

Handling Condominium Fee Delinquencies in Your Association

A fundamental aspect of condominium unit ownership is the requirement to pay a proportionate share of the condominium's common area charges. Common area charges generally include the cost of items such as landscaping, snow removal, maintenance, management fees, master insurance premiums, and common utilities, among others.

The failure of one or more unit owners to pay their share of assessed common area charges can result in a serious disruption to the operation of the condominium association. If the association is not receiving all the income necessary to meet its budgetary requirements, over time it will be forced to reduce spending, which will very likely include the deferral of expenditures for maintenance and repair items. In extreme cases, condominium buildings and grounds could fall into disrepair, adversely affecting the value of the individual units in the development.

Delinquencies can also create issues for those seeking to obtain mortgage financing. Underwriting requirements for most residential mortgage lenders dictate that new loans conform to the requirements of Fannie Mae and Freddie Mac. However, new mortgages on condominium units are deemed ineligible for sale to Fannie Mae or Freddie Mac where more than 15% of the units in the condominium project are 30 or more days past due. While it will take a number of delinquent units to reach this threshold in a larger development, it may take only one or two delinquent units to account for 15% of a small development. Once this threshold is reached, even if a unit owner is current with respect to payment of common area charges for his or her unit, the owner may find it virtually impossible to refinance. Furthermore, unit owners will likely find it substantially more difficult to sell their units, as mortgage financing may be unavailable to prospective buyers.

In order to avoid these issues, it is imperative that a condominium association act swiftly and decisively to obtain payment of delinquent common area charges, and Massachusetts law provides an effective means to do so. The relevant statutory provisions appear in the Massachusetts Condominium Act, General Laws Chapter 183A. When common area charges are assessed, the Act provides that the amounts assessed become an automatic lien against the unit until paid. Furthermore, this lien has a limited priority over any mortgages covering the unit. And if the association gives certain delinquency notices to

the unit owner and his or her mortgagee prior to commencing court action to enforce the lien, the priority will also extend to the attorney's fees and other collection costs that the association incurs. This protects the association against incurring out-of-pocket expenses and also provides a powerful incentive for lenders holding mortgages on condominium units to quickly pay the arrearages accrued by their borrowers. Otherwise, the association could foreclose its lien and wipe out the lien of the mortgagee in the process. However, only that portion of the delinquent common area charges for the six-month period immediately preceding commencement of the court action are entitled to priority over an existing mortgage. Therefore, the mortgage holder can regain its priority position by simply paying the past six months of common area charges, attorney's fees, and collection costs.

The lesson for condominium associations is that it pays to act quickly. Under the Act, the association can begin serving the statutory delinquency notices as soon as a unit owner's delinquency reaches 60 days past due. An association that acts promptly can generally complete the notice process, thereby achieving a priority position for its collection costs, and file an enforcement action well before the unit owner falls six months in arrears. This affords the association the best chance of receiving payment in full while also avoiding collection expenses, particularly attorney's fees and related costs, which the unit owner's mortgagee would be obliged to pay. However, if an association is not proactive, there exists a risk that the mortgagee will refuse to pay any arrearages exceeding six months of common area charges, leaving the association to absorb the loss.

For further information or questions regarding the collection of delinquent condominium fees affecting your association, I encourage you to call me directly at 508-532-3519.

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