community Operations and Management, [www.caionline.org](http://www.caionline.org)*

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## Sample Collections Policy and Resolution

**17. Ongoing Evaluation.** Nothing in this resolution shall require the association to take specific actions other than to notify homeowners of the adoption of these policies and procedures. The association has the option and right to continue to evaluate each delinquency on a case-by-case basis.

IN WITNESS WHEREOF, the undersigned have executed this resolution the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

---

*Adapted from: Downloadable Resources for Community Operations and Management, [www.caionline.org](http://www.caionline.org)*

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## **1.1 Short Form Collection Policy**



[Name of Common Interest community]

POLICY RESOLUTION No. \_\_\_\_\_

COLLECTION POLICY RESOLUTION

Upon Motion properly made and seconded, and after full discussion of it, the

Board unanimously adopted the following Resolution:

RESOLVED, the following Collection Policy is immediately effective for annual assessments for \_\_\_\_\_:

1. On \_\_\_\_\_<sup>1</sup> of each year, an invoice for annual assessments will be mailed with a due date of \_\_\_\_\_. The invoice will include a warning that if the assessment is not paid by \_\_\_\_\_ penalties of \_\_\_\_\_ and interest of \_\_\_\_\_ will begin to accrue.
2. On \_\_\_\_\_ of each year, if the invoice is not paid in full, interest at \_\_\_\_\_ per year starts to accrue on all unpaid balances
3. On \_\_\_\_\_ of each year, if the invoice is not paid in full, a penalty of \_\_\_\_\_ shall be assessed on all unpaid balances (in addition to interest at \_\_\_\_\_ per year).
4. On \_\_\_\_\_ of each year, if all amounts due are not paid in full, a letter will be sent from the Association or the Association's attorney warning that if the balance due is not paid in full by \_\_\_\_\_ a lien will be filed and all costs will be assessed to the owner.
5. On \_\_\_\_\_ of each year, if all amounts due are not paid in full, a lien will be filed in the County land records, and a copy will be sent to the owner with a statement of increased amounts for preparation and satisfaction of lien upon payment.
6. Once any owner reaches an outstanding balance of \$\_\_\_\_\_, suit will be filed seeking judgment and eventual sheriff sale of the owner's property.

All as presented unto and read at this meeting of the Board of Directors of \_\_\_\_\_.

---

<sup>1</sup> Conform this date and other requirements to the governing documents, or if your County offers a maintenance assessment billing service, coordinate the dates with the counties billing services if consistent with the governing documents.

[Name of Common Interest community]

**RESOLUTION ACTION RECORDED**

**Resolution Type:**

Collection Policy Resolution

Resolution No.: \_\_\_\_\_

Duly adopted at a meeting of the Board of Directors held on \_\_\_\_\_, 20\_\_

Motion By: \_\_\_\_\_

Seconded By: \_\_\_\_\_

	<b>Vote:</b>	Yes	No	Abstain	Absent
_____ President		_____	_____	_____	_____
_____ Vice President		_____	_____	_____	_____
_____ Treasurer		_____	_____	_____	_____
_____ Secretary		_____	_____	_____	_____
_____ Director		_____	_____	_____	_____

ATTEST: \_\_\_\_\_

Date: \_\_\_\_\_

File:

Book of Minutes: \_\_\_\_\_, 2014

Resolution Effective: \_\_\_\_\_

## **11.1 Stipulated Agreement**

## Stipulated Agreements vs. Judgments

Another tool available to Common Interest Communities looking to collect on a debt is a stipulated agreement. Stipulated agreements are useful for situations where the homeowner is not contesting the debt but cannot pay the balance in full due to current or past financial constrictions. A stipulated agreement essentially is an agreement whereby a homeowner acknowledges that a debt is owed and agrees to terms of repayment. Provided they do so, no judgement is entered against them. There are obvious benefits to both parties – since the homeowner avoids a judgment, they also avoid the potential damage such a judgment could have on their credit history. In addition, the homeowner gets to negotiate terms of repayment tailored to their means. (Often, a Community will waive payment of accrued interest as an added incentive to reach an agreement.) For the community, they receive a promise of repayment in regular installments over time without the need of a trial. Further, the agreement could be converted into a judgment without further Court action if the homeowner fails to live up to their end of the bargain.

## STIPULATED AGREEMENT

C.A. JP XX-XX-XXXXXX

Plaintiff: \_\_\_\_\_

Defendant: \_\_\_\_\_

The parties stipulate and agree:

1. A debt is owed by the Defendant to the Plaintiff in the amount of \$XX.cc (which consists principally of unpaid community association maintenance assessments due the Plaintiff of XX/per year for the following year(s):
  - [list year(s) and amount per each year due]
  - plus the court costs of XX and
  - interest on the debt in the amount of \$XX.cc (interest having accrued at the rate of XX% between dd/mm/yy and dd/mm/yy under the deed restrictions.))
2. The Defendant agrees to repay the debt: (insert terms of repayment here.)
3. Providing that the principal and court costs (totaling \$XX.cc) are paid according to the payment plan expressed in Term No. 2, the Plaintiff agrees to [waive collection on the interest accrued-if that is part of the agreement].
4. If the Defendant fails to adhere to the payment plan expressed in Term No. 2, the Plaintiff reserves the right to advise the Court of Defendant's breach and the Court to convert this agreement into a judgment with no further Court proceedings. In that event, the judgment will include any principal and court costs still owed, plus the interest totaling \$XX.cc as expressed in Term No. 1 and any interest that would have accrued at the current legal rate between the date of this stipulation and the date of breach.
5. Should the Defendant adhere fully to the payment plan expressed in term No. 2, the Plaintiff shall be considered satisfied. It is incumbent upon the Plaintiff to

notify the Court within 90 days of final payment that this matter should be dismissed with prejudice.

6. If the time expressed in Term No. 2 for payment of the debt exceeds the Statute of Limitations as defined by 10 Del. Code § 8106, the parties agree that adherence to the payment plan tolls the Statute.
7. Last, since the debt as expressed in Term No. 1 is admitted by the Defendant, and since the Defendant is, engaging in this stipulation and agreement thereby waiving their right to a trial before a Justice of the Peace, the Defendant understands and acknowledges that they are irrevocably waiving any appeal right that exists under 10 Del. Code § 9570.

By signing below, I acknowledge and accept the terms of this agreement.

Plaintiff: \_\_\_\_\_

Defendant: \_\_\_\_\_

IT IS SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ (seal)

Justice of the Peace.

**19. Rule to Show Cause against Garnishee,  
Form No. 19**

**IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR \_\_\_\_\_ COUNTY  
COURT NO. \_\_\_\_\_**

**COURT ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_

**CIVIL ACTION NO.** \_\_\_\_\_

**PLAINTIFF(S):**

**VS.**

**GARNISHEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DEFENDANT(S):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SERVED ON:** \_\_\_\_\_ (Date/Time)

**CONSTABLE:** \_\_\_\_\_

Phone \_\_\_\_\_

**RULE TO SHOW CAUSE AGAINST GARNISHEE**

This Court has issued to you, the garnishee, an order to attach or garnish the wages of the above named defendant/debtor, whom the plaintiff alleges is your employee.

To date, plaintiff alleges you have failed to comply with the Court order.

The Court is now scheduling a hearing for which you are ordered to appear to answer to your failure to follow the court order. You must appear at the Justice of the Peace Court named above for the hearing and bring all relevant payroll records and/or other documentation to explain your position. If the named defendant/debtor does not now work for you or was not an employee at the time you were served by the court you must appear to offer sworn testimony to those facts.

**IF YOU FAIL TO APPEAR**, you are subject to court sanctions as follows:

- (a) You may be held in contempt of court under 10 Del.C. § 9506 and could face a fine of up to \$100.00 or imprisonment up to 170 days.
- (b) The judgment may be transferred from the defendant to you.

If you communicate with the plaintiff/creditor and resolve this matter and the plaintiff notifies the Court in writing that he or she wishes to cancel, you may be excused from the hearing.

**HEARING DATE:** \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

**IT IS SO ORDERED** on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Justice of the Peace



**29. Sample Lien Forms-  
DUCIOA Style and Non-DUCIOA Style**

EFiled: Feb 10 2015 10:22AM EST  
Transaction ID 567  
Case No. N15C-02-08( )



20150126-0003  
Pages: 2 F: \$54.00  
01/26/15 08:55:41 AM  
T20150002597  
Michael E. Kozikowski  
New Castle Recorder MISC

Tax Parcel No: 26-042.00-0:  
Prepared by &  
Return to: Fr . . . . . Esquire  
P.O. Box  
Wilmington, DE

## NOTICE OF DUCIOA LIEN

WHEREAS, PURSUANT TO 25 Del. C. §81-316(b) OF THE DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT ("DUCIOA");

1. DESCRIPTION OF PROPERTY/UNIT: A condominium unit in  
Condominiums .as Unit#: 13, Wilmington, DE 19801,  
New Castle County tax parcel no.
2. **NAME OF RECORD PROPERTY OWNERS:**
3. **AMOUNT PRESENTLY DUE:** \$37.1
4. **PRIORITY LIEN\*:** \$2.1 (\*pursuant to 25 Del. C. §81-316(b)(ii),  
G: Condominium Council has super-lien priority  
lien over first or second security interest lienholders for up to six months of common expense assessments,  
plus recording/satisfaction costs);
5. **RECORDING CHARGES FOR THIS NOTICE:** \$57.00;
6. **AMOUNT DUE TO TERMINATE/RELEASE LIEN:** \$37.1 plus any further  
assessments, charges and fees assessed to this unit, plus recording/satisfaction costs;
7. **DATE DUE:** Common expense assessments are due on or by the first day of each month;
8. The amounts owing set forth in this NOTICE OF LIEN are correct, and are due and owing.

(Signature Page to Follow)

EFiled: Feb 10 2016 10:22AM EST  
Transaction ID 567  
Case No. N15C-02-08L



IN WITNESS WHEREOF the said Lien Holder has executed this NOTICE OF DUCIOA LIEN this 22nd day of January 20

SEALED AND DELIVERED

G:  
CONDOMINIUMS  
CONDOMINIUM COUNCIL and  
ASSOCIATION OF OWNERS

Witness \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Jr., Treasurer

STATE OF DELAWARE :  
: SS.  
NEW CASTLE COUNTY :

BE IT REMEMBERED on this 22nd day of January, A.D., 20 , personally appeared before me, the subscriber, a notary public for the State of Delaware, ( \_\_\_\_\_ ) Treasurer of \_\_\_\_\_ Condominium Council, known to me personally to be such, and acknowledged this NOTICE OF DUCIOA LIEN to be his act and deed and the act deed of said Condominium Council and Association of Owners, that the signature of the Treasurer thereto is in his own proper handwriting, and that his act of sealing, executing, acknowledging and delivery said NOTICE OF DUCIOA LIEN was duly authorized by a resolution of \_\_\_\_\_ Condominium Council.

GIVEN under my hand and seal of office the day and year aforesaid.

V \_\_\_\_\_ (SEAL)  
Notary Public



# Non-DUCIOA Lien Form

TAX #2-:

PREPARED BY & RETURN TO:

(302)

**COMMUNITY ASSOCIATION INC.'S  
NOTICE OF LIEN FOR ASSESSMENTS DUE**

THIS STATEMENT OF ASSESSMENTS DUE is made this 5th day of June, 2012, by COMMUNITY ASSOCIATION, INC., a corporation of the State of Delaware, with an address of c/o Inc., Inc., 19971, hereinafter the "Association."

WHEREAS, [redacted] (TE, of [redacted]) n, Delaware 19[redacted] a member of the above-named Association, owning Lot 57, Phase 2A & 2B, and is delinquent in her community assessment payments in the amount of \$1,41[redacted] plus interest thereon at the legal rate accruing from January 1, 20[redacted], together with accruing assessments, court costs, late fees, collection costs and attorney's fees; and

WHEREAS, [redacted] Community Association, Inc. desires to put the public on notice of the aforesaid delinquent assessments by recording this Notice of Lien for Assessments Due in accordance with Chapter [redacted], Section [redacted], of the Community Charter.

NOW, THEREFORE, notice is being given by these presents that a lien is hereby placed against Lot [redacted], Phase 2A & 2B, in the amount of \$1,41[redacted] plus interest accruing thereon at the legal rate from January 1, 2011, in accordance with Chapter 13, Section 13.7 of the Community Charter, infra, together with accruing assessments, court costs, late fees, attorney's fees and collection costs until the delinquent assessments are paid in full in accordance with Chapte. [redacted] Section [redacted] of the Community Charter, infra, which is of record in the Office of the Recorder of Deeds, in and for County, Delaware, in Deed Book [redacted], Page [redacted], et seq.

This document shall be recorded and indexed at the Office of the Recorder of Deeds, in and for [redacted] County, Delaware, indexing with the above-named delinquent property owner in the Grantor Index and cross indexing with [redacted] Community Association, Inc.

K5

6

Persons having notice of the recording of this document and being interested in the lien status of the above-named property owner are advised to direct any inquires to the above-listed address for the Association. Upon payment in full of the amount specified herein, a release from this lien shall be filed in the Office of the Recorder of Deeds, aforesaid, for indexing and recording.

The filing of this lien shall not prevent the accrual of interest as a penalty for delinquent assessments.

IN WITNESS WHEREOF, \_\_\_\_\_ : Community Association, Inc. has caused this statement to be executed by its President and attested to by its Secretary on this \_\_\_ day of \_\_\_\_\_, 20

COMMUNITY  
ASSOCIATION, INC.)

BY: \_\_\_\_\_ (SEAL)  
PRESIDENT

(CORPORATE SEAL)

ATTEST: \_\_\_\_\_  
SECRETARY

STATE OF Delaware  
 ) SS:  
COUNTY OF            )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, President of \_\_\_\_\_ COMMUNITY ASSOCIATION, INC., party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation, that the signature of the President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Council of said corporation.

GIVEN under my hand and seal of Office, the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

PRINT NAME: \_\_\_\_\_ NOTARY PUBLIC DELAWARE  
MY COMMISSION EXPIRES: \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

Recorder of Deeds  
Scott Dailey  
Jun 14, 2012 10:00A  
Sussex County  
Doc. Surcharge Paid

## **30. Sample Trial Questions- Board to Delinquent Owner**

**SAMPLE HOMEOWNERS ASSOCIATION INC. VS. Homeowner.**

**C.A. NO. JP16-\_\_-000??**

**Potential Exhibits:**

- 1. Declaration of Covenants, Condition, Restrictions and Reservation of Easements for Samples, recorded at Book 1111, pg 111, et seq.**
- 2. Deed of Ownership of Homeowner**
- 3. Ledger of Account of Homeowner**

**Themes:**

- A. This is an action about a debt owed to the Association for annual assessments.**



**30.1 Rule 50 Representative  
(Community Manager)  
Opening Statement/Testimony**

Good Afternoon Your Honor.

My name is Gail Launay-Tarlecki and I am the Property Manager for Samples Homeowners Association.

I have been managing the community for 3 years. As part of my duties as Property Manager for Samples Homeowners Association, I assist the community with collection of owner assessments.

My job is to mail out the invoices, receive payments, record them into our accounting system and deposit them into the Samples HOA bank account.

When owners are late with their payments, I send out delinquency notices. This process makes me very familiar with all the Samples HOA owner's account records.

The Samples Homeowner's Association is located in Dover, Delaware. It is governed by a Board of Directors that is elected by the owners. The Board is elected at the Annual Meeting of the Samples Homeowners Association.

Your Honor, I would like to provide you with a document marked Plaintiff's Exhibit 1. This is a true and accurate copy of the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for the Samples Homeowners Association. Under the Declaration in accordance with Article IV section 4.11 of the Association's Declaration the defendant is obligated to pay yearly assessments to the Samples Homeowner's Association. These assessments are due monthly on the first of the month.

The purpose of the assessments is to collect money from the homeowners that is used to fund the operating fund for the HOA. They use their operating fund to meet the HOA's expenses. Clubhouse and other common element maintenance, landscaping for the common

elements, electric, water and sewer bills for the common elements, HOA Insurance, any supplies and the fee for property management for the HOA.

By the way, your Honor, the Declaration also allows the HOA to collect attorney's fees, collection costs, court costs and interest at the legal rate of 6.5%. Since the HOA is paying a cost above their usual management fee for me to spend the time preparing this case and being present in court, I was wondering if you would consider allowing my collection costs?

**At this time, I would like to move Exhibit 1 into evidence.**

I am now presenting you with Plaintiff's Exhibit 2. This is a true and accurate copy of the deed evidencing the Defendant's ownership of the unit located with in the Samples Homeowner's Association from June 30, 2015 to the present. The Defendant has owned the property in the HOA since December 18, 2014. Their address is 123 Green Street, Dover, Delaware 19904.

**I would like to move Exhibit 2 into evidence.**

The Defendant has a delinquent balance for the payment of the annual assessments to the Samples Homeowner's Association from the period covering from August 31, 2015 through November 1, 2018. I am handing you a document marked as Plaintiff's Exhibit 3. This is a true and accurate representation of the Defendant's account history with the Samples Homeowners Association. The total amount of past due assessments due from the defendant during this delinquency period is \$2,518.50 in assessments, administrative costs and late charges.

**I would like to move Plaintiff's Exhibit 3 into evidence.**

Your honor. The total amount sought today is \$2,518.50 (plus collection costs and fees of \$480 for a total of \$2,998.50).

**30.2 Alternative:  
Rule 50 Representative  
Questioning Community Manager**

WITNESS: Gail

1. Can you please state your full name and current title for the record?
2. How long have you been community manager for Samples Homeowners Association, Inc.
3. As part of your duties as community manager for Samples Homeowners Association, Inc., do you oversee or assist with the collection of assessments? *(Yes, Explain duties)*
4. As part of your management duties, are you familiar with the account records for the Association? *(Yes)*
5. Are you familiar with Samples?
  - a. Where is it?
  - b. How is it governed? *(through a board of directors elected by owners)*
  - c. May I refer to it as the Association?
6. I'm handing you a document marked as Plaintiff's **Exhibit 1**. Is this a true and accurate copy of the Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements? *(Yes)*
7. Under the Declaration, are the Defendants obligated to pay yearly assessments to the Association? *(Yes, in accordance with Article IV section 4.11 of the Association's Declaration)*
8. When are assessments due? *(Monthly, the first of the month)*
9. What is the purpose of the annual assessments and what services do they cover? *(Explain)*
10. Does the Declaration give the Association the right to collection attorney's fees, court costs and interest at the legal rate of 6.5%? *(Yes)*
11. MOVE EXHIBIT 1 INTO EVIDENCE
12. I'm handing you a document marked as Plaintiff's **Exhibit 2**. Is this a true and accurate copy of the deed evidencing the Defendants' ownership of the unit located within the Association from June 30, 2015 to present? *(Yes)*
13. Are the Defendants, Homeowner, the owners of a unit/lot located within Samples Homeowners Association Inc.? *(Yes, 123 Green Street, Dover, DE 19966. They have owned the property since December 18, 2014.)*
14. MOVE EXHIBIT 2 INTO EVIDENCE
15. Do the Defendants have a delinquent balance for the payment of the annual assessments to the Association from the period covering August 31, 2015 through June 1, 2018? *(Yes)*
16. I'm handing you a document marked as Plaintiff's **Exhibit 3**. Is this a true and accurate representation of the Defendants' account history with the Association? *(Yes)*
17. What is the total amount of past due assessments due from the Defendant during this delinquency period? *(\$2,518.50 in assessments, administrative costs and late charges)*
18. MOVE EXHIBIT 3 INTO EVIDENCE
19. Does the Association's Declaration provide for the recovery of attorneys' fees and collection costs from delinquent unit owners? *(Yes, pursuant to Article IV, Section 4.11)*

20. Has the Association retained the firm of Whiteford Taylor and Preston to seek the collection of assessments from Homeowner? *(Yes)*
21. Have you agreed to pay attorney fees? *(Yes.)*
22. The Association does pay costs correct? *(Yes.)*
23. Has the Defendants made any payments/credits towards the delinquency during this time period? *(Yes/No – Refer to ledger)*
24. What is the total amount sought today from the Defendants?
- **\$2,518.50 in assessments**
  - **Plus attorney's fees and costs \$2,578.75**
  - **TOTAL = \$5,097.25**

**31. Case:**  
***Park Centre Condo v. Epps***  
**(Assessments are “unconditional.”)**

1997 WL 817875

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Delaware.

Park Centre Condominium Council

v.

Jerre E. EPPS

v.

Remo MAZZETTI, individually and t/a First State  
Contractors and also t/a First State Builders, First  
State Contractors, Inc. and A. Mazzetti & Sons, Inc.

No. 95C-05-033-WTQ.

|  
May 16, 1997.

Letter Opinion and Order on Two Motions Relating  
to the Complaint (1) Plaintiff's Motion for Summary  
Judgment-Final Judgment Granted. (2) Defendant/Third-  
Party Plaintiff's Motion for Summary Judgment-Denied.  
Case Remains Active as to Other Claims.

#### Attorneys and Law Firms

John H. Bengé, Esquire, Allmond Eastburn & Bengé,  
Wilmington, DE.

Roger D. Landon, Esquire, Murphy Welch & Spadaro,  
Wilmington, DE.

J. Calvin Williams, Jr., Esquire, Law Offices of J. Calvin  
Williams, Jr., Wilmington, DE.

Mason E. Turner, Jr., Esquire, Prickett, Jones, Elliott,  
Kristol & Schnee, Wilmington, DE.

Laura M. Nolte, Esquire, Goldfein & Joseph,  
Wilmington, DE.

#### Opinion

QUILLEN, J.

*Amount Owed Prior to Institution of Suit*

April 1994 through May 1995

14 months at \$200 per unit

= \$5,600

\*1 Dear Messrs. Bengé, Landon, Williams, and Turner,  
and Ms. Nolte:

This is the Court's decision on the competing  
motions for summary judgment filed by plaintiff Park  
Centre Condominium Council and defendant/third-party  
plaintiff Jerre E. Epps. Each party seeks summary  
judgment in its favor on plaintiff's direct claim.  
For the reasons herein stated, plaintiff's Motion for  
Summary Judgment is GRANTED, defendant/third-  
party plaintiff's Motion for Summary Judgment is  
DENIED.

#### I. FACTS

Defendant Jerre E. Epps (hereinafter "Epps") is the  
record owner of two units at Park Centre Condominiums  
(hereinafter "PCC"). Plaintiff Park Centre Condominium  
Council (hereinafter "the Council") is responsible for  
fixing and collecting condominium assessments at PCC.  
On May 2, 1995, the Council filed a complaint in  
this Court seeking judgment against Epps for unpaid  
condominium assessments, alleging that Epps has failed  
to pay the monthly assessments fixed by the Council  
since April 1, 1994. The Council also sought to accelerate  
payments for the remainder of 1995, which it claims to  
have the power to do under the Code of Regulations  
for PCC. Epps denied liability for payment of the  
assessments and asserted a counterclaim against the  
Council to recover for damages to personal property, for  
an amount expended in repairs which he claims were the  
responsibility of the Council, and for lost rental income  
from his inability to sublease the units. A third-party  
complaint was filed by Epps on June 15, 1995 against the  
various third-party defendants, whom he alleges are liable  
for the defective condition of his condominium units.

The funds now sought by the Council are spelled out in  
the Affidavit of Alan Mazzetti, attached as Exhibit A to  
the Council's Motion, and include accelerated assessments  
for 1996 and 1997:



*Unpaid Accelerated Assessments*

June 1995 through December 1995

7 months at \$200 per unit = \$2,800

January 1996 through December 1996

12 months at \$200 per unit = \$4,800

January 1997 through May 1997

5 months at \$200 per unit = \$2,000

*Total due as of May 1, 1997* = \$15,200

See Ex. A, Pl.'s Mot. for Summ. J. (Docket No. 25) at 2. Approximately five months after institution of the present action, the parties discovered that Epps had overpaid his assessments from July 1990 through March 1994 by \$100 per month. The amount of overpayment was \$4,200 (condominium fees were waived for the three Decembers). The Council has credited the \$4,200 to Epps' amount owed, and seeks a judgment of \$11,000.

In his own Motion for Summary Judgment, Epps seeks summary judgment on plaintiff's direct claim. The gist of the Motion is that he did not actually owe the Council any money prior to the institution of the suit, as he alleges is indicated by Exhibit A to his Motion (Docket No. 28). As Epps argues, the \$4,200 credit for overpayment, combined with a credit on his condominium fee account of \$1,115.76, gives him a \$115.76 credit to his account as of May 1, 1995. Epps alleges that since there was no deficit in his account at the time the suit was filed, the Council had no claim as of the date of the filing of the complaint and the acceleration of subsequent assessments was therefore also improper.<sup>1</sup>

## II. DISCUSSION

\*2 When considering a motion for summary judgment under *Superior Court Civil Rule 56*, the Court's function is to examine the record to determine whether genuine issues of material fact exist. *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, Del.Super., 312 A.2d 322, 325 (1973). If, after viewing the record in a light most favorable to the non-moving party, the Court finds there are no genuine issues of material fact, summary judgment is

appropriate. *Id.* The Court's decision must be based only on the record presented, including all pleadings, affidavits, depositions, admissions, and answers to interrogatories, not on what evidence is "potentially possible." *Rochester v. Katalan*, Del.Super., 320 A.2d 704, 708 (1974). All reasonable inferences must be drawn in favor of the non-moving party. *Sweetman v. Strescon Indus.*, Del.Super., 389 A.2d 1319, 1324 (1978). Summary judgment will not be granted if the record indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances. *Ebersole v. Lowengrub*, Del.Super., 180 A.2d 467, 470 (1962).

Upon review of the facts in the record and the applicable law, the Court concludes that there is no genuine issue of material fact and that summary judgment is appropriate in favor of the Council on the Council's complaint. First, the Court finds that the obligation to pay assessments is unconditional and that Epps had no authority to suspend payment of the assessments because of any alleged breaches of a duty to repair or maintain. Second, the Court finds that the Code of Regulations for PCC clearly prohibits the treatment of the working capital credit as an advance payment on assessments, and that Epps therefore had an assessment deficit of at least \$1,400 (not including any accelerated assessments) as of the filing of the complaint. Third, the Court finds that the Code of Regulations for PCC clearly permits the Council to accelerate assessment payments as it did in the present matter.

*A. Obligation to Pay Assessments is Unconditional*

The issue of whether a condominium homeowner's obligation to pay condominium fees is unconditional appears to be a matter of first impression in the State. The issue was raised in *Linden Knoll Condo. Ass'n v. McDermott*, Del.Super., C.A. No. 93C-03-090, Del Pesco, J. (Aug. 19, 1994), but the Court found it unnecessary to decide the question presented. Fortunately, the question has been addressed by the courts of many other States, and the answer is fairly uniform: *the obligation to pay is unconditional*.<sup>2</sup> The Massachusetts Supreme Judicial Court wisely noted the importance of regular payment of condominium fees to the proper management of the condominium association:

Whatever grievance a unit owner may have against the condominium trustees must not be permitted to affect the collection of lawfully assessed common area expense charges. A system that would tolerate a unit owner's refusal to pay an assessment because the unit owner asserts a grievance, even a seemingly meritorious one, would threaten the financial integrity of the entire condominium operation. For the same reason that taxpayers may not lawfully decline to pay lawfully assessed taxes because of some grievance or claim against the taxing governmental unit, a condominium unit owner may not decline to pay lawful assessments.

\*3 *Trustees of the Prince Condo. Trust v. Prosser*, Mass.Supr., 412 Mass. 723, 592 N.E.2d 1301, 1302 (1992). This Court finds the reasoning and conclusion of the *Prosser* Court to be persuasive on this point. Notwithstanding the silence of the Delaware Unit Property Act, 25 Del. C. ch. 22, on a condominium homeowner's right to withhold fees, this Court finds the public policy of this State to be in favor of an unconditional obligation to pay the assessment fees, irrespective of any liability which a condominium association may bear to the homeowner.

*B. Working Capital Credit is Not an Advancement on Assessments*

As noted, Epps alleges that the \$4,200 overpayment credit and the condominium fee account credit of \$1,115.76 demonstrate that he had a \$115.76 credit to his account as of May 1, 1995. However, as the Council correctly

points out, Epps was not entitled to treat that credit as a prepayment of his condominium fees. Under Paragraph 8.1.3 of the Code of Regulations for PCC, the \$1,115.76 was a two month reserve to be used as working capital:

At the time of the first conveyance of each unit, the grantee named in the first deed to such unit shall contribute to the Council a working capital fund equal to two (2) month's estimated common expense assessment against such unit, to be held by and for Council in a separate account to meet unforeseen contingencies and to provide capital for equipment or services deemed necessary by the Council. *Such working capital shall not constitute advance payment of assessments*, nor shall it be refunded to any unit owner upon conveyance of his unit, but shall be deemed automatically assigned to each successive unit owner as an appurtenance of the unit until such time, if any, as the condominium regime is terminated or until such fund is otherwise exhausted.

See Ex. B, Pl.'s Mot. for Summ. J. (Docket No. 25) (emphasis added). It seems clear that the \$1,115.76 sum is not a credit to the assessments under the Code of Regulations. Therefore, there was a deficit of \$1,400 (\$5,600-\$4,200), equal to three and one-half months of assessments, at the time of the filing of the complaint (not taking any acceleration into account).

*C. Failure to Pay Assessments in Timely Fashion Permits Council to Accelerate*

Under Paragraph 8.2.3 of the Code of Regulations for PCC, the Council reserves the right, in the event a homeowner defaults on payment of assessments, to demand payment of all assessments scheduled to become due during the remainder of the fiscal year:

In the event that the monthly or any special assessment of any unit owner remains unpaid, regardless of the amount which he has on deposit, or in the event that the amount on deposit remains deficient, for a period of more than sixty (60) days, the Council shall have the right to call in writing for immediate payment of all sums past due and all assessments scheduled to become due during the remainder of the fiscal year, as if this aggregate amount had originally been due and payable in full. The Council may take any and all steps available within the law to collect the amount due plus interest and attorney's fees.

\*4 See Ex. B, Pl.'s Mot. for Summ. J. (Docket No. 25).<sup>3</sup> Given that Epps had a deficit at the time of the filing of the complaint, the Council was within its rights under Paragraph 8.2.3 to accelerate payment of the assessments due for the remainder of the 1995 fiscal year. Furthermore, since the deficit continues to exist and Epps made no payment of any assessments due during the 1996 fiscal year and during these first five months of 1997, the Court finds that the Council is within its rights to accelerate the assessments due for the 1996 fiscal year and the first five months of 1997.<sup>4</sup> As indicated in Part I of this Opinion, the total accelerated assessments due for the period of June 1995 through May 1997 is \$9,600.

### III. CONCLUSION

#### Footnotes

- 1 A third motion, third-party defendant Remo Mazzetti's Motion to Dismiss pursuant to [Superior Court Civil Rule 37\(b\)](#), had been filed for presentation at oral argument but was withdrawn prior to argument.
- 2 See, e.g., *Agassiz West Condo. Ass'n*, N.D.Super., 527 N.W.2d 244 (1995); *Panther Lake Homeowners' Ass'n v. Juergensen*, Wash.App., *Park Place Estates Homeowners Ass'n v. Naber*, Cal.App., 29 Cal.App.4th 427, 35 Cal.Rptr.2d 51 (1994); *Forest Villas Condo. Ass'n v. Camerio*, Ga.App., 205 Ga.App. 617, 422 S.E.2d 884 (1992); *Trustees of the Prince Condo. Trust v. Prosser*, Mass.Super., 412 Mass. 723, 592 N.E.2d 1301 (1992); *Rivers Edge Condo. Ass'n v. Rere, Inc.*, Pa.Super., 390 Pa.Super. 196, 568 A.2d 261 (1990); *Abbey Park Homeowners Ass'n v. Bowen*, Fla.App., 508 So.2d 554 (1987); *Pooser v. Lovett Square Townhomes Owners' Ass'n*, Tex.App., 702 S.W.2d 226 (1985); *Newport West*

The obligation to pay the lawful assessments of the condominium association is not dependent upon the fulfillment of any obligation which the association may owe to the homeowner. Whatever grievance Epps may have against the Council, it does not entitle him to withhold payment of lawful assessments. The \$1,115.76 working capital credit is not an advance payment on those assessments. Epps was therefore in default of \$1,400 in monthly assessments when the complaint was filed in May 1995. He has also failed to pay any assessments that came due after the filing of the complaint, up to the present day. The Council may therefore accelerate the assessments due for the remainder of the 1995 fiscal year, the entire 1996 fiscal year, and the first half of the 1997 fiscal year.<sup>5</sup> The total amount owed is \$11,000, representing \$1,400 for April 1994 through May 1995 (\$5,600 owed minus the \$4,200 credit) and \$9,600 for June 1995 through May 1997.

For these and all of the foregoing reasons, defendant/third-party plaintiff Jerre E. Epps' Motion for Summary Judgment is DENIED and plaintiff Park Centre Condominium Council's Motion for Summary Judgment is GRANTED. Summary Judgment is entered in favor of plaintiff Park Centre Condominium Council on its complaint in the amount of \$11,000. IT IS SO ORDERED. Since there is no just reason for delay, THE ENTRY OF FINAL JUDGMENT PURSUANT TO [SUPERIOR COURT CIVIL RULE 54\(B\)](#) IS DIRECTED. IT IS SO ORDERED. Defendant/Third-Party Plaintiff's Motion for Summary Judgment is DENIED. IT IS SO ORDERED.

#### All Citations

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*Condo. Ass'n*, Mich.App., 134 Mich.App. 1, 350 N.W.2d 818 (1984). *But see Kirktown Homes Ass'n v. Arey*, Mo.App., 812 S.W.2d 198 (1991).

- 3 The Council's fiscal year follows the calendar year.
- 4 Contrast the result in this case with the *Linden Knoll* decision. In *Linden Knoll*, the condominium owners failed to pay the full assessments for June and July of 1991, but paid the full assessments for all months after that. The condominium association sought acceleration of assessments for the 1995 fiscal year, but the Court denied acceleration on the ground that the condominium owners had not failed to pay the proper amount of assessments at any time during the 1995 fiscal year. *See Linden Knoll*, mem. op. at 6. In the present case, Epps, unlike the *Linden Knoll* condominium owners, has failed to pay assessments during the fiscal years for which the Council seeks to accelerate payment.
- 5 The Council could, under the Code of Regulations, accelerate the assessments for the entire 1997 fiscal year, but has chosen to seek to accelerate only the assessments up through the date of this decision.

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