



## City of Greeley: Collections/Foreclosures

Presented by  
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### HB22-1137 Changes

- Effective August 9, 2022
- Update Collection, Covenant Enforcement, Conduct of Meetings Policies (**No action without updates**)
- Notice requirements: posting, certified mail
- Interest limited to 8%
- Payments applied to assessments first.
- Designated contact & preferred language.
- Monthly invoices to everyone with a delinquency.
  - Add language for bankruptcy and/or homeowners in collections.

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### HB22-1137 Changes (Continued)

- Additional info in payment plan offer letter:
  - Explanation of balance
  - 18 month payment plan:
    - \$25/month, equal payments, or something else
    - 3 payments at least 15 days late before default
- Vote on each individual collection and foreclosure
- **Document everything**

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### HB22-1137: Top 8 Issues at Turnover

- Collection Policy has been updated, but not signed AND sent to the attorney.
- Payment plan:
  - 18 months (no longer 6)
  - 18 equal payments OR
  - 17 payments of \$25 and 1 balloon payment OR
  - Another plan at the homeowner's choice and the Board's approval (cannot be less than 18 months and cannot **require** more than \$25/mo if you want to preserve the foreclosure option)

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### HB22-1137: Top 8 Issues at Turnover

- One notice (payment plan offer letter) must be:
  - Sent by certified mail, return receipt requested AND
  - Posted to the unit AND
  - One of the following:
    - Sent by regular mail OR
    - Sent by email OR
    - Sent by text

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### HB22-1137: Top 8 Issues at Turnover

- Document everything:
  - Communication with homeowner
  - Attempts to communicate with homeowner
  - Compliance
- Board vote in executive session to turnover to collections:
  - Just like foreclosure
  - Email is NOT ok
  - Document with Resolution or Minutes

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### HB22-1137: Top 8 Issues at Turnover

- Interest is limited to 8%
  - Doesn't matter if Declaration or Policy say otherwise.
  - BUT, not retroactive
- Application of payments
  - Apply payments first to unpaid assessments, then everything else
  - Accounting needs to reflect this
  - BUT, not retroactive

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### HB22-1137: Top 8 Issues at Turnover

- Seemingly irrelevant information **MUST** be in payment plan offer letter:
  - Ex: Small claims language
  - Ex: Covenant enforcement language (even if the owner does not have current CE issues)

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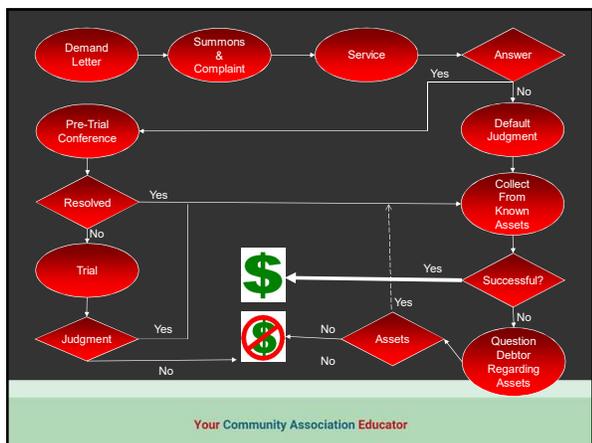
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## Writ of Continuing Garnishment



Court Order allowing garnishment of 25% of net disposable income

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## Bank Levy



Court Order seizes all money held in the Defendant's bank account

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## But what about COVID garnishment law changes?

SB20-211 passed in June 2020, extended to June, 2021, now expired.

- First \$4000 automatically exempt from bank garnishment.

SB22-086:

- \$2500 exempt from bank garnishment, but homeowner must claim.

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## Receiverships as an Option

A receivership is the court ordered appointment of a rental agent for a property within the association.

The property must be either vacant or tenant occupied.  
Cannot be owner occupied.

- How do we know?
  - Returned mail
  - Process server information
  - Board information

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## Receivership process

- Motion Court
  - Can be either pre-judgment or post-judgment (depending on judge).
  - Can request even without person service on homeowner (depending on judge)
- Court orders receivership:
  - Receiver goes to property:
    - If tenant occupied: Tells tenant to pay rent to receiver
    - If vacant: Receiver gets access to property, prepares for rental, locates tenant.
  - Receiver provides regular updates to Association and Court.
  - Receiver is paid hourly, then payments to Association until paid in full.

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## Judicial Foreclosures

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**Slide 13**

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**KND1** Kiki N. Dillie, 3/2/2021



## When Do You Foreclose?

- Chronically delinquent account
- "Judgment proof" account
- Large account balance (not just covenant violation fines and attorney fees)
- Owner is company, bank, LLC, trust, estate...
- Owner who cannot be located or served
- Equity in the property of at least \$40,000

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## How Long Does a Foreclosure Take?

Uncontested: 9 months

Contested: 1 year or longer



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## Common Outcomes:

- Homeowner pays and foreclosure is stopped
- Investor purchases at the sale
- First mortgage starts their own foreclosure
- Association becomes the owner

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### What if the Association Becomes the Owner?

1. Sell
2. Rent until mortgage forecloses
3. Refinance (rare)



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### Bankruptcies: An (Brief) Overview



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### Chapter 7 Bankruptcy (aka Liquidation)

- Upon completion, the owner's debt, as of the date of filing, is discharged.
- Typically lasts: 4-9 months



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**How Does a Chapter 7 Bankruptcy Affect the Association?**



- **During the bankruptcy:**
  - Automatic Stay: Creditors cannot attempt to collect debt. No delinquency notices!
- **Upon discharge:**
  - Owner's personal obligation for the pre-bankruptcy debt is forgiven.
  - Lien against property remains.

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**What if the Owner Surrenders the Property?**



- **11 U.S.C. §523(a)(16)**
  - Requires an owner to pay post-petition assessments and related charges for as long as the homeowner continues to own the unit, regardless of whether they abandon or rent out the unit.

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**Chapter 13 Bankruptcy (aka Reorganization)**



- Debtor reorganizes their debt and makes payments to creditors over a longer period of time.
- Typically lasts: 3-5 years

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### How Does a Chapter 13 Bankruptcy Affect the Association?

- **Automatic Stay**
  - Creditors cannot attempt collection of debt
- **Association, in most situations, will be paid the pre-petition debt over 3-5 years.**
  - Depends on whether the debtor is retaining or surrendering property.
- **The lien on the property remains...usually (lien stripping)**

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### Situation: Owner Retains the Property (Chapter 13)

- Debt as of the date of filing must be included in the plan and listed as secured.
- Debtor must pay post-petition assessments.
- If not paid, association can ask the Court to dismiss the owner's bankruptcy.

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### Situation: Owner Surrenders the Property (Chapter 13)

- Debt as of the date of filing must be included in the plan, but...
- Association becomes an unsecured creditor and only a small portion of the balance is paid.

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## QUESTIONS & ANSWERS



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