

Delinquency Cycle of an HOA or COA Foreclosure

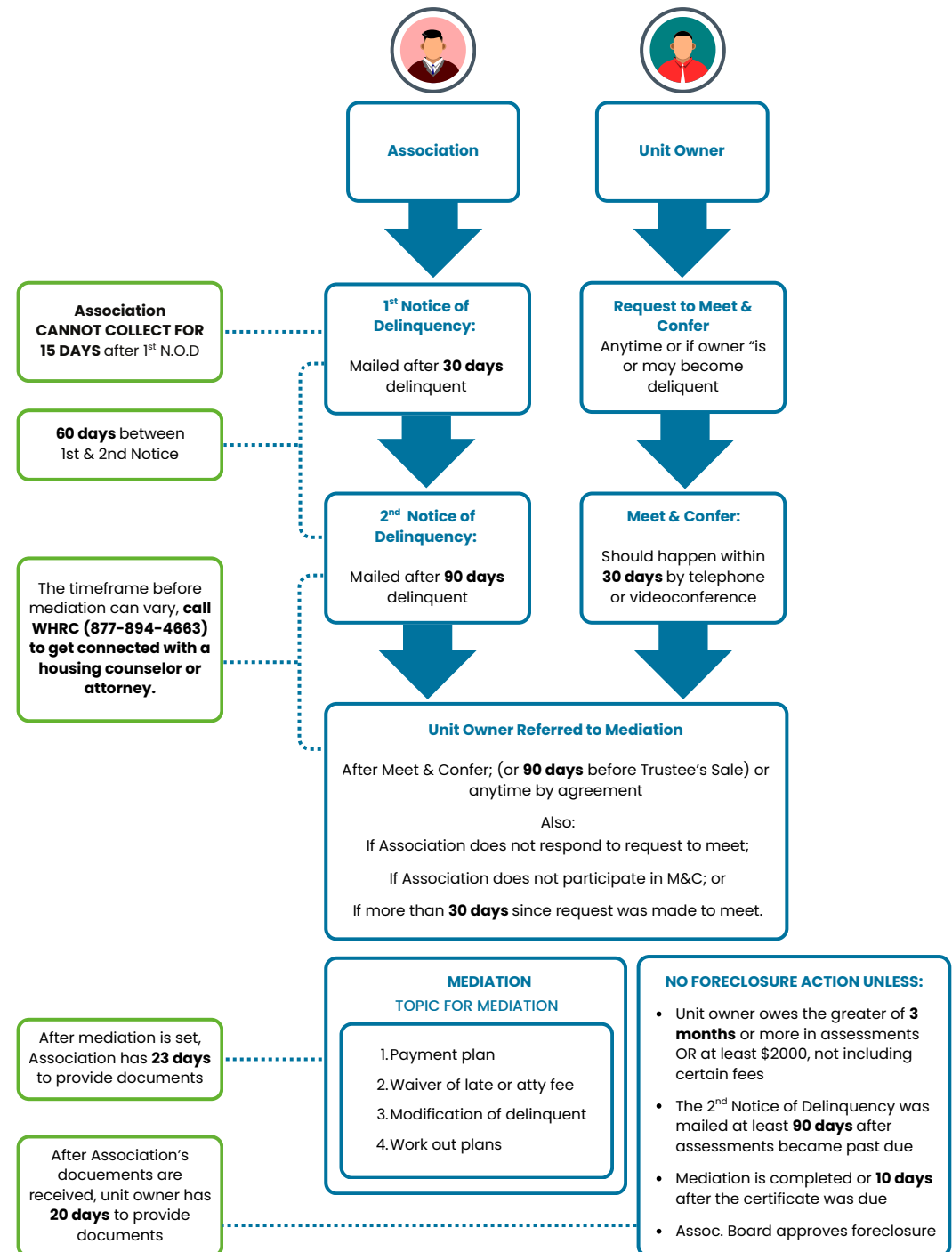
In Washington, there are statutes describing when “Common Interest Communities,” such as Homeowners Associations (HOAs), Condominium Associations (COAs) and similar organizations, may foreclose on a home. (RCW 64.32, 64.34, 64.38, and 64.90). Most foreclosures by an HOA or COA are done in court through a process called judicial foreclosure. This is different from mortgage foreclosures, which are usually done through the non-judicial process, which does not involve a lawsuit or taking the homeowner to court.

Because the HOA/COA foreclosure process is usually judicial, it is difficult to say exactly how long the process will take in every case. The minimum procedure for a judicial foreclosure takes as few as 57 days. This is roughly calculated from the date that the homeowner is served with a lawsuit until the day of the foreclosure sale. If the homeowner responds to the lawsuit, the timeline will likely be longer.

However, Washington has several opt-in provisions that are designed to help homeowners avoid foreclosure. Homeowners must have a housing counselor or attorney to opt-in to these programs, and opting in can extend the foreclosure timeline significantly. Therefore, it is important to contact a housing counselor or attorney as early as possible in the HOA/COA foreclosure process.

A general foreclosure timeline appears to the right.

HOA FORECLOSURE TIMELINE (RCW 61.24)



(1) Notice of Delinquency. If a payment is missed, an association may send several letters, including Notices of Delinquency. The first Notice of Delinquency must be issued no later than 30 days after an assessment becomes due.

- **Impact of first Notice of Delinquency.** This is mailed by first-class mail. For 15 days after the first Notice of Delinquency is issued, the HOA or COA may not take action to collect an HOA or COA assessment. The HOA or COA may not charge the homeowner collection costs, other than minimal fees to print and mail the notice, a \$10.00 fee, and a late fee, which is limited to \$50, or 5% of the unpaid assessment, whichever is less.
- **Impact of second Notice of Delinquency.** This must be issued before an HOA or COA may begin the judicial (court) foreclosure process. It must be mailed by first class mail, at least 60 days after the first Notice of Delinquency, and after 90 days of assessments are past-due. The Second Notice of Delinquency may be issued only after the total owed is \$2,000, or the sum of 3 months of assessments that are past-due (may be less than \$2,000). When calculating this amount, it includes HOA or COA assessments only, and does not include fines, late charges, interest, attorneys' fees, or costs. Please note that an HOA or COA may issue more than two Notices of Delinquency, but the HOA or COA must issue at least two Notices of Delinquency that meet the above criteria.

(2) Meet and Confer. A housing counselor or attorney may refer a homeowner to a meeting with the HOA or COA, called "Meet and Confer." The Meet and Confer should occur within 30 days after the referral. At the Meet and Confer, the HOA/COA and owner should discuss options to resolve the default. The Meet and Confer may be held by phone or video conference. The HOA/COA may not charge attorney fees between the referral date and the Meet and Confer date.

Due to the private nature of the discussion, homeowners have the right to request that this be a private meeting, and not a public board meeting.

Meet and confer agreements should be signed by both parties. However, any agreements reached during this meet and confer may not be final if the HOA requires a full board vote and approval.

(3) Mediation. After the Meet and Confer, or if your HOA/COA denies your request for a Meet and Confer, a housing counselor or attorney may request Mediation with the HOA or COA. If the Meet and Confer was requested but the HOA/COA did not respond or it did not occur, Mediation may be requested after 30 days.

If the HOA/COA is proceeding through the courts (judicial), then Mediation may be requested any time before the court enters a judgment. If the HOA/COA is proceeding non-judicially (rare), Mediation must be requested at least 90 days before the trustee's sale.

Mediation provides a neutral setting where both the homeowner and the HOA/COA are obligated to act in good faith, exchange paperwork, and discuss alternatives to foreclosure. A homeowner cannot independently request mediation and **MUST** be referred to mediation by an attorney or a housing counselor.

For more information on mediation, see ***Foreclosure Prevention Flyer***.

if mediation is requested, the HOA/COA may not file a new judicial foreclosure until the Mediation process is completed. If the HOA/COA filed a judicial foreclosure lawsuit before the Mediation was requested, the HOA/COA must not advance the lawsuit during the Mediation process. If the HOA/COA is proceeding non-judicially (rare), the trustee may not conduct a trustee's sale or publish the Notice of Trustee's Sale until after mediation has taken place.

(4) Judicial Foreclosure. Most HOAs/COAs use the courts to foreclose on an owner. This judicial foreclosure process begins with filing and serving the homeowner with a Summons and Complaint.

- The homeowner has 20 days after service to file an Answer with the court and to serve it on the HOA/COA.
- If the homeowner does not file an Answer within the 20 days, the HOA/COA may ask the court to enter default against the homeowner and also ask for a judgment for foreclosure. A COA/HOA does this by filing a motion with the court, which can be heard with 5 days' notice.
- If the Court enters a Default Judgment, then the HOA/COA can then ask the Sheriff to conduct a foreclosure sale. The HOA/COA must mail notice of the sale 30 days in advance. RCW 6.21.020. At the same time, the Sheriff must publish the notice of sale in a legal newspaper for four consecutive weeks. RCW 6.21.020.

Because the judicial foreclosure process can be very quick if the homeowner does not respond, it is important for homeowners in default to contact a lawyer as early in the judicial foreclosure process as possible.

After the foreclosure sale and redemption period, the new owner takes title to the property subject to any existing mortgages or non-HOA/COA liens.

- **Right of Redemption.** In the foreclosure judgment, the court will provide the former homeowner with either an 8- or 12- month "redemption period." The Redemption Period is the time during which the former homeowner has the option to pay the foreclosure sale purchase price to the Sheriff, plus certain other allowable costs (the "redemption price"). If the former homeowner pays this redemption price within the prescribed 8- or 12- month period, then the former homeowner retains their title to the home. RCW 6.23. If the former homeowner does not pay this price within the 8- or 12-month period, then the Sheriff issues the new owner a deed to the home. RCW 6.23.060.

- Homestead Right of Possession. Most former homeowners who reside in the property at the time of foreclosure sale have the right to live in the property for the redemption period without paying rent. RCW 6.13.010, RCW 6.23.110. If you have questions about this right, contact a lawyer.

(5) Bankruptcy. If the homeowner files a bankruptcy petition at any time prior to the sale, the sale is automatically put on hold pursuant to federal bankruptcy law (11 U.S.C. § 362). However, certain exceptions may prevent the homeowner from being entitled to an automatic stay in bankruptcy, for example if the homeowner has already filed one or more bankruptcies in the past year. If you are in this situation, contact an attorney as soon as possible.

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