

Collection Procedures Reviewed

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By: Joseph E. Adams



Q: I was recently appointed as the treasurer of my association. I noticed that there are a couple of unit owners who have not paid their condominium fees for over a year. I asked the other board members what they have done about the delinquent owners, and they basically shrugged their shoulders and said that the association has sent them letters but they do not know what else to do. We are a small self-managed condominium and can't afford high

attorneys' fees. How can the association recover the monies it is owed? (J.R. by e-mail)

A: If you turn back the clock 10 years, the greatest crisis in the community association assessment collection realm started, and lasted far too long. The result of the meltdown applicable to many condominiums is that units lost half their value (or more) and untold millions of dollars of bad debt was written off. Many of these properties were then absorbed by investors at bargain prices.

That crisis is well behind us and I am hopeful that more responsible lending practices will prevent another crash of that magnitude. I also think associations should be in a much better position if there is another downturn, as post-meltdown lending required much better loan to value ratios. This means that owners will have more "equity" in their units, which is key to the association's likelihood of a favorable outcome.

Both the Florida Condominium Act, Chapter 718 of the Florida Statutes, and the Florida Homeowners' Association Act, Chapter 720 of the Florida Statutes, contain detailed collection procedures, as may the governing documents for your community.

The condominium statute gives the association the right to record a claim of lien against the unit for unpaid assessments. According to the Florida Supreme Court, only attorneys can prepare liens. Before the association can record a claim of lien it must first send the unit owner a demand letter advising them of

the amounts that are owed and that if such amounts are not paid within 30 days, the association will record a claim of lien. This “pre-lien” letter does not legally have to be prepared by a lawyer, but it is often a good idea.

After the claim of lien is recorded, the association must send a second letter advising the owner of the new amounts that are owed, that the claim of lien has been filed, and that if the new amounts are not paid within 30 days the association has the right to file an action to foreclose the lien in the same manner as a mortgage is foreclosed.

The statute provides that the association is entitled to recover all attorneys’ fees and costs associated with its efforts to recover delinquent assessments from the unit owner. The association may also recover interest at the rate set forth in the documents (and at the rate of 18 percent if the documents are silent) as well as late fees if authorized by the documents.

If the association is forced to foreclose its claim of lien, it can ultimately obtain a judgment of foreclosure, which will require the unit to be sold at auction to satisfy the association’s claims. With the exception of taxes and first mortgages, the association’s lien is generally superior to all other liens against the property, no matter when they were issued.

An association also has the right to suspend a unit owner’s voting rights and use rights of the association’s common facilities when they are more than 90 days delinquent in the payment of any monetary obligation to the association. However, voting rights can only be suspended when the delinquent amount exceeds \$1,000.00.

Homeowners’ association procedures are essentially identical except the pre-lien letter must be sent 45 days in advance, as opposed to the 30 day requirement for condominiums.

A year is much too long to have waited to address these matters. The association should seek counsel and may be able to address these matters with the ability to get your legal fees repaid. Often, the first “lawyer’s letter” results in payment.

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