

MONEY JUDGMENTS - A CREDITOR'S CHOICE©

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Introduction

This Article contains general advice and comment regarding the collection of past due Florida Homeowner's Association assessments and Condominium Association assessments by obtaining a money judgment. It is **not** an exhaustive treatment of the subject. Many issues are omitted because of space and time constraints. The reader is encouraged to discuss the issues of a particular case with their attorney.

Community Associations have two remedies to collect money from a unit owner who is in default in the payment of their Association assessments.¹ The most common remedy is to record in the public record a lien upon the unit; foreclose the lien; then, gain ownership and possession of the unit through a judicial sale.² Another remedy is to obtain a money judgment against the unit owner.

It is recommended that one first read and consider *Assessment Collection: General Principles and Strategies*, by James R. De Furio, J.D., before reading this article.

What is a Money Judgment?

When an Association decides to file a lawsuit to collect past due assessments, the lawyer will file one complaint that will describe two separate remedies. One remedy will be to foreclose the Association's lien. The other remedy will be for a money judgment. After the suit is filed the Association will choose one of the remedies. It can't have both; only one.

If the Association chooses to obtain a money judgment, a judge, after either hearing testimony at a trial or considering affidavits on a motion for summary judgment, will determine the amount of money owed to the Association including principal, interest, late fees, attorney fees and costs of suit. This total amount is called the "judgment amount." This judgment amount is placed in a document called a *Final Judgment*. (For our purposes we will call the *Final Judgment* a money judgment) The Association becomes the "judgment creditor." The unit owner is the "judgment debtor." The money judgment allows the judgment creditor to collect the judgment amount from the judgment debtor. The money judgment earns interest at an annual rate adjusted annually by Florida law.

¹ The principles described in this article are applicable to both Condominium and Homeowners Associations in the State of Florida, unless noted otherwise. Any reference to an "Association" or a "Community Association" means both a Condominium Association and a Homeowners Association unless otherwise noted. Any reference to a "unit" means both a condominium unit and a lot in a mandatory membership homeowner's association.

²For a full discussion of liens and foreclosing liens for past due Community Association assessments, see *Assessment Collection: General Principals and Strategies*, by James R. De Furio, J.D.

The Money Judgment May Become a Lien

Once a money judgment is entered by the judge, it may become a lien against “non-exempt” assets owned by the judgment debtor. Not all assets owned by a judgment debtor are subject to the lien of the money judgment. Assets that *are not* subject to the lien are called “exempt.” Assets that *are* subject to the lien are called “non-exempt.” Examples of exempt property include a judgment debtor’s homestead, personal property worth \$1,000.00, and one motor vehicle worth \$1,000.00. There are other exemptions. Discuss them with legal counsel.

The money judgment becomes a lien against non-exempt real property when a certified copy of the money judgment is recorded in the public record in the Florida County where real property owned by the judgment debtor is located. The money judgment becomes a lien against non-exempt personal property (personal property consists of things like boats, cars, jewelry, etc) when a Judgment Lien Certificate is filed with the Department of State for the State of Florida.

Execution and Levy

When the judgment creditor has identified non-exempt property owned by the judgment debtor, the clerk of the court will issue a writ of execution. The sheriff will then “execute” the writ by seizing (levying) the property. Once seized, the property will be sold at public sale and the proceeds distributed.

There may be mortgages and other liens (“lienholders”) on the judgment debtor’s property that have priority over the Association’s judgment lien. The proceeds of the sale shall be paid first to the payment of the sheriff’s costs; then, \$500 to the levying creditor for expenses; then, to the lienholders in order of their priority.

The Association may not have first priority. Other lienholders may be paid from the proceeds before the Association’s judgment lien is paid. The sale price of the property may not be great enough to satisfy all lienholders in full. Hence, the rank of the Association’s lien in the order of priority will have a bearing on whether it is worthwhile for the Association to proceed with execution and levy.

Life of the Judgment Lien.

Judgment liens on real property remain liens for a period of ten years, but may be re-recorded to extend the lien for an additional ten years.

Judgment Lien Certificates remain a lien on personal property for five years, but may be re-filed at five year intervals.