

Debt Collections Fee Schedule/Procedure

The law firm **WINTON LAW** (Firm) provides debt collection services to its community association clients. This document is a memorandum explaining the Firm's collection services and the fees charged for such services.¹ The Firm's debt collection activities include:

1. **Community-intuitive Collections.** Some believe effective debt collection requires one to be vicious. We believe effective collection requires successfully collecting the debt. Winton Law primarily practices community association law, which means we understand condominium and homeowner association budgets, covenant/bylaw constraints, and volunteer board participation. We have found the collections approach that holds debtors to agreements, but doing so with respect, produces best results. We have also found that "all or nothing" approaches to collecting debt may not be the most cost-effective approach. Accordingly, we counsel our clients when necessary to offer payment arrangements, write off bad debt, or if warranted, foreclose on a debtor's home.
2. **Initial Collections Letter** - \$100.00. When the Firm opens collections files, we review the client's governing documents for collections requirements and options, locate the debtor (i.e. the person who owes the debt), research title on the debtor's property, research bankruptcy and litigation history of the debtor, and prepare and serve an initial collections letter on the debtor that complies with the Fair Debt Collection Practices Act.²
3. **Lien** - \$200.00 plus a filing fee of \$13.00. When the Firm prepares a lien, we draft the lien with an accurate legal description (i.e. legal address) of the debtor's property, file the lien with the appropriate office, and serve the lien on the debtor.
4. **Lien Release** - \$75.00 plus a filing fee of \$13.00. When the Firm prepares a lien release, we draft the lien release with an accurate legal description of the debtor's property and reference to the underlying lien, file the lien release with the appropriate office, and serve the lien release on the debtor.³
5. **Small Claims Collections** - \$175.00 per hour attorney's fee plus a filing fee of \$45.00 for a small claims affidavit to recover an amount up to \$1,500.00 or a filing fee of \$150.00 for a small claims affidavit to recover an amount between \$1,500.00 and \$7,500.00. In many small claims

¹ The Firm does not bill for most telephone conversations with debtors regarding debt collection activities. All time and actual costs associated with the Firm's debt collection services are billed to the client, including but not limited to: filing fees, service of process fees, and travel costs. These expenses are sought for collection from the debtor.

² The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., is a federal statute designed to eliminate abusive practices in debt collection and to promote fair debt collection practices. FDCPA applies to third-party debt collectors, including HOA managers and attorneys.

³ The Firm coordinates lien payoffs with title companies when preparing lien releases as a courtesy to the client at no cost.

cases, the court grants a judgment in favor of our client because the opposing party does not show up at the court hearing.⁴ In such cases, we typically charge \$375.00 for our work. After our client receives a judgment, various collections remedies exist, such as bank garnishments, wage garnishments, and hearings on assets (see below). For small claims hearings, at least one person with authority to settle the case or someone with knowledge of the transaction or facts, such as a member of the client's Board of Directors, or HOA manager, must be available to testify on the date of the hearing. If the Firm requests such person's attendance at the small claims hearing, that person should bring documentation related to the case that has not been sent to the Firm, such as the client's governing documents, updated invoices and letters sent to the debtor, and any type of contract entered into with the debtor (if available).

6. **Bank Garnishment** - \$150.00 plus a filing fee of \$60.70. A bank garnishment is a collections remedy or method where the bank disburses funds from the debtor's bank account when the debt owed to the creditor (i.e. person to whom the debt is owed) has not been fully recovered. For bank garnishments, the Firm prepares all bank garnishment documents, files the documents in the appropriate office, serves the documents on the debtor, and appears in court if the debtor or garnishee (i.e. a third party who holds a debtor's money or property, such as a bank) contests the garnishment. The Firm appears on behalf of the client at any court hearing regarding garnishments, and there is no need for the client to attend such hearings.
7. **Wage Garnishment** - \$175.00 per hour attorney's fee plus a filing fee of \$60.70 for a non-continuing wage garnishment and \$100.70 for a continuing wage garnishment. A wage garnishment is a collections remedy or method where the debtor's employer withholds a portion of the debtor's compensation to help pay any debt owed to the creditor. For wage garnishments, the Firm prepares all wage garnishment documents, files the documents in the appropriate office, serves the documents on the debtor, and appears in court if the debtor or garnishee contests the garnishment. The Firm appears on behalf of the client at any court hearing regarding garnishments, and there is no need for the client to attend such hearings.
8. **Hearing on Assets** - \$175.00 per hour attorney's fee plus filing fee of \$65.70. A hearing on assets is a court hearing where the debtor meets personally with the Firm after swearing an oath to tell the truth, and the Firm obtains information about the debtor's assets for further collection activities. A typical hearing on assets usually costs \$375.00, though this number may increase due to uncooperative behavior by the debtor, in which case the hearing would have to be conducted in front of the judge or continued to give the debtor additional time to comply. For a hearing on assets, the Firm prepares a motion and order directing the debtor to attend the hearing, files the motion and order in the appropriate office, serves the motion and order on the debtor, and appears in court. The Firm appears at the hearing on behalf of the client, so there is no need for the client to attend the hearing.
9. **Foreclosure (Association as Defendant)**. Your association may be named as a defendant in a lawsuit by a lender on a property within the neighborhood.⁵ Absent extraordinary circumstances,

⁴ By law, if the client takes judgment by default, awardable attorney's fees are limited to 10% of the principal amount of the judgment. All costs are awardable.

⁵ Winton Law serves as registered agent for many of our association clients. The cost is \$100.00 per year, plus initial registration costs with the Oklahoma Secretary of State.

the lender is not seeking money from the association. Rather, the lender must name all persons/entities with an interest in the property – that includes the association. If your association receives a summons and petition, we must receive copies and instructions that the association wants us to represent the association in a timely manner. We will enter an appearance, file and answer to the petition, and file a cross-claim against the debtor if the association is owed any delinquent dues, assessments, or fines. We will then attempt to obtain a judgment against the debtor quickly and then seek collection on the judgment.

10. **Foreclosure (Association as the Plaintiff)** - \$175.00 per hour attorney's fee plus a filing fee of \$213.70 and \$5.00 for each summons issued. The cost for foreclosure lawsuits is usually anywhere between \$3,000.00 to \$4,000.00, with attorney's fees constituting roughly \$1,500.00 to \$2,500.00 of the overall cost, and court costs, fees, and appraisal costs constituting roughly \$1,500.00 of the overall cost. Foreclosure lawsuits are instituted by an association when a sufficient delinquency in the account exists to warrant the costs of the foreclosure. Foreclosure lawsuits, if taken to finality, will force a sale of the debtor's property to another buyer. For foreclosures, the Firm prepares all necessary documents to effect a foreclosure on the debtor's property, files the documents in the appropriate office, serves the documents on the debtor, and makes any necessary court appearances on behalf of the client.
11. **Motion for Deficiency Judgment** - \$375.00 plus filing fee of \$50.00. The Firm files a motion for deficiency judgment subsequent to the institution of a foreclosure lawsuit against the debtor's property and a sale of such property. The client usually files a motion for deficiency judgment if there is little chance that the client's claim against the debtor's property will be fully recovered in the debtor's foreclosure lawsuit due to another creditor possessing a higher priority (i.e. right to get paid first). If the court grants the motion for deficiency judgment, the court enters a judgment in our client's favor in the amount owed by the debtor. Similar to small claims judgments, once a judgment is entered, the client may then pursue further collections remedies, such as bank garnishments, wage garnishments, and hearings on assets (see above). On motions for deficiency judgments, the Firm prepares all documents associated with the motion, files the documents in the appropriate office, serves the documents on the debtor, sets a court hearing date regarding the motion for deficiency judgment, and appears in court for the hearing on the motion. Unless the Firm communicates otherwise, our clients do not need to attend the hearing.

We look forward to working with your association, and we are available to answer any questions you might have.

Sincerely,

WINTON LAW