Your Association Advocate Since 1982

Delinquent Assessment Collection - Explained

Condominium and homeowner association assessments, or maintenance fees, are the lifeblood of any community association. These assessments, whether collected monthly, quarterly, or annually fund the association's operations and ensure it is well maintained, beautiful, and financially secure. When owners cease paying assessments, the burden falls on the association to make up the difference. This ultimately harms timely paying owners who may be subject to increased assessments or special assessments to cover the delinquencies.

Collection Procedures per Florida Statute 720.3085 & Florida Statute 718.116

Understanding the law governing collection of assessments is imperative to formulating a working collections policy. Florida's Homeowners' Association Act, Chapter 720 of the Florida Statutes, and the Florida Condominium Act, Chapter 718, Florida Statutes, both provide detailed collection procedures. Additionally, an association's governing documents may also contain procedures that must be followed.

Prior to filing a lawsuit to collect delinquent assessments, governing documents may require a "friendly" late notice to owners who have failed to pay. A late notice is not required by law, but is certainly best practice. Prior to sending a delinquent account for collections, a 10-day final warning notice should be issued. If this notice is ignored, Chapter 720 and Chapter 718 permit an association to record a claim of lien against the delinquent property. However, prior to doing so a very specific demand letter must be issued to the delinquent owner.

The "Notice of Intent to Record a Claim of Lien" should be prepared by an attorney to ensure it complies with the law. In homeowner associations, the law requires this the notice be issued and received by the owner 45-days prior to recording a claim of lien. In condominium associations, only 30-days' notice is required before a lien may be recorded. If payment in full is not received by the expiration of the time limits, the association may record a claim of lien against the property.

Following the expiration of the "Notice of Intent to Record a Claim of Lien" and the recording of a claim of lien against a property by an attorney, an association may continue toward a lien foreclosure lawsuit. Prior to filing a lawsuit, a second letter must be issued allotting an additional 45-days or 30-days to pay the full balance owed. If this second demand is ignored, a lien foreclosure lawsuit may be filed. This may result in a judgment against the property, and possible sale to recoup the delinquent amounts owed.

In addition the delinquent assessments, both Chapter 720 and Chapter 718 permit associations to collect interest (either at 18% or according to the governing documents), late fees (typically $25, if permitted by the governing documents), attorney's fees, and costs incident to the collections process. Any payment received less than the full amount demanded is paid in a manner dictated by law. Payments are allocated first to interest, then late fees, followed by attorney's fees and costs. Only after those amounts have been paid does a payment less than the full amount get applied to the principal. This is to prevent an owner who has been sent to collections from sending in payment for only the principal and claiming they have paid the assessments in full.

Time is of the Essence

Often times, associations are reluctant to vigorously pursue delinquent assessments because the amount is perceived as insufficient to collect, or because the Board empathizes with an owner who cannot afford to pay. While there is nothing inherently wrong with compassion, associations that delay collections risk being wiped out by foreclosure of first mortgages. Although the association's lien rights against a property are superior to almost all claims, such as money judgments against the owner, tax liens, and second mortgages, a first mortgage on the property is always superior to the lien claim of the association.

If an owner ceases paying their first mortgage, the mortgage holder may file a mortgage foreclosure lawsuit. If foreclosure results in sale of the property and a third party takes title to the property, the association's lien will be wiped out. The association may be eligible for any overbid at the sale, and may be eligible only for the principal assessments depending on the association's governing documents. Conversely, if the mortgagee takes title at a sale any delinquent assessments will be reduced to either one percent of the original mortgage debt, or assessments levied within 12 months of the sale, whichever is less. This is known as "Safe Harbor," and is only available to associations with updated documents. Those associations without this language will not be eligible to receive payment in the event of a first mortgage foreclosure.

Owners who fail to timely pay their assessments often cease making payments on their mortgage, though there is no way to know if that is the case until a mortgage foreclosure is filed. It is therefore imperative for an association to act quickly against delinquent owners to prevent being wiped out and to ensure the maximum amounts can be collected.

Tankel Law Group Collections Approach

The Tankel Law Group offers our clients extremely cost effective methods of collections. From the initial demand, through any lien foreclosure, the firm covers all attorney's fees and costs associated with the collections process. An association does not come out of pocket to secure the delinquent funds.

Firms that charge associations up front to collect add insult to injury for their clients, as the association will not only short the delinquent assessment, but also must cover the attorney fees and costs further harming the community. Additionally, the Tankel Law Group offers a free online portal for managers and Board members to track the status of collections efforts in real time.

Contact our office today to ensure your community is protected from owners who fail to timely pay assessments, and allow us to provide your community the most cost-effective method to retrieve the association's funds.

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