

COLLECTIONS DURING THE MORTGAGE CRISIS

By Associated Property Management

Increasingly, Board of Directors are having to deal with the Mortgage Crisis in terms of how this is adversely affecting the association's operations. When an owner does not pay their assessments, the non payment of assessments and the costs of collecting are impacting all owners and the services of the association. Boards are finding themselves caught in the middle of having to be compassionate towards their neighbors but also, in need of funds to operate and manage the association. Boards have to take action quickly in order to assert their rights in a delinquent action against an owner.

Today, many of these delinquent owners also owe their mortgage holders past due amounts and the Board needs to handle collections consistently and on a basis that is fair to all concerned. Maintenance assessments are required to operate and maintain the association's assets. The need for these assessments is established every year in the association's budget. The assessments then fund the expense accounts established in the budget. We believe that all planned assessments and special assessments should have a provision for non-collectable assessments. This means that instead of having an assessment and only 95% of the owners pay and causing a cash shortfall, the Board is calculating into the assessment that there is a probability that 5% of the owners will not be paying and that there will be a shortfall. Yes, this means that 95% of the owners are paying for the rest! Unfair? Yes, but it is reality and that is why the Board of Directors needs to deal with the problem and collect these past due funds as quickly as possible. Unfortunately, in a majority of the cases there will also be a mortgage foreclosure that will ultimately be superior to any action that the association takes.

If the mortgage holder has more rights than the association, why bother? The association should assert their rights in this action in that this is a fiduciary responsibility of a Board to try and collect these past due amounts. If in the future there was foreclosure and there were excess funds (any amount over and above the mortgage balance + costs) the association should be in line to collect these funds, rather than other creditors.

Recently, Chapter 720 was amended to allow associations to collect any past due amounts at time of transfer of deed. No doubt, the banking lobby will try to have this changed as they are now liable for these costs after they foreclose and there is a transfer. Chapter 718 allows for the Association to collect the equivalent of 6 months maintenance or 5% of the mortgage amount, whichever is less.

Prior to the association collecting owner's assessments, the Board of Directors needs to establish the rules governing the payments of assessments and the procedures for collecting same. In most cases, the association's bylaws will provide the Board of Directors with the collection process procedure. It will spell out when the assessments should be billed (monthly, quarterly or annually), when the assessments are due and when the assessments are late. In some instances, the documents will even indicate when the owner should be sent to the attorney for collections and when they should begin foreclosure proceedings on the owner. If these procedures are not spelled out in the association's documents, then the Board of Directors, through the unit owners should consider amending the documents to reflect a reasonable collection. If, your association is fortunate to have collection procedures spelled out, then at every instance the owners should be told about these procedures at the time of billing and also with reminder notices and in newsletters. This is necessary due to new owners coming into the association. Never assume that everyone reads their documents or every piece of mail that comes to their home!

If your association is experiencing collection problems or would like to avoid those potential problems before they arise, then do the following:

Consult your documents and review the procedures. If they seem reasonable, then make sure you begin following them. If they seem inadequate or are out of date, consult with your association attorney for further review. Whatever the procedure is or if the Board has passed a Resolution concerning collections, then supply the unit owners with a copy of the procedure prior to implementation. Continue to let the owners know what the procedure is at every instance. Let your management company or attorney do their job, as stated in the documents or in your Collection Resolution.

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