

Fear Not the Dreaded Legal Fees: Part Two

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Very often boards of condominiums and other community associations hesitate to engage in litigation against unit owners who fail to pay common expense assessments due to fear of the legal expense. In addressing this concern, I often advise boards that likely if you do nothing, you will receive nothing.

In New Jersey legal fees are recoverable against non-paying owners. Although many actions against delinquent owners proceed as uncontested, some owners do appear and attempt to defeat the association's claim to the money due and owing. Some matters may actually proceed to trial. This of course increases the expense to the association.

Well established case law in New Jersey provides that the amount due to an association should not be reduced by the legal expense incurred to recoup the fees. The Appellate Division reaffirmed this principal in a case decided this week. Significantly, the court determined that although the fee must be reasonable and must comport with the factors set forth in the Rules of Professional Conduct, the fact that the attorney fee award requested may be substantially disproportionate to the amount the association claims to be due for monthly common expense assessments, is not determinative of whether the fee is reasonable and should be awarded.

Since unpaid common expense assessments will continue to accrue for so long as a non-paying unit owner has title, it is critical for the association to have a cost effective legal strategy in place to recover the fees.