

# ASSESSMENT COLLECTION PROCEDURES

*The 2012 Prince William County  
Neighborhood Conference  
Saturday, February 25, 2012*

*Presented by*

*Lucia Anna Trigiani, Attorney at Law*

*MercerTrigiani*

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*Westridge Swim & Racquet Club, Inc.*

# COMMUNITY APPROACH AND PHILOSOPHY

- ◆ *Strict enforcement – no exceptions*
- ◆ *Individual approach and negotiation*
- ◆ *Consistent pressure – uniform application of policy*

# TIMES HAVE CHANGED

- ◆ *Healthy economy – lower delinquency rate*

# ADAPT TO COMMUNITY NEEDS

- ◆ *Be creative*
- ◆ *Gather information*
- ◆ *Leverage*

# AT WHAT COST?

- ◆ *Payment plans*
- ◆ *Settlement negotiations*

# BEFORE THE ASSOCIATION LEGAL COUNSEL IS CALLED IN

- ◆ *Review assessment collection policy*
- ◆ *Review communications sent to delinquent owners*
- ◆ *Understand the role of management*
- ◆ *Educate community*
- ◆ *Encourage contact with the board to discuss payment plan*

# AFTER AN ACCOUNT IS REFERRED FOR LEGAL ACTION

Your Job Is Not Over

- ◆ *Monitor accounts*
- ◆ *Track payment plans*
- ◆ *Review reports and correspondence  
from counsel*

# FORECLOSED AND ABANDONED PROPERTY

- ◆ *Ownership*
- ◆ *Maintenance*
- ◆ *Self Help*
- ◆ *County Support*



# COLLECTIONS IS A TEAM EFFORT

- ◆ *Strict enforcement – no exceptions*
- ◆ *Individual approach and negotiation*
- ◆ *Consistent pressure – uniform application of policy*

# REFERRAL OF DELINQUENT ACCOUNTS

*Delinquent account referred for legal action:*

- ◆ *45 days after the due date for condominium unit owners associations*
- ◆ *120 days after the due date for property owners associations*

# TWO AVENUES TO PURSUE ASSESSMENT COLLECTION

- ◆ *Lien recorded against property*
- ◆ *Civil action filed against owners personally*

# LIEN FOR UNPAID ASSESSMENTS

- ◆ *Virginia Condominium Act - Section 55-79.84*
- ◆ *Virginia Property Owners' Association Act - Section 55-516*

# CONDOMINIUM LIENS

- ◆ *Must be filed within 90 days from the date the assessment came due.*
- ◆ *Take priority over most other liens and encumbrances on the unit except for real estate tax liens, liens and encumbrances recorded prior to the recordation of the declaration, and sums unpaid on any first mortgages or deeds of trust recorded prior to the condominium lien and securing institutional lenders.*

# CONDOMINIUM LIENS (CONT'D)

- ◆ *If the condominium instruments for an association establish authority for acceleration of an account (i.e., to declare the entire fiscal year assessments due and payable) the account is usually accelerated at the lien stage.*

# PROPERTY OWNERS ASSOCIATION LIENS

- ◆ *Must be filed within one year from the date the first delinquent assessment came due.*
- ◆ *Do not have the same priority as condominium liens. These liens come behind any mortgage or deed of trust recorded prior to the lien.*

# CIVIL ACTION

- ◆ *Civil suit is filed in the General District Court of the jurisdiction where the property is located.*
- ◆ *General District Court is the least expensive and most expeditious court.*
- ◆ *The initial Court date (Return Date) is scheduled approximately 4 to 6 weeks from the date suit is filed.*



# CIVIL ACTION (CONT'D)

- ◆ *If the Sheriff is able to obtain proper service of the lawsuit (ie., by personal service or posting to residence), two things may occur at the return date:*
- ◆ *If the delinquent owner appears and contests the debt (asserts that the owner does not owe the assessments) the case is set for trial.*

# CIVIL ACTION (CONT'D)

- ◆ *If the delinquent owner fails to appear or appears and admits to owing the debt, a judgment is granted.*
- ◆ *The court will also issue an award of “reasonable” attorneys’ fees*
- ◆ *If proper service is not obtained, an alias warrant is issued and a new suit is filed with a different address or with service via the Secretary of the Commonwealth.*

# DOCKET JUDGMENT

- ◆ *Abstract of Judgment is received 4 to 6 weeks after return date.*
- ◆ *A General District Court judgment (either by default, admission or verdict after trial) is docketed among the land records of the jurisdiction where the property is located. Once docketed, the judgment becomes a lien upon any property owned by the owner in that city or county.*

# POST-JUDGMENT COLLECTION

- ◆ *Gathering Information - Information about the property and the property owner is vital.*
- ◆ *Is the property rented or is it owner-occupied?*
- ◆ *Is the property occupied?*
- ◆ *Are there copies of canceled checks?*
- ◆ *Where is the owner employed? Do we have a work telephone number?*

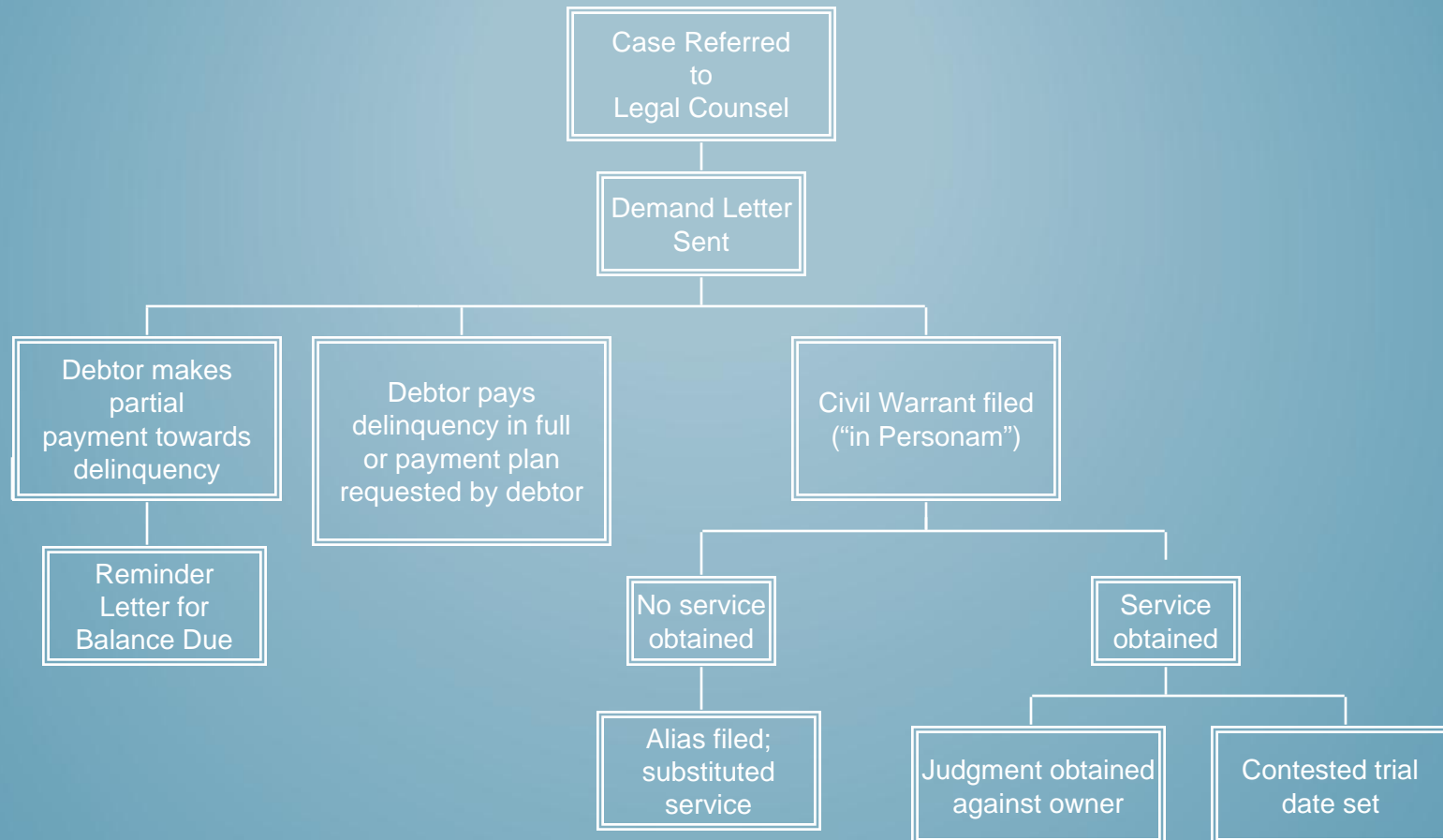
# POST-JUDGMENT COLLECTION

- ◆ *Has the owner filed bankruptcy?*
- ◆ *What is the status of the mortgage on the property - is foreclosure by the mortgage holder likely?*
- ◆ *What is the past history of the delinquent owner?*

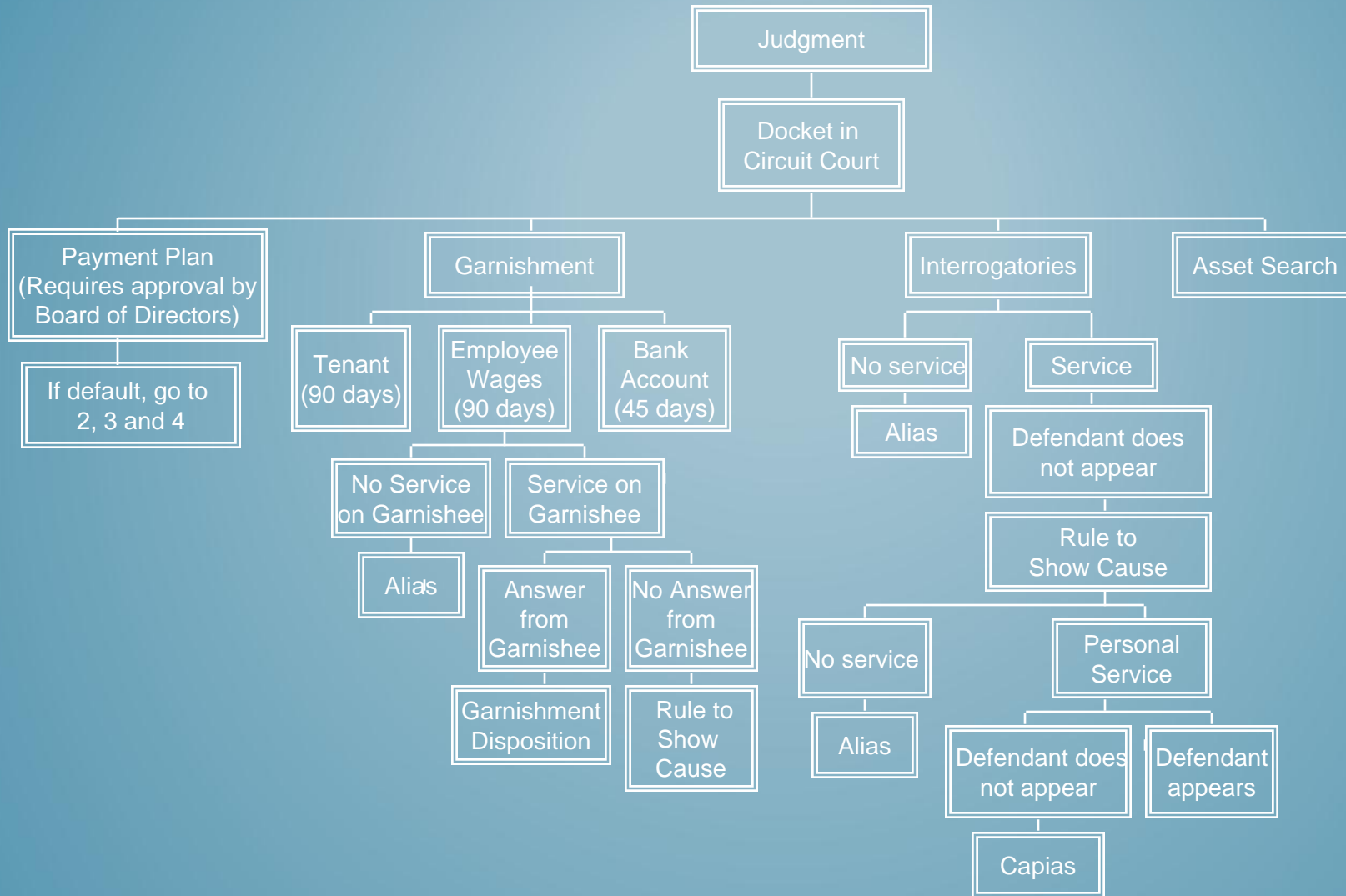
# POST-JUDGMENT OPTIONS

- ◆ *Payment Plans*
- ◆ *Garnishment*
- ◆ *Levy*
- ◆ *Delinquent Owners' Interrogatories*
- ◆ *If all else is unsuccessful, commence foreclosure proceedings*

# Obtaining a Judgment



# Post-Judgment Collection Process Chart





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