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We are pleased to announce the names of 9 great HOA Presidents, and provide you with a list of the qualities that make them worthy of this honor. Congratulations!

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### 2015 GREAT HOA PRESIDENTS AWARD!



Many HOA board members serve their community by agreeing to serve on the Board and attend meetings and work to resolve the issues affecting their association whether it is a maintenance issue, or a collection issue, or some other challenge. We appreciate the hard work of every board member, and this year we wanted to begin an annual tradition of acknowledging just a few Board Presidents who have been nominated as a great leader in their community.

It is always possible that we have missed someone, and for that we apologize in advance. We will repeat this each year in the Spring. For 2015, we have selected nine Presidents to be recognized, and we applaud you and honor you for your excellent example as a Board President. They are as follows in no particular order:

- Sajan Kashyap, Brent Park Townhomes
- Richard Schwabe, Cedar Ridge
- Strefan Fauble, The Maryland HOA
- Judy Kent, Del Mar Townhomes
- Queenie Taylor, Hawaiian Gardens
- Mae Chauvin, Park Shadows
- A.R. Little, Canyon Park Townhomes
- Kay Russell, Park Place Villas
- Kim Michalski, Orange Grove Gardens HOA

The Qualities of GREAT PRESIDENTS which were identified in determining the 2015 honorees are:

- Always has the best interest of the Association at hand and doesn't have their own agenda.
- Interacts well with others and defuses arguments rapidly between homeowners.
- Knows the homeowners in the community.
- Follows the law.
- Takes steps to improve the value of the property.
- Is organized and thorough.
- Makes sure that all board members know and perform their roles while not interfering with their position. Delegates well.
- Fosters mutual respect on the Board.
- Communicates with manager who feels like part of team and doesn't micromanage.
- Participates in educational classes
- Proactive
- Observant
- Professional
- Leads and holds regular meetings that are run smoothly Business-like decisions are made; guides the board in making well-reasoned decisions and only at meetings.
- Asks questions of manager and other professionals and relies on outside professional expertise.

Congratulations to all of you.



# Judicial Foreclosure Is The Best Method To Collect – So Why Isn't It More Popular?

By Kelly G. Richardson, Esq. CCAL

There are three main methods of compelling delinquent homeowners to pay assessments: Small claims court, non-judicial foreclosure and judicial foreclosure. Small claims court allows the association only to sue for a limited amount of money. Non-judicial foreclosure only allows the association to take the owner's property. Judicial foreclosure allows pursuit of both money damages and the property.

Foreclosure is the process of a lienholder involuntarily taking another's property. Judicial foreclosure pursues that process under court supervision, and non-judicial foreclosure does so without court involvement.

The collection process starts the same way, regardless of which type of collection process is pursued – the association imposes a late fee and then records a lien on the property. The processes diverge at the point where the late notice and lien do not compel the debtor to bring the assessment account current. Most delinquencies are corrected by the homeowner at or before the lien stage. The foreclosure process is necessary when the owner, despite the lien, still does not correct the delinquency.

In the judicial foreclosure process, a lawsuit is filed in Superior Court asking for a money judgment and an order foreclosing upon the property. The lawsuit is normally filed as a "limited jurisdiction" case, reducing filing fees and time to trial. In the rare case in which the debtor contests the lawsuit, limited jurisdiction cases allow less pretrial activity, thereby limiting cost.

Foreclosure, or the threat of foreclosure, sometimes does not compel the owner to pay their balance current. Usually, that is because the owner simply does not fear foreclosure. An owner will not fear foreclosure when the owner knows there is no equity in the property, and, if taken away, the owner loses nothing of value. Others do not fear foreclosure because they do not believe their association can take their home,

such as the notorious case about eleven years ago involving the Radcliffs of Copperopolis, California, who lost their home to their HOA over a debt of \$120 in a non-judicial foreclosure. Anita Radcliff said "It didn't occur to me that they could foreclose..." Similar news stories and quotes abound in recent years.

Judicial foreclosure is preferable for several reasons:

**1. The association has all the options.** If the property is so tied down with mortgages and liens that there is no net value, the association can ask for a money judgment. On the other hand, if there is sufficient equity in the property, the association can ask for an order of foreclosure. So the association has the flexibility. When a non-judicial foreclosure is completed, and the association takes ownership of a property which appears worthless, it is barred by law from seeking money from the former owner.

**2. The process is usually faster than non-judicial.** Almost all foreclosure actions are unopposed. A lawsuit goes to default if it is not opposed within 30 days. At the same time, a non-judicial foreclosure has prescribed waiting periods of several months.

**3. Even the most unsophisticated people understand** that a lawsuit is a bad thing, unlike non-judicial foreclosure, which they, like Mrs. Radcliff, do not believe they can lose their home without a judge involved.

**4. The sophisticated delinquent is not able to simply "walk away"** because the association can obtain a money judgment, which lasts for ten years – and can be renewed for another ten.

**5. The association is protected.** In judicial foreclosure, in the rare instance where a homeowner wishes to challenge the delinquency, all they have to do is file a response to the association's lawsuit. In a non-judicial foreclosure, if a homeowner wishes to stop the foreclosure, they typically sue not only the HOA, but also the manager and the

foreclosure company.

**6. The HOA attorney is involved** – and available to guide the association in making reasoned decisions on a case by case basis. Non-judicial foreclosure companies are not law firms and cannot give advice. You will have someone to ask "is foreclosure in our best interests?" All too often non-judicial foreclosure proceeds automatically, and the association finds out too late it has spent thousands of dollars to own worthless properties – and cannot pursue any other way of collecting.

**7. The homeowner is protected.** Stories of alleged non-judicial foreclosure abuse abound, but they are better protected by a court-supervised process.

With all its limitations and drawbacks, why are non-judicial foreclosures more common, particularly when the general public and media abhor the process? The cause is a few enduring myths – that judicial foreclosure will take longer (it doesn't) or that it will cost more (it shouldn't). Trust your association attorney to pursue the safer and less controversial judicial method, and make sure their charges are reasonable for that work.



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# Non-judicial Foreclosure as a Method of Collecting Delinquent Assessments

By Sandra L. Gottlieb, Partner, SwedelsonGottlieb, Community Association Attorneys

One method for collecting delinquent assessments is the statutory non-judicial foreclosure process, which contrasts dramatically to the judicial foreclosure method. In a non-judicial foreclosure, if an owner does not pay their delinquency, an association can conduct a foreclosure sale through a private independent trustee. This process occurs outside of the court system pursuant to the authority given in the California Civil Code and the association's governing documents.

Over the years, association attorneys have debated which method of assessment collection to utilize. We favor non-judicial foreclosure, relying on a very astute judge, who said when comparing the two, "Why use a cannon where a pistol will do." Taking it a step further, why go to court and litigate with and against a fellow homeowner if you do not have to? There is ample support for this position.

The benefits of using the non-judicial process are self-evident: an association can avoid the time and expense involved in filing a lawsuit against a homeowner. Non-judicial foreclosure is significantly less expensive than filing a civil action to obtain a personal judgment to collect the debt (in the superior court or small claims court) or filing a lawsuit in superior court to foreclose on the recorded assessment lien and/or obtain a personal money judgment. It is also, we find, more effective since the owner either pays what he/she owes the association or faces a forced sale of his/her home. Non-judicial foreclosure is also relatively quick. Using the time frame set forth in the Civil Code, the entire foreclosure process, from pre-lien letter, to lien to sale, can be completed within approximately five months so long as the delinquency either has exceeded the \$1800 threshold or the owner had been delinquent for more than one year.

Most owners, wishing to stop

the foreclosure process and not lose their property, will pay the arrearages after receiving a Notice of Default. This high response rate is not surprising in light of the small amounts usually in default to an association in comparison with the loss of equity the owner is likely to suffer if the property is sold by the association through the trustee. Of course, it is true if the owner has no equity to lose, the owner may not be as inclined to save their property from foreclosure sale. That said, as a practical matter, it is much less expensive to pay the delinquency and save your home than it would be, in most cases, to pay a first, last and security deposit on a new rental property. Add to that the cost of moving and the upheaval on family, paying delinquent assessments and redeeming their property to "save it" before the foreclosure makes sense more times than not. From the association's standpoint, since the costs of collection, including attorneys' fees, are typically added to the amount due by the delinquent homeowner, if the owner pays the amount of the delinquency prior to sale, the professional fees and costs of the foreclosure will be paid by the owner. Unlike a lawsuit, an owner making payment in full will be required to bring his account current, not the amount owing on the date of a court judgment, which is what happens with judicial foreclosure, that may have been entered many months, and at times, many years prior to the sale date.

The principal "drawback" to pursuing the non-judicial foreclosure process could arise if there is no equity in the property and the owner is ready to walk away from the property (if no third party purchases the property at the foreclosure sale, the association becomes the property owner subject to senior deeds of trust). Although this may not be what the association wants, it may be the association's only viable

option if it appears the owner has no money or collectible assets. In the end, however, the association is at least in possession of the real property interest as opposed to owning a judgment on paper that is worthless and not collectible.

The most common mistake we see associations making is inaction, i.e., doing nothing; which is different than making a decision to do nothing. The problem with doing nothing is the Board is not sticking to its guns; the collection policy, thereby not providing a true deterrent to delinquent owners. Further, the Board is not protecting itself and the association from claims that it did not adequately evaluate the course of action that was in the best interest of the association.

In practice, even though the actual foreclosure may take place, the vast majority of owners pay their debt well before the private sale. Given the indisputable legal authority for holding non-judicial foreclosure sales, the main relevant factors in deciding between judicial and non-judicial foreclosure are often the time and expense involved and whether the association wants to be embroiled in litigation. Non-judicial foreclosure offers, almost without exception, the quicker and less expensive assessment collection process. Therefore, when you need to record an assessment lien, use a pistol by designating a trustee; no cannons allowed!



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# THE ROLE OF TREASURER!

By David Brock, PCAM

The position of Treasurer is an important position in any Common Interest Development; however the associated tasks are not overly complicated or difficult. The functions required of the Treasurer can be learned relatively quickly by most people. There is a myth that in order to be a Treasurer you should have an accounting background or finance degree. This is absolutely not the case. The requirements of a good Treasurer are to apply common sense and good business practices to the financial affairs of the association. The actual complexity of the role of Treasurer is actually caused by the politics that exists in most every association arising from the challenge of competing

agendas, specifically to balance the desire for low monthly assessments with the necessity to properly maintain and also reserve for future needs as defined by the reserve study.

The Treasurer should be the board member who is most aware of the financial affairs of the association on behalf of the board. This does not excuse the other Board members from paying attention, however the duty of the Treasurer is to provide reasonable and business-like oversight, and to report to the board regularly on the status of the Association finances. The board is required by law to review a reconciliation of all accounts on at least a quarterly basis. A bank reconciliation compares the bank statement to the association's books and accounts for the differences. The board should see the actual bank statement and not rely on what is stated as the balance.

First, the approval of association payables is the most important regular ongoing function of the Treasurer. The Treasurer should verify that the expenses paid are proper, for example confirming that the service was received and that the service was provided at **your** property. Ideally, if an Association is managed, the management company will prepare the checks and the Treasurer, and if preferred another board member will approve payments. Transfers or payments out of your reserve account are required by law to have two signatures.

The Treasurer should bring to the board's attention owners who are delinquent in their assessments and only referring to them by account number if this is discussed in an open Board meeting. The association must have a collection policy which should be followed uniformly with all owners. A collection policy is a statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members and it shall be annually delivered to

the members each year.

In addition, the reporting by the Treasurer should also include a year-to-date budget comparison of the expenses compared to the forecasted budget for the year to date. Fortunately, there are great standardized reports that make this relatively straightforward. A "budget comparison" report should be utilized to understand how each expense category is performing for the year so far. This report can be intimidating initially but once you learn how to read it, it is very helpful to get an understanding on the expenses in comparison to the budget. The Treasurer and the board should study this report prior to the board meeting so the board members can ask questions as needed at the meeting. The focus on this review should concentrate on major over-expenditures, and what the trends are for the future. It is not prudent to focus on small overages on expenses; however those budget items can be adjusted for the budget next year.

The Treasurer should have a basic understanding of the required financial reports and understand how to read them. If a management company is involved with your association, the manager will prepare the reports and provide guidance on how to read them as needed. The reports should not be complicated or difficult to understand. Beven & Brock board members can find a tutorial to help them on the website.

Reserve funds should be safely invested according to the direction of the board, and transferred to the operating account as they are needed for reserve projects. The association should have reserves adequate to cover long-term needs of the property as determined by the reserve study. Reserve funds should always be invested in a



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*The Role of Treasurer!: continued on page 5.*



federally insured account, with the Board determining how long the funds should be invested. Some Treasurers like to shop the interest rates and obtain the highest rate. This level of involvement is not essential. The difference of a quarter percent on the rate for \$50,000.00 is only \$125.00 per year. As Treasurer, you are expected to recommend good business like practices and safety of the Association's funds is the only priority. The Treasurer should advocate strongly for complying with the legal requirements, specifically in obtaining a reserve study, and complying with the recommendations. Treasurers should never directly undertake the task of performing the reserve study, annual updates and required disclosures; rather the Treasurer should be sure the Association has retained proper professionals to assist in this process.

The Treasurer works with management to prepare the next annual budget. If there is an association manager, they would likely do the first draft and then the Treasurer would lead the Board in the process of approval. The topic of budget development will be addressed in the September newsletter.

All board members and especially the Treasurer must lead by example and always be current on their own assessments. Additionally, the Treasurer should lead the board by being objective, fair and reasonable. It is imperative that all owners are treated the same when it comes to collection issues.

Some Treasurers and board members mistakenly view the association's funds as an extension of their own funds not realizing that as trustees or fiduciaries they have a far higher level of responsibility. The personal financial practices of any individual board member may differ with the approach that is best for the association as a whole. Cutting corners in your personal finances may be acceptable, but using that strategy with the association finances isn't always a good choice.

Finally, it is not important that the Treasurer have extensive experience in finance or accounting, although it can be helpful. The concepts of HOA accounting are relatively simple and can be explained easily. If you can balance your own personal checking account each month, you are likely qualified with a little bit of training and good common sense.



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**"I gave my first Treasurer's Report at our condo board meeting tonight but I only pretended to know what I was talking about. Fortunately, the board was only pretending to listen."**

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# Earthquake Insurance - Now is the time for “Naked” associations to cover up and buy EQ Insurance

by Elliot Katzovitz

Countless associations all along the Pacific earthquake belt nicknamed the “Ring of Fire” do not currently carry earthquake coverage for one reason or another. In some instances it was simply a matter of affordability, other times carriers declined the risk and for some it was a lack of owner equity that drove the HOA to “Go Naked”.

Fast forward to the “the perfect storm” happening right now in the catastrophe insurance markets of 2015. Pricing, capacity and underwriting have all aligned in such a way as to provide earthquake shoppers with some of the best rates and deductible options available since Hurricane Katrina in 2005.

## Bargain Pricing

That old tidy excuse “Quake is just too expensive for us” may no longer ring true in today’s buyers’ market.

Earthquake markets have been “soft” for three years running resulting in lower and lower premiums. The term “soft” means that the pricing pattern is pushed



downward to the advantage of buyers rather than insurance companies. The main reason for this downward trend is that there have not been any significant catastrophic insurance losses (i.e., hurricanes, floods, earthquakes) since Katrina. Also, there has been little growth in the purchasing of quake so this makes carriers more eager to aggressively price to lure new buyers.

## Increased Capacity

But wait, there’s more. There is also an increase in market capacity, which simply put means that insurance carriers are willing to take on increased amounts of risk in relation to their company’s surplus. When a major quake or hurricane happens carriers dip into assets to pay out claims. Earthquake premiums are directly tied to losses from catastrophes. Since, the last major US event to put a real dent in the reserves of catastrophe insurers was Katrina, the insurance company capacity has increased every year for the last decade, thus generating the lower premiums we see today.

Okay, so what could be better than lower prices? How about lower deductibles? Yes, that’s right. Not only will you see better rates, but excess capacity has led many companies to toss in more favorable deductibles to sweeten the pot. Those associations who have previously passed on coverage because they were uncomfortable with \$50,000, \$75,000 or \$100,000 deductible per unit options presented to them may find lower deductibles this time around. In fact, one company is willing to offer a 2% deductible.

This is the first time since Northridge that we’ve seen a company offer deductibles this low. If your board wrote off quake insurance due to worries that the owners don’t have the resources to pay huge deductibles and fears that they won’t buy assessment coverage then a low deductible option solves the problem.

## Easing of Underwriting Standards

Now for the icing... Three carriers are now willing to write associations built more than about 50 years ago or those with tuck under parking. This is a stunning development because just twelve months ago these HOAs had no option other than the high risk

syndicate of Lloyds of London which delivered minimal coverage at obscenely expensive rates. If your HOA has been locked out from buying, this time around you may find coverage at a price that finally makes sense.

Conclusion

Board members for “naked” associations need to take a fresh look at earthquake coverage to see if the buyers’ market has brought quake within reach for the association. A board member’s fiduciary duty dictates that they must consider the fact that Earthquakes present a tangible threat to their owners’ equity and should be insured against if at all possible. Keep in mind that ALL Directors and Officers insurance policies exclude the failure to purchase earthquake insurance from their coverage for matters of insurance. So, if the board gets sued for failure to purchase coverage from those owners that have equity the D&O policy does not protect them and the board members’ personal assets could be at risk. In that regard, it is advisable to obtain a quote every year for quake insurance, and at least put it to a vote or survey of the owners.



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Insider's Guide to HOA Insurance  
by Elliot Katzovitz

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# Effective and Successful Board Meetings

Common interest development (HOA) board meetings are an important element for every association. Some boards meet regularly on a monthly basis, however, it is not uncommon for boards in small associations to never meet and communicate only by email. Some governing documents require a specified frequency such as monthly or quarterly, however if not specified, boards should meet at least quarterly to satisfy the legal requirement to review the reconciled financial statements.

In this day of email as a highly desired form of communication, the law still requires meetings in person, where owners have the opportunity to speak to the board, and observe their board in action, and this cannot be done by email. Meetings by email constitute "secret" meetings, and is a violation of the "Open Meeting Act". Volunteer board members may actually find it to be a relief to not have to receive, read, and respond to multiple daily emails on a given subject, preferring rather to discuss and decide issues at a meeting. This is the standard method of how volunteer corporate boards function.

Since meetings are a legal requirement and may actually help to focus and manage the board members service, let's look at some ideas to make them more effective and productive. Let's look at the three P's of effective and successful meetings: purpose, punctuality and patience.

First, what is the purpose of board meetings? The primary purposes of HOA board meetings is to discuss and decide issues, and allow an opportunity for owners to express their opinions. The "open forum" portion of the meeting is a legal requirement, however the board can establish rules related to the amount of time an owner can speak. You may want rules about meeting decorum as well, such as interruptions, use of foul language, or yelling which should not be allowed. In order to have an efficient meeting, the board members should receive and

review any background material prior to the meeting, so meeting time is not used for this purpose. The President (or Chair) should keep the discussion to the issue and not allow new issues to come up. The requirements on having an Agenda should help with this. The only other issue that should occur at the board meeting is for a financial report from the Treasurer, or perhaps, other committee reports.

Secondly, the next important "P" is punctuality. Utilize a "timed agenda" which allows for discussion on the issues to be decided, as well as a suitable amount of time for Open Forum, perhaps providing 3 minutes for each speaker. Start the meeting on time, and end it on time. Most board meetings can be accomplished with 90 minutes, or sooner. Well-run board meetings are typically 45 to 60 minutes. The board meeting is not a party where you show up when you want and hang out for a while. Socializing can occur, by those who want that, after the meeting is adjourned.

Finally, let's look at how patience can help your meetings. Good decisions by a group take time and this can be frustrating for some board members. The key is to make well-informed and thoroughly reasoned decisions. There are not many issues that are urgent enough that can't wait a month. Patience is also important when listening to some owners during the Open Forum. Also, patience is necessary for those owners who want to resolve issues between meetings via email. Good listening skills require patience since we really need to hear what our fellow board members are saying.

It is not inconceivable to believe that well run and productive meetings will set a positive tone in your association, and that encouraging healthy dialogue as modeled by the board will help to encourage future board members to serve.

  
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## COMMUNITY BUILDING - Plan now for a summer event

One of the greatest challenges in HOA living has to do with the lack of connection between residents.

So often life in an HOA is about conflict and unhealthy disagreement, however, an excellent long term strategy to mitigate the negative issues is to take the initiative to create community. The best way to do this is to plan at least two events that gather the residents each year. Summer is one of the best times to do this. If owners can meet each other in a fun and casual setting, they will be more likely to understand each other and find agreement when challenging issues come later.

The best part is that it doesn't have to be complicated. If you want to try this, ask several owners to serve on a planning committee. The board doesn't need more to do, so broaden the base of involvement and ask

someone who isn't already involved. The greatest challenge will be in getting people to show up as some people are naturally shy. Don't let that stop the party planners from pursuing the involvement of everyone, both owners, and yes, renters as well. Announcing the event, and personally inviting people to come works best to get a decent turnout.

It's not hard to roll out a BBQ, and let people grill what they want, and have everyone contribute their favorite side dish. Everyone can bring their preferred beverage to share. A few games on hand doesn't hurt, in case the conversation lulls. Some associations play a movie outside after dark.

Don't let the turn-out the first year convince you this is not a good idea. Keep at it. It will pay off over time.



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