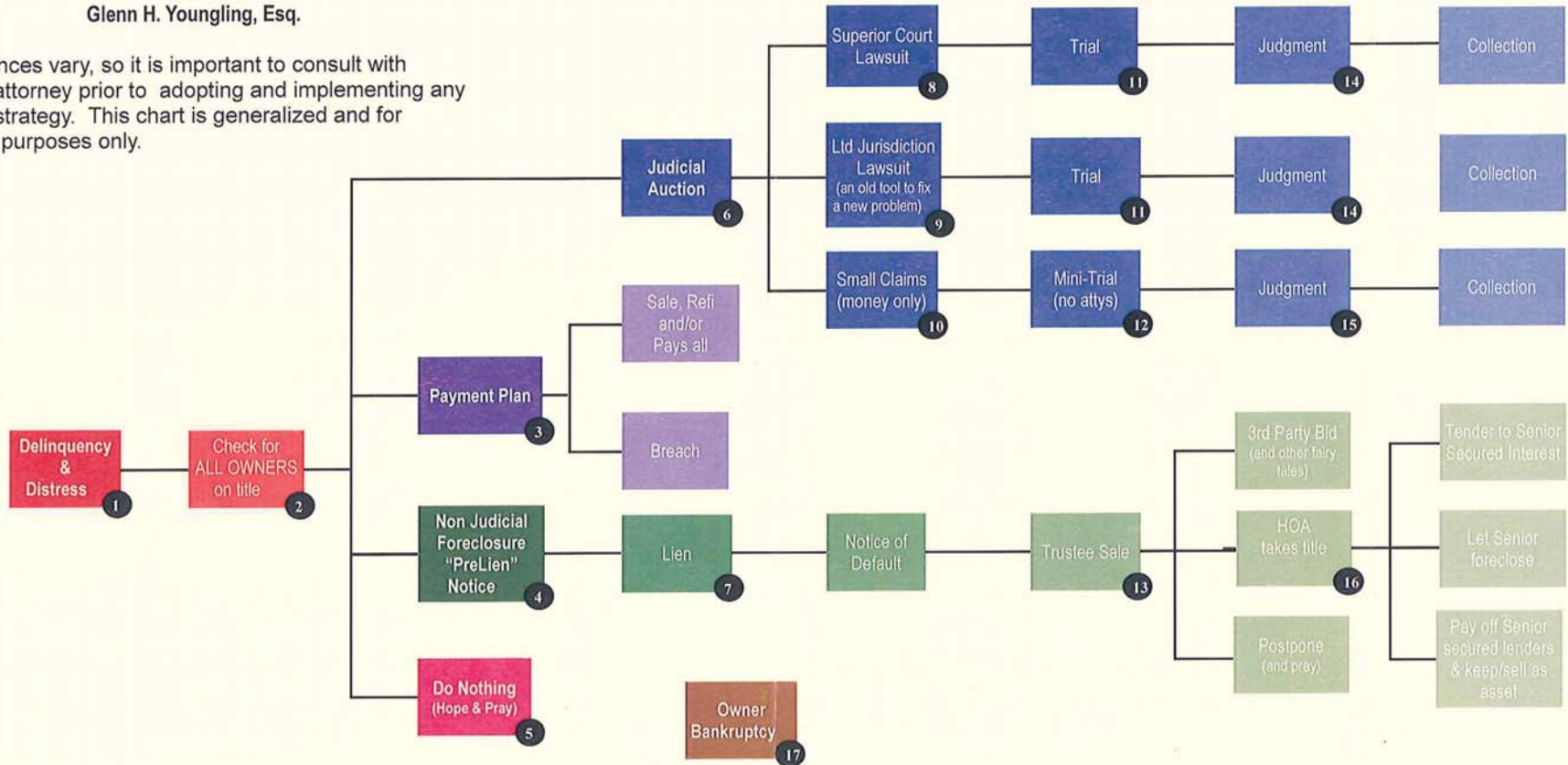


# Delinquent Collection Strategies©

Glenn H. Youngling, Esq.

Circumstances vary, so it is important to consult with your own attorney prior to adopting and implementing any particular strategy. This chart is generalized and for illustrative purposes only.



## Footnotes:

1. The Board needs to actively monitor all delinquencies for the foreseeable future. Payment is due on the 1st and delinquent on the 15th. If it is not brought current by the 30th, it should be on your watch list with a PreLien Notice and Lien to follow.

2. Check the deed to be sure you are addressing all owners of record. Watch for an ex-spouse, parent, or silent partner.

3. Get the Lien in place anyway. Keep the duration of the plan to months. Provide that all late charges, interest and

costs will apply until fully performed, & with the last payment, there will be a specified reduction.

4. You should always initiate the Lien process as soon as possible. It is difficult to know what lies ahead, so the Lien will preserve as many options as possible.

5. This is not an option. You should almost always go as far as filing a Lien. After that, if you decide not to "throw good money after bad" at least you have made a business decision.

6. Regardless of the type of lawsuit you file, there is an advantage to getting it served before the owner moves out. After owners move, it may be difficult and more expensive to find and serve them by hand or to serve by publication. Expect a fair number to default.

7. The Association Lien is only as good as the owner's equity. All too often now, the holder of the first or second mortgage will foreclose & after they are paid, there is nothing left for the Association. This wipes out the Lien & claim against the

property, but it is still a personal debt of the former owner and can be the basis of a lawsuit.

8. If your claim exceeds \$25,000, this is the Court in which you file for money & foreclosure of the property.

9. The cap for claims at this level is \$25,000. The process is faster and less expensive than a full lawsuit. At trial you may be able to use declarations rather than live witness testimony.

10. It's fast and efficient but inconvenient. An authorized

representative can appear on behalf of the Association and present the claim. The cap for Association claims is \$5,000. After two actions in any calendar year, the cap drops to \$2,500.

11. Trials above the Small Claims level are best left to your attorney. Calendar the date because you may be needed to act as a witness and present documents.

12. No attorneys are permitted. Be sure your director, officer, manager and/or bookkeeper brings a completed Form SC 109

authorizing his or her representation of the Association. Organize your paperwork ahead of time. Include the CC&Rs, Collection Policy, & a clean accounting of all amounts due. Consider reading the Nolo Press book on Small Claims ([www.nolo.com](http://www.nolo.com)) Also, get there early so you can watch the rhythm of the Court.

13. If the Association is likely to have its Lien wiped out in foreclosure by a senior party, you won't want to incur the expense of scheduling your own

Trustee Sale. Reportedly some Associations do go forward with the goal of taking the property & then pushing the underlying lenders to foreclose themselves sooner rather than later, or to dispossess a problem owner or tenant. Consult with your trustee or legal counsel if you are considering conducting your own Trustee Sale.

14. Once you have a judgment, an abstract can be recorded in every California County in which the debtor may have property. The result is much like a lien.

15. Once you have a judgment, go to the Court website for more information: [www.courtinfo.ca.gov/selfhelp/smallclaims/collect.htm](http://www.courtinfo.ca.gov/selfhelp/smallclaims/collect.htm).

16. Remember, the Association takes title subject to secured banks and perhaps other senior interests!

17. Once a bankruptcy petition is filed, further action against the property & owner must cease. Hopefully, you already have a Lien on file & will be processed as a secured creditor. Often owners will file but fail to comply

with the Court requirements which then leads to dismissal. Watch for the dismissal. Also, the owner is required to stay current with payment of new assessments after the petition filing date. The biggest problem with bankruptcies is always the costs of participating in the process. The smaller the delinquency (pre and/or post petition), the more likely a wait-and-see approach is warranted. The larger the sum, the more sense it makes to seek legal advice.