



DELAWARE COMMON INTEREST COMMUNITY: COLLECTING DELINQUENT ASSESSMENTS

*A GUIDE for
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 pay. 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.

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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.

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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.

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:**
 - a. New Castle County
 - <http://www3.nccde.org/parcel/search/>
 - b. Kent County
 - <http://www.co.kent.de.us/Apps/KentCountyMapping/>
 - <http://kent400.co.kent.de.us/PropInfo/PIName.HTM>
 - <http://co.kent.de.us/planning-dept/planning/homeowners-association.aspx>
 - c. Sussex County
 - <https://munis.sussexcountycle.gov/MSS/citizens/RealEstate/Default.aspx?mode=new>
- 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.
- c. Date when an assessment becomes delinquent.
- d. Rate of interest and the penalties for assessments that have become delinquent (as authorized in the Association's Governing Documents).
- e. 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 timeline, 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?

- a. 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: <http://courtconnect.courts.delaware.gov>.

C. Learn the appropriate time limit if you sue.

The Statute of Limitation in Delaware is typically three (3) years after Default. However, a recent 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.)

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. 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.**

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.

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 \$15,000. You may use the Justice of the Peace Court only if you limit your claim to \$15,000 plus interest owed on the contract. If your claim exceeds \$15,000 you will lose the right to the amount over \$15,000. For an amount owed over \$15,000, 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 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. \(Click here\)](#) (See also Appendix 2.) You must file this Certificate before you submit your Complaint or Answer. The Certificate of Representation must be renewed annually. The fee 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.**
- 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.** 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 Parcel Search website: <http://www3.nccde.org/parcel/search>

(302) 395-7700

Kent County

Kent County Levy Court Administrative Complex

555 Bay Road, Dover DE 19901

Kent Co. Parcel Search website:

<http://kent400.co.kent.de.us/PropInfo/PIName.HTM>

(302) 744-2300

Sussex County

2 The Circle

Georgetown DE 19947

Sussex Co. Parcel Search

website:

<https://munis.sussexcountyde.gov/MSS/citizens/RealEstate/Default.aspx?mode=new>

(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.

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) 739-3184

Sussex County

Sussex County Courthouse
1 The Circle, Suite 2
Georgetown DE 19947
(302) 856-5742

(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.

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?](#) and [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, 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 fourteen (14) 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 booklet which can be found 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](#), 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 found here: [Filing Fee](#). (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 (2018) are:

- | | |
|--|-------|
| a. Filing fee where the amount in controversy exceeds \$5,000 | \$ 45 |
| b. Filing fee where the amount in controversy equals or is between
\$ 1,000 - \$5,000 | \$ 40 |
| c. 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 here: [Sign up for e-filing training](#).

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 a 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	Middletown	New Castle County
Justice of the Peace Court 13	Wilmington	New Castle County
Justice of the Peace Court 16	Dover	Kent County
Justice of the Peace Court 17	Georgetown	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 to file a [Certificate of Representation](#). (Civil Form 50). Find a copy of that form in Appendix 2.

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 Defendant/Owners 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. **Beginning April 2, 2018, the process for requesting service of process through the Delaware Secretary of State will change:**

1. Filers must provide a completed [JP Court Civil Form 67](#) requesting Secretary of State Service, in addition to all other required documents. [CF67 was available for downloading on March 30, 2018.](#)
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 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), to begin the action.

The Court explains Service of the Complaint on the Defendant/Owner. You can learn more about this Process and Service here: [How to notify the Defendant 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: <http://court.delaware.gov/jpcourt/>.

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

- [Corporations.](#)
- [Defendants Not Located In Delaware.](#)
- 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.

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.** (There are few defenses for an unpaid HOA assessment.) When the answer to a Complaint states a defense to not paying an assessment, 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. **BEWARE:** 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.**
- 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.**

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.

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. If stated in a document recorded in the Office of the Recorder of Deeds, the Court presumes that you know about the assessment.**

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 Bylaw's 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:
 - 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.

(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 31.

- 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 delinquent in assessments

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. A Default Judgment is 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 file a response to the suit and appear in Court on a date specified.

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. (Refer to Chapter VII Section D of this Guide for more details.)
- b. A 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 the form from the Justice of the Peace Court found here: [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 should 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:

- Mail the original to the Court where the Action is pending, with a [notarized statement](#) explaining how the Bill of Particulars was Served or 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

- 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.
 - 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](#), found in 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 against the Plaintiff/Association 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](#) in Court and deliver or mail a copy to the Plaintiff/Association. With the Court's copy, you must file a [notarized statement](#) stating how and when you delivered the 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 \$15,000,** usually you MUST file your Claim as a Counterclaim and you may not file it in a separate suit.
- 6. If your Counterclaim exceeds \$15,000 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 \$15,000, you may bring it as a Counterclaim in the Justice of the Peace Court** if you limit any Judgment to \$15,000.

8. For more information on Counterclaims, see Justice of the Peace Court [Civil Rule 13](#).

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](#).

E. Defenses to a Suit by a Plaintiff/Association to collect delinquent assessments.

- 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.
- 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 25. For more information, see the [Delaware Uniform Rules of Evidence](#).
- 4. Bring to Trial all papers, documents, materials, or pictures with anything to do with your case.** Bring all written materials, including 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 states 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](#) 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 ([J. P. Civil Rule 45](#)), found in Appendix 13.

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, unless there is a true 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

- 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 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. The 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.
 - 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.

- b. 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.

- c. The Plaintiff/Association may cross-examine the witnesses of the Defendant/Owner after their direct testimony.
- d. The Judge may ask questions of any witness. Answer the Judge's questions clearly and directly.
- e. If the Defendant/Owner filed a Counter-Claim, the Defendant/Owner may call witnesses and submit evidence regarding the Counter-Claim.
- f. The Plaintiff/Association may Cross-Examine any witnesses called by the Defendant/Owner.
 - 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.

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 6CF14A](#)” 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. 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 a motion for a Hearing on reviving the Judgment. Do this by filing a [Civil Form No. 11](#), a Request for Motion Hearing, also found in 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 the 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 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”).

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 Record 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.

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.
 - Include the name and address of the employer of the Defendant/Owner in completing the Form 17.
 - Note on the Form 17 (where it indicates, “less total credits”) any previous payment received from the Defendant/Owner.
 - 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.

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

The employer must file an [Answer](#) 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.

- c. 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](#)) or, all three charts are also in Appendix 18.

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

F. 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 Court considered, but *did not adopt* important 2016 changes in JP Court's "[Levy/Constable Sales, Questions and Answers](#)," by clicking here, and also found in Appendix 16.) Constable sales often produce little money. You should be aware of these concerns.

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 No. 16, Levy of Personal Property](#), found also in 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 No. 11](#).

5. List motor vehicles owned by the Defendant/Owner.

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.

6. 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
Attn: Correspondence Department
Phone: (302) 744-2509

7. 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](#).

8. 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.

9. 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.

10. 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](#), also found in 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.](#)

11. File a Lien on Real Property.

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 in which property of the Judgment/Debtor is located. A transferred Judgment becomes a Lien from the date transferred on all the real estate of the Defendant/Owner owns in the County 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](#).

12. Other useful Information

- a. Justice of the Peace Court Rules:
<http://courts.delaware.gov/forms/download.aspx?id=39328>.
- b. Delaware Uniform Rules of Evidence:
<http://courts.delaware.gov/forms/download.aspx?id=39388>.
- c. Delaware Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants: <http://courts.delaware.gov/Supreme/AdmDir/ad178guidelines.pdf>

- d. Civil Court [videos](#) Series on Civil Court procedures, preparing for and presenting evidence at Trial
- e. Changes to execution procedures considered but **not** adopted, and reasons worth considering:
<http://courts.delaware.gov/jpcourt/docs/ConstableQandA.pdf>

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 units or homes, and if the annual assessment is more than \$500 in 2009. (The \$500 increases the exemption for low assessments by 3% per year, on July 1.) Communities have a right to amend their Governing Documents to include this part of DUCIOA.

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. However, 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 prompt settlement of the Debt.

The DUCIOA's section 81-316 also applies to communities created before September 30, 2009, though not smaller, exempt communities. (Note: There are 23 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.

A 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 has 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. Often the sale price of the property is not enough to cover the remaining balance.

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

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

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

1. For New Castle County:

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

- a) 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>

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

- a) Fees for recording a lien in Kent County: <http://www.co.kent.de.us/recorder-of-deeds-office/current-schedule-of-fees.aspx>

3. For Sussex County: <https://www.sussexcountyde.gov/recording-information-requirements>

- a) Fees for recording a lien in Sussex County: <https://www.sussexcountyde.gov/recorder-deeds-fee-schedule>

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.

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.

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)

1. The FDCPA is a Federal statute.

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.

All references to Creditor are *recommended* for and Association collecting its own debts, but Debt Collectors *must* adhere to all the FDCPA requirements.

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.

2. 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 regard 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>