WINZENBURG LEFF PURVIS & PAYNE LLP

Collection of Delinquent Assessments: Protecting Your HOA's Fiscal Health

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Focused on Communities

Questions from Budgeting and Reserves Workshop?

Board of Directors Has a Fiduciary Duty to:

- Create a Budget that:
  - Adequately addresses operating expenses; and
  - Makes appropriate contributions to reserves

- Collect Delinquent Assessments from Owners

“Assessments” are commonly referred to as “Dues”

Why is it important to collect delinquent assessments?

- Assessments are the lifeblood of associations
  - Need assessment income to provide services
  - Need assessment income to carry out routine maintenance
  - Need assessment income to fund reserves

- Generally, assessments are the only source of income for associations

- It's your fiduciary duty to provide the required services and to carry out the maintenance, repair and replacement responsibilities outlined in the Declaration.

Methods for Collecting Delinquent Assessments

- Initial Notification of Delinquency to Owner
- Recording lien on Unit/Lot
  - Association Recording
  - Legal Counsel Recording
- Turning delinquent accounts over to legal counsel
  - When?
  - What legal counsel will need

Methods for Collecting Delinquent Assessments Continued . . .

- Legal Counsel Will:
  - Carefully review provisions of Declaration
  - Carefully review ledger
  - If permissible in Declaration, recommend *Acceleration* of balance
  - Record a Lien on the Unit\Lot (if not already accomplished)
  - Send a Demand Letter to Delinquent Owner

Typically, around 40% of Unit Owners will respond to a demand letter from legal counsel.

Payment Plans

Amount of Delinquency + attorney fee for demand letter, late charge and interest

Include current month assessments in payment plan

Methods for Collecting Delinquent Assessments Continued . . .

- If Legal Counsel doesn't receive response from delinquent owners within 30 days after sending the demand letter:
  - File a lawsuit to obtain a personal judgment.
  - What may happen:
    - Gets the Owners attention and agrees to enter into a Stipulation
    - Owner files an answer with the court – they aren't responsible
    - Default Judgment
  - Once a judgment is entered:
    - Garnish Bank Accounts
    - Garnish Wages
    - Tenant Garnishment

Methods for Collecting Delinquent Assessments Continued . . .

- Issues Relating to Lawsuits
  - Bankruptcy
  - Can't Find Owner for Service of Process
  - Fines converted to assessments
  - Unemployed
  - Fishing Expedition for Bank Accounts

Methods for Collecting Delinquent Assessments Continued . . .

- Receivership
  - Unit must be vacant
  - Obtain permission from APCHA to proceed
  - Is the unit a good option for a receivership?
  - Court must approve a receiver
  - Receiver will prepare the Unit for rental and facilitate the rental of the unit.
  - Costs of receiver paid first
  - Once the delinquency is brought current – receivership ends

Methods for Collecting Delinquent Assessments Continued . . .

- Foreclosure on the Association's lien
  - Not a great option for APCHA communities
    - Extremely Expensive Option
    - Foreclosure takes up to 1 year
    - Must deal with the Deed Restriction on the Unit – Association is not a "Qualified Buyer"
    - Take subject to the 1st Mortgage

Instead of Foreclosure – Work with APCHA to Utilize their Big Sticks

Public Trustee Foreclosures

- Lender forecloses on mortgage
- Association has a “Superlien” over the First Mortgage
  - What would equal 6 months of assessments from the date of the NED backward in time
- NED – lender must schedule sale within 110 to 125 days
- From initial sale date, lender can continue sale for up to 1 year
- Associations can really take it on the chin financially
- Public Trustee Statute will be taken up during the 2012 legislative session.

APCHA Tools for Collections

- Violation of the Deed Restriction to be delinquent on HOA assessments
- APCHA can put pressure on owner to pay assessments
- APCHA can force the owner to put the unit on the market
- At conveyance, the delinquent assessments will be paid

Collection Policy – Provides Notice to Owners of Consequences and Options

- Due Dates
- Late Fees and Interest
- Acceleration
- Return Check Charges
- Attorney Fees on Delinquent Accounts
- Application of Payments
- Collection Letters
- Liens
- Referral of Delinquent Accounts to Attorneys
- Referral of Delinquent Accounts to Collection Agencies
- Waivers
- Order of Remedies

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Creating Ledgers and Applying Payments

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