

The "Past Due" Predicament: Practical Advice on Collecting Unpaid Assessments

February 17, 2020



Condo Lifestyles publishes article by Adam Kahn and Molly Mackey | Reprinted with permission from Condo Lifestyles

Monthly assessments are the lifeblood of condominium associations. These funds pay for the association's ongoing expenses, (such as fees for management and other professionals, costs for maintaining the building, etc.), as well as any capital improvements. They also fund the association's reserves. Without payment of monthly assessments by unit owners, associations simply could not function.

Unit owners who fail to pay their monthly assessments, whether due to economic hardship or otherwise, put their association in a bind and the other unit owners will be left to pick up the slack to meet the association's ongoing financial obligations. Collection issues are further complicated by the fact that financial issues among neighbors can be delicate and uncomfortable. That said, the bottom line is that boards have a fiduciary obligation to ensure that monthly

assessments are paid in full and on time.

Since delinquencies pose a threat to the operating of an association, the question facing boards of directors is: what can an association do to protect the association's interests in the event that a unit owner fails or refuses to pay their monthly assessments? The following steps are a general outline to assist boards to effectively handle assessment delinquencies and protect the association's financial interests:

1. **Keep Track of Delinquencies:** The first step to prevent delinquencies from spiraling out of control is to keep track of all assessment payments. Monthly ledgers that accurately show the amount due should be sent to all unit owners on a monthly basis to promote complete and on-time payment. It is customary for management (if the association is professionally managed) to send monthly ledgers by (or before) the first of the month, and some managing agents offer electronic payment and "auto-pay" options to make payment more convenient. Accurate ledgers are also essential should legal action to collect the outstanding assessments become necessary (see #3 on next page).

Tip: Be sure to maintain up-to-date

contact information for any unit owners who live offsite so that they can be notified of an assessment increase, special assessment, or delinquency.

- 2. Impose Late Fees.** In order to incentivize on-time payment, it is customary for associations to impose reasonable fees for late assessment payments (e.g., \$50 per month), which are usually spelled out in the association's rules and regulations. Once accrued, late fees should be added to the monthly ledger for the unit.

***Tip:** any late fees imposed by management (as opposed to the association) must be expressly included in the management contract.*

- 3. Engage Legal Counsel to Initiate a Collection /Eviction Action.** If delinquencies remain unpaid for a certain period of time, the next step is to involve the association's legal counsel to initiate a collection/eviction action. Best practice is to turn accounts over to the association's legal counsel once they are 60 days past due; however, the

association's governing documents should be reviewed to ensure that they do not provide for a different timeframe. Allowing additional time to make payment on past-due assessments before turning the matter over to the association's legal counsel is generally not recommended, as delinquencies may continue to grow, and formal collection proceedings can take months to complete.

The first step in commencing a collection/eviction action is to issue a formal 30-day demand letter stating the amount of the delinquency. Once the 30-day demand period expires and if the unit owner has not paid the outstanding balance, a complaint may be filed against the unit owner seeking an eviction order and money judgment in the amount of the delinquency.

***Tip:** The Illinois Condominium Property Act creates an automatic lien on a unit in favor of the association for any unpaid assessments and provides that any attorneys' fees incurred by the association to collect delinquent assessments can (and should) be billed back to the delinquent unit owner.*

4. **Enforcement of the Order.** Under Illinois law, two separate legal remedies are available to associations for unpaid assessments, both of which are discussed below:

a. Collect on the Money Judgment. If the personal service of the collection lawsuit is obtained on the unit owner, the association can seek a money judgment against the unit owner in the amount of the delinquency.

Tip: Once a money judgment is obtained, the association can seek to garnish the unit owner's wages (assuming the unit owner is gainfully employed) to collect on the outstanding judgment.

b. Lease the Unit. In addition to a money judgment, the association may obtain an order of possession allowing the association to lease the unit and apply the rent to pay down the outstanding balance. This remedy is available regardless of whether the unit owner is served personally or via posting and gives the association the right to possess (but not own) the unit to lease it out. The lease can be for a term of up to 13 months and must commence within 8 months after the

60 day stay for the possession order expires. (Note: per Illinois law, condominium unit eviction orders are automatically stayed for 60 days from the date of entry; after the stay expires, the order must be placed with the Sheriff for eviction.) Thereafter, the association may, with the permission of the court in each instance, renew the lease for additional 13-month terms.

Tip: *It is strongly recommended that any such lease be prepared and / or reviewed by the association's counsel to ensure that it is proper and adheres to the requirements for leases entered into pursuant to an order of possession.*

The above remedies are in addition to (and not in lieu of) the automatic lien for unpaid assessments (see #3).

- 5. Watch for Foreclosures.** If a unit owner fails to pay their monthly assessments, they may have also fallen behind on their mortgage payments. Associations should monitor foreclosure actions, and in the event a unit is sold at a foreclosure sale, seek payment of the outstanding assessments from the new owner. If a

unit is sold at foreclosure auction or transferred to the lender to satisfy the outstanding debt (a "deed in lieu of foreclosure"), the lender will only be required to pay the assessments going forward. So long as the lender meets its obligations to pay the assessments following the foreclosure/deed in lieu, if the lender subsequently sells the unit to a third party, the third party will only be responsible for paying the 6 months' worth of assessments immediately preceding the foreclosure/deed in lieu, and the remaining balance is wiped out.

***Tip:** Courts are split as to whether there is a deadline/timeliness requirement for lenders to pay the assessments following a foreclosure/deed in lieu in order to have the remaining balance (i.e., anything beyond 6 months' worth of assessments) wiped out, and if so, what that deadline is. Accordingly, best practice is to monitor payments and aggressively pursue available remedies if payment is not made in a reasonably timely manner.*

While assessment collection issues pose a difficult challenge to condominium boards and threaten the financial well-being of

associations, the steps outlined above can help effectively address the issue, protect the financial interests of the association and the investment of unit owners. **By acting diligently to collect unpaid assessments, the board not only fulfills its fiduciary obligation to protect both the financial health and interests of the association and all unit owners, but also sends a message that non-payment will not be tolerated and that all unit owners will be held to the same standard of meeting their financial obligations to the association.** The above recommendations are intended to highlight common strategies for effectively handling delinquencies but are not an exhaustive list of all available remedies.