

The Art & Practice of Collecting Delinquent Assessments

*A Guide to Keeping
Your Association in the Black*



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Kovitz Shifrin Nesbit

Kovitz Shifrin Nesbit is "The Condo Law Firm". Since our inception in 1983, we have focused our practice on condominium law, Common Interest Community Associations, landlord/tenant law, and the cooperative form of ownership. Additionally, we represent clients in business matters including real estate transactions, tax appeals, and estate planning. We have four office locations, serving hundreds of clients and thousands of associations throughout Illinois and Wisconsin. Our attorneys are also licensed in Arizona, Florida, Missouri, and Wisconsin.



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INTRODUCTION

There is nothing more frustrating to an owner who is trying to make ends meet than finding out that some of their neighbors are getting away without paying their fair share.

Having represented associations since 1977, our firm recommends that boards adopt a uniform collection policy in order to deal effectively with delinquent owners. The law allows for certain procedures for the collection of delinquent assessments in order to provide associations with the quickest and most cost effective way of recovering unpaid assessments, costs and fees.

This pamphlet is intended to provide an overview of collecting assessments; as the primary source of income, assessments are the lifeblood of an association. If assessments are not collected in a timely manner, the association will not be able to operate, preserve, maintain or enhance its common property.

This pamphlet covers:

- Owner assessments and special assessments
- Authority to collect assessments
- Establishing annual assessments
- Collection policies and procedures

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Types of Association

Condominium Associations: Owning a condominium gives you an undivided interest in property held in common with other owners (common elements) plus a separate interest in a “dwelling unit”.

Owners are required to pay common expenses based upon their percentage of ownership.

Cooperatives: A cooperative is a corporation or trust that is set up to manage property, typically an apartment building. Each purchaser is a shareholder, certificate holder or beneficiary of the cooperative. A proprietary lease that grants rights of occupancy to an apartment is executed, and each member is subject to the by-laws and house rules, as well as an express obligation to pay a proportionate share of all expenses of running the cooperative. Cooperatives usually maintain control over who may purchase and/or live on the property.

Homeowners’ Associations: Homeowners’ or townhome associations are communities consisting of attached or detached housing in which individual owners of units or lots are subject to recorded covenants which may include the right to use the common areas and the right of the association to levy assessments for payment of common expenses. These associations are also known as “common interest associations”.

Master Associations: A master association (also known as an umbrella association; “homeowners’ association” may sometimes actually refer to a master association) creates an association with designated powers over one or more separate residential associations, usually to administer recreational facilities and other common areas. It is often set up to control jointly shared facilities and has separate assessment authority.

Homeowners’ and master associations usually levy assessments where all members pay an equal share. Condominium and cooperative owners are assessed on a proportionate basis.

Assessments

An assessment is the owner's financial obligation to the association during a given period of time — usually one year. It covers the owner's share of the common expenses. An annual assessment may be paid on a monthly, quarterly or annual basis, depending upon what is required in the operating documents.

An assessment for an owner's share of the common expenses is a binding legal obligation based on the association's governing documents. Some documents also include acceleration provisions — for example, if an owner misses more than one payment, the entire obligation for the remainder of the year may become due and payable.

Special Assessment

A special assessment:

- Can be a one-time assessment payable in one installment
- Can be a one-time assessment payable in multiple installments
- Can be an additional assessment collected each month over a period of time (even several years)
- May also be known as a “supplemental” or “non-recurring” assessment
- May be adopted to cover a major expense, e.g., a major repair or replacement or improvement that was not included in the annual budget
- Is generally not collected for ordinary operating expenses
- Is usually adopted by the board, but sometimes requires owner approval.

In condominiums and planned communities, assessments are binding obligations that the owner *cannot* avoid without board consent. In §18(o) of the Illinois Condominium Property Act, “the association shall have no authority to forbear the payment of assessments by any unit owner.” This means the board is prohibited from waiving or ignoring an owner's obligation to pay assessments.

Authority to Collect Assessments

The authority to collect assessments comes from various sources:

1. Federal Laws and Regulations — There are some federal regulations that apply to associations in certain instances, for example, the Federal Fair Debt Collection Practices Act, Federal Bankruptcy Code, etc. It is always important to make sure that your association's collection procedures not only conform to state law, but Federal statutes as well.
2. State Statutes — State statutes enable the board to collect assessments. These statutes also provide which procedures an association must follow in order to collect delinquent assessments. In Illinois, associations (other than cooperatives) are subject to the following.

Some states have held that management companies, collection agencies and even attorneys are debt collectors under the laws. Federal case law states that the collection of assessments is considered collection of a debt.

- a. Illinois Condominium Property Act [765 ILCS 605/1 et seq.]
 - §9(g) of the Act creates a right of lien against any delinquent owner. This lien can be foreclosed.
 - §9.2 provides that evictions (Forcible Entry and Detainer) are an appropriate remedy for collection of assessments.
- b. Common Interest Community Association Act [765 ILCS 160/1-1 et seq.] – Associations covered under this Act (most townhome and homeowner associations) are entitled to utilize the Forcible Entry and Detainer statute (see c below).

Many judges are reluctant to award late fees, attorneys' fees, etc., even when mandated by statute and by case law. They do not realize that law abiding, assessment paying owners are subsidizing the delinquents. That is why it is important to have good record keeping practices in place. If the records are clear and concise, it is much easier to get most, if not all of the amounts requested.

- c. Illinois Code of Civil Procedure [735 ILCS 5/9-101 et seq.] (Action in Forcible Entry and Detainer) — This statute, also known as the eviction law, can be used by condominiums, homeowners' associations and cooperatives, as well as all other types of community associations (umbrella and master associations) to obtain an Order of Possession for the property. This law sets out the required language that must be included in the notice, suit requirements and enforceability of court order.
3. Governing Documents — The association's governing documents, including the Declaration of Condominium Ownership, Declaration of Covenants, By-Laws, Proprietary Lease (cooperatives) and even the rules and regulations, typically cover the following items:
 - Mandatory nature of assessments
 - Authority to collect assessments
 - Purpose or use of assessments
 - Basis for calculating assessments
 - Reasons for levying fines, fees, etc.
 - Payment procedures
 - Collection procedures for delinquent payments
 - Attorneys' fees and court costs
4. Common Law – Common law permits lawsuits for breach of contract. The recorded declaration is a covenant running with the land and is a contract between each owner and the association. A delinquent owner can be sued in order to obtain a money judgment.

Establishing Annual Assessments

Annual assessments are based on the association's budget for the fiscal year (usually calendar). The amount of the total annual assessment is the amount of income that the board requires to operate the association with a balanced budget. The board must also determine if additional funds are needed to establish, replenish or contribute to designated reserve accounts. Some associations also borrow money and the budget must then include debt service to pay off the loan balance.

Each owner is assigned a share of the community's annual obligation. An owner's share is either based on the number of owners in the community or, in condominiums, on his or her percentage interest in the common elements. Here is a typical formula for calculating assessment fees for condominium owners:

Total Assessments Required in Annual Budget	X	Percentage Interest as Found in the Declaration
Number of Installment Payments in a Year		

Thus, once you have determined the type of association you live in and establish the authority of the association to collect assessments, the board must implement a policy of how to collect assessments from people who do not pay.

Why Establish a Collection Policy?

A formal collection policy is the foundation of a successful program in order to:

- Maintain necessary cash flows
- Reduce financial loss from owner defaults on assessment payments
- Establish and maintain reserves
- Present a sound financial picture to potential lenders for the association or a mortgage company for potential purchasers

A board must establish a systematic approach to delinquencies. This can usually be done by the board without owner approval. When a board formulates such a policy, it must be communicated to the owners on an ongoing basis. An educated community is a well-run community.

Consequences of Uncollected Delinquent Payments

By not having a tough but fair policy in place:

- Innocent owners' assessments have to be increased to cover the deficit, either by way of increases in the operating budget or through special assessments
- Essential maintenance may become unaffordable and put off when needed
- The property begins to appear run-down — which, in turn, reduces property values
- Borrowing from reserves may become necessary to cover shortfalls
- Disharmony may occur between paying owners and the board for its failure to take action

If the ratio of delinquencies to paid-up assessments is out of proportion, mortgage lenders may begin to reject applications and the association may not be able to obtain a loan to make essential repairs that need to be financed.

It is crucial that accounts be dealt with promptly. This is especially true in the event of a mortgage foreclosure. Once a mortgage lender files suit and completes the foreclosure, the lender or successful bidder will usually obtain a Sheriff's Deed to the property. If the association has not filed an eviction, obtained possession of a unit, rented it out and collected sufficient funds, it will probably have to write off a bad debt. That is why we recommend that accounts be referred to legal counsel no later than two months past due.

Establishing a Firm Collection Policy

1. The board should consult with its attorney, accountant and manager to set up guidelines. A formal resolution of the board should be adopted at an open meeting of members that:

- Specifies the problem
- Delineates the authority for taking the approved action
- Designates the procedures to be followed
- Designates the circumstances under which the procedures are required or permitted
- Establishes deadlines

The final policy should ultimately be included as part of the association's rules and regulations.

2. Set a firm due date for assessments and the levying of a late fee (usually the 15th of the month), subject to the rules and regulations and Declaration.

3. Outline the steps to be taken by the manager or person responsible for collecting assessments when a payment is overdue.

4. Allow for payment plans in cases of special need and financial hardship (so long as it is not abused).

5. Specify when a delinquent assessment should be referred to legal counsel. The manager should note that this is automatic once a delinquent account reaches a specified age or amount (we generally recommend no later than two months).

6. Provide for the collection of any costs associated with collecting delinquent assessments and the assessment of attorneys' fees at the time they are incurred.

7. It is critical that this policy be communicated to all owners so there is no question as to what the procedures are.

By waiting too long to turn over an account, an association may lose out if a mortgage foreclosure is filed against the unit or the owner goes into bankruptcy. In a foreclosure, the lender will assume ownership of the unit before the association has a chance to collect its money.

8. Keep in mind that there are certain givens:

- No two cases are alike
- The faster you attack a problem, the quicker the result
- Frequent communication is essential
- Payment plans and work-outs for first time delinquents are strongly encouraged
- Only send partial payments back if they prejudice your case

Legal Proceedings

In commencing a collection action, it is essential that we have as much information as possible when the account is turned over. It is important to have a detailed breakdown of all activity on the account, the name(s), phone number(s) (if known), last known addresses, offsite addresses, names of all occupants and tenants, work addresses, and any other relevant information, before proceeding with a collection action. It is best to e-mail this data as soon as it is available.

First Notice of Collection

The board and the property manager must strictly comply with all State and Federal statutes, including the Fair Debt Collection Practices Act.

After the first notices are sent, we encourage the delinquent owners to contact our office to “make arrangements” for payment. At this early stage, a payment plan, such as an initial large lump sum plus double-payments, or current assessments plus \$100.00 per month, will generally have the account cleared up in a very short period of time.

However, if an association waits too long to turn over a delinquent account and the balance gets to be too large, these types of plans may not be practical.

If the association takes an inflexible, hard-line approach the first time an owner is delinquent, it can cause difficulty throughout the processing of the file and may force the owner to default on their mortgage or to file for bankruptcy. A payment plan for a “first-time” delinquent will usually result in cooperation and end the problem. It also creates goodwill with individuals that have a legitimate financial hardship. However, accepting a payment plan does not mean that you should accept less than the total amount due, including all fees and costs.

Owners who only accrue late fees or small fines should not be sued for possession. Judges will generally not award late charges and legal fees to collect these amounts (late fees on late fees). These should be carried on the account (as a lien against the unit) until (i) the owner becomes delinquent again with assessments, (ii) pool passes are requested or (iii) an assessment status letter is requested for a sale or refinance. The other alternative is to file a breach of contract action against the owner to collect the amounts due.

Remember, you cannot charge late fees on unpaid late fees. A late fee is not a penalty; it is a legitimate charge back of the manager’s additional time to process and administrate a late account. Judges will only allow late fees to be charged in the month in which the owner failed to make a monthly payment.

Tract Book Search

In order to commence collection proceedings, we first order a tract book search (like a title search) to verify ownership, mortgage lender(s), pending lawsuits, other lienholders, etc. (if a delinquent’s unit is being foreclosed, it may be too late to file suit). The cost is charged back to the delinquent owner. The tract book search provides additional documentation to protect the association in the event their records reflect a different owner so that they cannot be accused of proceeding wrongfully.

30-Day Notice and Demand for Possession

Once the tract book search is received, we will proceed with sending a 30-day Notice and Demand for Possession to the record title owner and all occupants to terminate possession, which begins the eviction process.

All legal documents must strictly comply with State and Federal statutes.

Lien

A lien is the recording of a legal claim by the association against the unit. The act of recording establishes the priority of the association's claim as to all other creditors who file a claim after the association.

We can prepare and record a Notice of Lien against the property in the county where the property is located, in order to have it noted on any title search (i) in the event of a sale or refinance of a mortgage and (ii) to protect the association's interest in case of a bankruptcy and/or foreclosure.

This is a legal document. Preparation of a legal document by anyone who is not a lawyer is the UNAUTHORIZED PRACTICE OF LAW and can be subject to legal sanctions.

As an alternative to filing an eviction action, a lien could be foreclosed by the association in lengthy, costly proceedings. This is only recommended in very select cases. Also, if the association decides it wishes to proceed with a lien foreclosure, it must be prepared to purchase the unit and pay off all prior mortgages and lien holders.

Liens should be recorded because if the delinquent owner files bankruptcy or is placed in foreclosure and there is no recorded lien, the association's claim could be given a lower priority. It could mean the difference between full payment and no payment.

Eviction

An Action in Forcible Entry and Detainer (eviction) is filed after the 30 Day Notice and Demand for Possession has expired and full payment is not received. Prior to filing suit, we will need an itemized month-by-month breakdown showing all charges incurred and payment received.

In order to file the eviction suit, a complaint is prepared requesting the court to award possession of the unit to the association together with a judgment against the owner for all amounts owed. In addition, a summons is prepared because the defendants must be brought within the jurisdiction of the court by being served personally with a copy of the complaint and summons. A court date is selected approximately 30 days after the first filing date.

If the owners have disappeared or are avoiding being served with the summons, the summons will be returned “Not Found” by the Sheriff. If the Sheriff is unable to serve the owners within the specified time period, we are required to issue a second or “Alias” summons and attempt service once again. We will often hire our own “special” process server to attempt service.

If the summons is again returned “Not Found”, then the case must be continued for approximately 21 to 30 days in order to do a Notice By Posting in lieu of preparing additional summonses. A Notice By Posting is a notice posted in the Sheriff’s office without personal service. If the case proceeds on a Notice By Posting, we will still be able to obtain possession of the unit, but we will not be able to get a personal money judgment against the delinquent. It is very important that any information regarding work addresses or off-site addresses be provided to us at the time of the initial turnover. Additionally, we will publish a Notice against all “Unknown Occupants” in order to allow the Sheriff to remove any and all persons in possession of the premises in case of an eviction.

In most cases, it is worthwhile to proceed and obtain a court order for possession, since that is the most effective way to collect the to collect if a delinquent owner is judgment-proof, files bankruptcy or is unemployed.

Once the final court date arrives, most of these cases will proceed as a “default” because the debtor does not show up, and the court will enter an order terminating the owner’s right of possession of the unit and award it to the association. When the delinquent defaults, it may not be necessary to have a witness in court. In addition, a judgment for the amount owed will be entered against the defendant(s) (if there is personal service), or against the property (if service was obtained by posting). The court will also enter a judgment for attorneys’ fees and costs.

In some courtrooms, or if the case is contested, a witness (either a board member or the manager) must be present in court in order to testify under oath to verify the allegations made in the complaint. It is a good idea for witnesses to follow up the day before in order to prevent an unnecessary trip to court.

If the owner is still occupying the unit, the court will issue a “stay” of execution on the eviction order and we must wait a minimum of 60 days before we can place the order with the Sheriff to evict them. There are some judges who insist on longer stay dates and occasionally we have to wait up to 180 days.

If the unit is leased out by the owner and that information was provided to us prior to starting the process, we have the right to make a demand upon the tenant that all future rents be paid to the association, or we can have the Sheriff evict the renter if they refuse to pay the rent to the association. Therefore, it is very important that any information regarding tenants be provided to our office at the time of initial turnover.

Once the occupants of a unit have been removed by the Sheriff, the association can secure possession by changing the locks and can rent the unit out, applying the collected rent against the delinquency. If the unit has been foreclosed on by the bank, the mortgage lender may demand possession immediately after their mortgage foreclosure action is completed. We do not recommend that a lender or real estate broker be permitted to obtain keys or take possession until they can produce a copy of a recorded deed showing that there is a new owner.

Sometimes we can negotiate with a bank to keep our tenant in the property for an extended period of time, or sometimes we will be forced to have the tenant pay the rent to the bank or the new owners directly. Sometimes there may be room to negotiate to recover assessments and costs because we have uncovered a “technical” defect in the foreclosure proceedings.

If the association is renting out a unit as a result of an eviction, the board should always enter into a written lease. We can provide the appropriate form(s) so that you can maximize rent collections. When an association is renting out a unit, it is important to be in frequent communication with our office. For example, if the tenant does not pay the rent and we must then take action against them. In addition, all leases must include a 30-day early termination clause.

The entire eviction process can take a minimum of six months if all of the factors are in place. However, if the unit is still occupied by the owner, and he or she refuses to cooperate, it can take longer. You should make every effort to move it along quickly in order to avoid losing out to a foreclosing mortgage holder.

Mortgage Foreclosures

Most purchasers of a condominium will finance their purchase by obtaining a mortgage. During difficult economic times foreclosures increase significantly. To secure their loan, the bank records the mortgage as a first and prior lien against the property. In order to encourage banks to loan money to purchase condominiums, state law and declarations are written so that a bank’s lien has a higher priority than all others, including the association’s lien for unpaid assessments.

Because the lien of the first mortgagee is superior to the association’s assessment lien, this means that if the lender forecloses and there are no other bidders at the foreclosure sale, the lender will probably “purchase” the unit for the amount of their own loan and the association’s lien will be extinguished against the unit. Therefore, the best chance for recovering unpaid assessments is by renting out the unit after an eviction.

It is crucial that if any notices are received pertaining to a foreclosure, they be sent to legal counsel immediately. If the association's attorney is designated as the registered agent for the association, which we strongly recommend, all notices will be delivered or sent to the attorney's office by the foreclosing mortgagee. Associations that choose not to use their attorney as their registered agent may lose thousands of dollars if the board or the manager is not diligent in promptly forwarding all foreclosure paperwork. Our office will prepare and file the necessary court pleadings in the foreclosure to protect the association's interest, since the association is a defendant in a lawsuit. Like all other collection billing, the legal fees involved are charged back to the unit.

Once the foreclosure is completed, the court will order the property to be sold at an auction held by the county Sheriff (Sheriff's sale) or a sales agent. The purchaser at the sale is obligated to begin paying assessments from the first day of the first month following the Sheriff's sale. Under certain circumstances, the Buyer of the unit from the lender may be required to pay an amount equivalent to 6 months of assessments to the association in connection with their purchase. They do not have to pay any past due assessments from before that date. The association will have to pursue the former owner personally if they have not already obtained a money judgment.

If all goes well, an association can collect enough rent (after having obtained possession of the unit), while monitoring the foreclosure, in order to break even. In some cases, there may be sufficient equity in the property to pay off the mortgage in full (plus all penalties from the proceeds of the Sheriff's sale), and there will still be money left over to be applied to past due assessments.

That is why it is critical for the association to file a claim for any unpaid amounts owed to be included in the Judgment of Foreclosure. When there is no equity, or the Buyer put down a small down payment, the association's lien will likely be extinguished.

If, based on the amount owed to the lender and the fair market value of the unit, it appears that there may be a surplus of proceeds, it is also important for the association to be represented in the foreclosure and file a claim for any surplus. If you are notified by our office about the Sheriff's sale, please contact us immediately so that we can decide whether we should attend the auction to assert the association's interests.

Also, based upon the amount of equity in the unit and the amount owed to the association, it may make financial sense for an association to attend the Sheriff's sale in an effort to bid on and buy the unit. If the unit can be purchased for the right price, an association can then sell the unit and keep all profits from the sale, thus paying off the delinquency and possibly making some money for the association. Usually there are strict requirements in a declaration that must be met in order for an association to buy a unit. Interested associations should call our office for details.

If the lender obtains title before an association can collect all the back assessments, any deficiency will be lost unless we can locate the owner and garnish assets or wages based upon the monetary judgment. Unfortunately, people who lose their homes in foreclosure usually do not have money to pay the association. In fact, they often file for Bankruptcy.

If the association does not file a response in a mortgage foreclosure, it will not receive notices and could lose out if there is a surplus from the sale.

Bankruptcy

The U. S. Constitution provides for the filing for bankruptcy as a means by which any debtor can seek a "fresh start", regardless of how abusive their indebtedness. Recent changes in the law make it more difficult, but not impossible, to discharge all debts. If the association has recorded an assessment lien on the property, it is considered a non-dischargeable obligation. Even if a debtor files for bankruptcy, this means we can still get paid as a result of the lien on the unit. However, assessments can be dischargeable as a debt against the owner personally.

If the debtor files a “Chapter 7” bankruptcy, this means he or she is insolvent and seeks to be discharged from all personal obligations or be ordered by the court to pay some token amount. We will seek to have the debtor re-affirm their debt or we may be able to petition the

Bankruptcy Court to award the association the right to seek possession of the unit.

If the debtor intends to keep the property and become current with the lender, we will assert the association’s lien as a priority debt in order to be able to collect all monies owed. If the debtor files for bankruptcy under Chapter 13 (or debt reorganization), he or she is asking the court to consolidate all debts under a 24-60 month payment plan to be administered by a Trustee. The debtor must continue to pay current (post-petition) assessments even though the outstanding balance (pre-petition) can be paid off over the period of time allocated for the plan. Often the debtor does not pay current assessments, so we must then petition the court to lift the “stay of execution” on all debt collection activities to allow us to proceed with an eviction and to collect post-petition assessments as a priority creditor. It is important to insist that the association be named as a priority creditor and have a court order entered to that effect in order that the association be paid off in a more expeditious manner. If the Chapter 13 fails (the debtor does not make their payments), it will be dismissed and all legal proceedings can commence.

Finally, if the debtor files Bankruptcy (Chapter 7) after a foreclosure, the association must write off the balance as a bad debt, since the foreclosure extinguishes the lien against the property and the bankruptcy discharges the personal obligation against the owner. Remember, association obligations are not automatically discharged due to the filing of a bankruptcy.

Post Judgment Proceedings

When the association is able to obtain a money judgment against a delinquent owner, either by filing a breach of contract suit or in conjunction with the entry of an Order of Possession (after personal service), the judgment has to be levied in order to collect the money. Post judgment proceedings take several forms:

1. Citation to Discover Assets. The debtor is summoned to appear in open court to testify under oath as to the amount and location of any assets. If there are assets, the court can order them to be either liquidated or turned over to the association to satisfy the judgment. If the debtor ignores these proceedings, they can be arrested after a body attachment is issued for contempt of court.
2. Wage Garnishment. If the debtor is a salaried employee, a wage garnishment can be filed, served on their employer and the employer is required to deduct payments from each paycheck. If the employer ignores the garnishment, they can be held liable for the full amount.
3. Non-Wage Garnishment. If the debtor works on commission or if the debtor has a bank account, these assets can be garnished for the full amount.
4. Levy and Execution. If the debtor owns assets free and clear of any secured debts, an order can be obtained to have the Sheriff seize the asset and liquidate it to satisfy the debt.

All of the above can be costly and/or time consuming; that is why our office recommends eviction proceedings as the most effective collection procedure. It is more cost efficient and results can be attained in a shorter period of time. However, it is sometimes necessary to utilize other types of collection proceedings.

Billing

After each step in the collection process, we will issue a bill for fees and costs. Collection billing is sent out each week. All costs and fees should immediately be posted to the delinquent owner's account so that they can be collected in full at the time of payment.

When any collection matter is taken to court, we will file an affidavit with supporting documentation asking the court to award all of the association's attorneys' fees and costs. Please keep in mind that the awarding of fees is discretionary and even though most judges are cooperative, once in a while the association will appear in front of a judge who will not award everything they should. That is why we prepare and present detailed records to ensure the highest degree of success.

Collection Status Online (CSO)

Kovitz Shifrin Nesbit is unique in that it has installed state-of-the-art technology to keep our clients informed of the current status of all of their collection cases online, through our CSO service. For more information, including a link to CSO, go to www.ksnlaw.com.

Conclusion

In conclusion, it is critical for the association's board to continually review receivables and aggressively pursue the collection of delinquent accounts. Once a case begins, there are many intangible factors that one cannot count on, such as debtors hiring attorneys to defend the case, counterclaims, extenuating circumstances at the time of purchase, bookkeeping errors, lost payments, etc.

The procedures outlined above are for the majority of cases and we take great pride in the ability of our office to expeditiously collect payment and the high rate of success we have in cases that appear to be uncollectible (we have been successful in collecting thousands of dollars years after a foreclosure has been completed).

The most important factors that an association board should have in place are a firm policy, the prompt turnover of delinquents, the reasonableness of the board at certain stages, frequent communication between the account manager and our office and most of all, understanding the process.

Appendix A

CASE LAW PERTAINING TO ASSOCIATION COLLECTIONS

Western v. Chardonnay Village Condominium Association, 519 So.2d 243 (La. App. 5 Cir. 1988) — Association denied right to shut off water to delinquent owner.

San Antonio Villa Del Sol Homeowners Association v. Miller, 761 S.W.2d 460, Tex.App. (1988) — Association does have the right to shut water off, only if it is in the declaration.

Meyer v. Board of Managers of Harbor House Condominium Association, 221 Ill.App.3d 742, 583 N.E.2d 14, 164 Ill.Dec. 460 (1991) — Concern over association actions in collecting assessments from delinquent owners is considered a proper purpose for an owner to inspect association delinquency reports.

Board of Managers Colony West Townhome Owners v. Bucalo, 69 Ill.App.3d 287, 387 N.E.2d 53, 25 Ill. Dec. 596 (1979) and *Board of Managers Dunbar Lakes Condominium Association II v. Beringer*, 94 Ill.App.3d 442, 418 N.E.2d 1099, 50 Ill.Dec. 105 (1981) — An association can collect attorneys' fees equal to or in excess of the amount in controversy if the complexity of the case warrants it.

Citicorp Savings of Illinois v. Bhatti, 173 Ill.App.3d 170, 527 N.E.2d 424, 122 Ill.Dec. 926 (1988) — The lien of the first mortgagee is superior to the assessment lien and the lender is not liable for preforeclosure assessments.

St. Paul Federal Bank For Savings v. Wesby, 149 Ill.App.3d 1059, 501 N.E.2d 707, 103 Ill.Dec. 390 (1986) — Even though the declaration establishes the obligation to pay assessments as a covenant running with the land, it is subject to the mortgagee's interests and the association's lien for unpaid common expenses does not relate back to the date the declaration was recorded. The lien arises for common expenses "when due", and prior recorded mortgages take priority.

Elbadramany v. Oceans Seven Condominium Association, Inc., 461 So.2d 1001, 10 Fla. L. Weekly 3, Fla.App. 5 Dist. (1984) — A fine imposed for violation of rules and regulations cannot constitute a lien against a unit or serve as the basis for foreclosure, because it is not a “common” expense within the meaning of the law.

Diamond Savings & Loan Company v. Royal Glen Condominium Association, 173 Ill.App.3d 431, 526 N.E.2d 372, 122 Ill. Dec. 113, Ill.App. 2 Dist. (1988) — Where condominium association was collecting rents under a court order obtained in a forcible action, it was not necessary to escrow rent payments as the lender, in its foreclosure action, has an adequate remedy - a suit for damages.

Washington Courte Condominium IV vs. Cosmopolitan Bank, 169 Ill.App.3d 1050, 523 N.E.2d 1245 (1988) — Litigation costs were “non recurring common expenses” and properly the subject matter of a special assessment.

Thanasoulis v. Winston Towers 200 Association, 110 N.J. 650, 542 A.2d 900 (1988) — Board exceeded its authority in adopting parking rental fees that discriminated between resident and non-resident owners.

Miller v. St. Charles Condominium Association, 141 Ill.App.3d 834, 491 N.E.2d 125, 96 Ill.Dec. 311 (1986) — Failure to issue an assessment letter to prevent an owner from selling her condominium could be considered intentional and malicious interference with a contract and could be actionable.

How v. Mars, 245 Neb. 420, 513 N.W.2d 511 (1994) — Association members who are delinquent in their assessments or dues can be restricted from voting; assessments and dues of an association run with the land.

Maercker Point Villas Condominium Association v. Gregory Szymiski, 275 Ill.App.3d 481, 655 N.E.2d 1192, 211 Ill.Dec. 809 (1995) — Developer owes a fiduciary duty to owners and may breach that duty by failing to fund reserves adequately.

Mailman v. Abbady, 629 N.Y. S.2d 6 (1995) — Defective conditions in a unit and disagreements with board decisions do not allow owners to withhold payment of assessments. Also see *Panther Lake Homeowners Association v. Juergensen*, 76 Wash.App. 586, 887 P.2d 465 (1995), where the court held that dissatisfaction with an association's capital improvements is not a defense to avoid paying a special assessment.

Chin v. Coventry Square Condominium Association, 270 N.J. Super. 323, 637 A.2d 197 (1994) — A condominium association may charge a rental fee to a non-resident owner (landlord) if the fee is reasonably related to the actual cost of reviewing the rental transaction and inspecting the rental unit.

Board of Directors of Olde Salem Homeowners Association v. Secretary of Veterans Affairs, 589 N.E.2d 761, 226 Ill.App.3d 281, 168 Ill.Dec. 361 (1992) — Purchaser at foreclosure sale takes title free of assessments accruing prior to recording of deed, but association has authority under Illinois Mortgage Foreclosure Act to foreclose lien for unpaid assessments that accrue after foreclosure.

First Federal Savings Bank v. WSB Investments, Inc., 67 Ohio App.3d 277, 586 N.E.2d 1159 (1990) — Condominium owner was held liable to pay association's assessments and attorneys' fees, despite the lack of evidence establishing an annual budget and despite the lack of express authority awarding attorneys' fees in the declaration.

Hidden Grove Condominium Association v. Katherine Crooks, No. 3-00-0329 (2001 WL 82005), an Illinois Appellate Court 3rd District decision dated January 26, 2001 – An association can charge late fees, but not “late fees on late fees”.

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