

BOARD OPERATIONS

New York City

Condo Arrears? Try DILF. It Means More than "Debtors I'd Like to ... Foreclose On"

By Adam Leitman Bailey

Condominium owners in arrears for their common charges is a persistent problem. Most boards know all the usual legal tools for pursuing them, and some boards are familiar with such less well-known but legal and appropriate tactics as withholding amenities. Now attorney and best-selling author Adam Leitman Bailey offers yet another alternative

June 28, 2012 — Most condo boards that attempt to collect common charges from delinquent unit-owners are faced with essentially three choices – enter into a payment plan with the defaulting resident, sue for money damages or foreclose.

The problem with the payment-plan option is that when a unit-owner misses a payment, the board must start an action, which takes time and money. This is really just delaying the inevitable. If a board decides to go straight to court (Small Claims or otherwise), the board may succeed in getting a judgment on the outstanding common charges, but would have to begin consecutive actions in order to keep collecting the common charges as they continue to accrue. Also, collection on the judgment(s) may be impossible. This starts a cycle of continuous legal bills and unpaid common charges.

The third option, foreclosure, is the clear choice of these three because, theoretically, a board will be made whole by the sale of the unit. However, especially with the recent regulations creating more red tape for foreclosure proceedings, this can be a long process.

Attack of the Hybrid Option

Our office has advocated a fourth option, which blends the benefits of the three standard options.

Not quite three years ago, the board of managers of a three-tower, 250-unit condominium retained our firm and advised us that a large percentage of the unit-owners were delinquent in common charge payments. The board further advised us that prior counsel had employed payment plans and suits for money judgment. Many unit-owners already had numerous judgments against them, but no money had actually been collected.

We realized that we needed a new collection method that would keep us out of court, incentivize unit-owners to make payments, and rid the condominium of those unit-owners who had no way of keeping up with their common charge obligations going into the future.

The result was an agreement that included a payment plan secured by a **Deed in Lieu of Foreclosure (DILF)**. [*Editor's note: This is a document the board asks a seriously delinquent owner to sign, in which the board agrees to a payment plan and the debtor agrees to assign the apartment deed to the condominium association. Should the owner pay off the arrears, the DILF is nullified. Should the owner not, he or she loses the apartment.*] The DILF is executed and held in escrow by our firm during the term of the payment plan. It is released to the board for recording if a payment is missed and not cured within 10 days.

Also included in the agreement is a **Notice to Quit**, which, as part of the agreement, is deemed to have been duly and properly served upon the defaulting unit-owner on the 15th day succeeding the date of the recording of the DILF, and which obligates the unit-owner to vacate the apartment on the 27th day after recording.

Default Is Not in Our Stars

Therefore, if a unit-owner defaults on his or her obligations under the payment plan (and does not cure them in a timely manner), not only will the board become the record owner of the unit, but it will gain possession via the "Notice to Quit" within 27 days thereafter.

Essentially, the agreement tests a delinquent unit-owner to determine whether he or she can catch up on unpaid common charges under the payment plan and become a unit-owner in good standing. If he or she can, the common charges are paid in full and the unit-owner keeps his or her unit. If the unit-owner cannot, then the release of the DILF shortcuts the entire foreclosure process and rids the condominium of a unit-owner who cannot keep up with his or her payment obligations.

In the case discussed here, the board was able to collect most of the unpaid common charges without incurring significant legal expense or spending years in court, and the board avoided raising common charges for all unit-owners.

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