

What Do Community Associations Need to Know About Collecting Assessments During the Coronavirus Pandemic?

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Below is a summary of what community associations need to know about collecting assessments during the Coronavirus pandemic.

Are Boards Required to Collect Assessments?

Illinois law, both statutory and case law, impose upon community association boards of directors a fiduciary duty to act in the best interest of the association (and all owners) as well as a duty to enforce the governing documents of the association. Once the operating budget is set for a year, boards are required to collect each owner's pro-rata share of the budget (i.e. assessments).

Assessments are calculated based on the association's approved budget, most of which are fixed expenses to operate the association. This can be from paying utility bills, to keeping

the lights on in common areas, elevators operating, property and general liability insurance, necessary maintenance, repairs and replacements of the common elements. It can include paying payroll for staff such as maintenance and janitorial personnel who are likely disinfecting the common elements regularly during the Coronavirus crisis, and door personnel (if applicable).

Can Condominium Associations "Waive" or Forbear the Collection of Assessments?

No. Section 18(o) of the Illinois Condominium Property Act ("Act") expressly states that condominium associations " *shall have no authority to forbear the payment of assessments by any unit owner.*" As such, condominium boards are prohibited from "waiving" or forbearing the collection of assessments-despite hardships that may arise due to the Coronavirus pandemic.

From a practical standpoint, waiving assessments is problematic because waiving assessments may leave a condominium association underfunded and unable to meet its ongoing expenses, which in turn impacts each unit owner's underlying investment in the association.

Similar to condominium association

assessments, waiving or forbearing HOA assessments is not recommended and problematic because assessments are needed to pay for ongoing HOA operations.

Practically Speaking, What's the Harm in Cutting Unit Owners Some Slack on Their Assessments?

Community associations (including condominium associations and HOAs) are not banks or for-profit businesses, and in the event of a budget shortfall, the owners collectively are still responsible for "picking up a budget shortfall", most commonly by a special assessment. Ironically, the owners paying their assessments obligation would ultimately be paying the share of assessments of owners who are not paying their assessments. While it may seem harsh, community association boards have a fiduciary duty to operate the association in the best interest of *all* owners, not just those that are (unfortunately) delinquent during this difficult time.

What About Issuing *Partial* Refunds for *Temporary* Closure of Condominium Common Element Amenities Such as a Fitness Room?

No. The above prohibition on forbearing assessments in Section 18(o) of the Act also applies to any partial refund of assessments. Further, use or non-use of amenities subject to the Board's restrictions are both nonquantifiable and still require maintenance and supervision by Association staff, which in turn must be funded via assessments. If a temporary closure results in cost savings that lead to an annual surplus, the surplus may be allocated as a credit or direct refund to unit owners (depending on the provisions of the condominium instruments).

What About Waiving Late Fees or Reducing the Budget?

Community association boards have discretion to waive late fees (as opposed to assessments) in extenuating circumstances; however, it is generally not recommended to do so because late fees are a tool to incentivize timely payment of assessments, which are the lifeblood of community associations. Nonetheless, temporarily freezing late fees to reduce the financial burden on owners is an option the Board may consider.

If practical, Boards could also consider reducing services to the owners built into the

budget or defer non-essential projects to garner a budget savings to reduce the budget (by following required approval protocols), which reduces the assessment obligation of each owner pro-rata. However, it must be noted that most community association budgets do not contain superfluous expense items. In fact, they contain fixed expenses for reasonable and expected services to the owners and maintenance, repair and repayment of the common areas, so a nominal reduction of the budget will be tantamount to only a nominal reduction in assessment obligation for each owner.

Should Collections Be Put on Hold?

No. Subject to any new legislation that affects collection of assessments, we recommend that Associations continue to adhere to their standard collections procedures in order to ensure that the association has funds to continue operating properly, pay its staff and vendors providing services, pay for utilities and insurance, maintain and repair the common elements, and so on. Hope is not a strategy, and unfortunately, there is no guarantee that delaying collections will improve the situation in the near term-and may even lead to a greater deficit for the association. Plus, it should be noted that the

collections process can take as long as six (6) months to collect delinquent assessments (not including delays due to court closures - [click here for information regarding collection cases being postponed due to the coronavirus pandemic](#)), so delaying the commencement of an assessment collection action will delay the association receiving necessary funds to operate.

It is understandable that boards reflexively may wish to show compassion to neighbors who are in an unfortunate situation due to Coronavirus; that said, boards need to be mindful of the association's ongoing funding needs (to which even delinquent owners receive a benefit of services) and their fiduciary duty to all owners and the association when navigating delinquency issues.

LP is committed to keeping our community association clients updated, informed, and prepared to proactively navigate the Coronavirus pandemic. For questions about handling specific issues related to the Coronavirus in your community association, please contact [Howard Dakoff](#), [Patricia O'Connor](#), [Adam Kahn](#), or [Molly Mackey](#) of [LP's Community Association Group](#)

**For more resources and LP's response to
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