



How can a condo collect common charges from defaulting unit-owners without spending a lot of time and money in court?

BACKSTORY With the recent economic downturn, condominium boards have been plagued by unit-owner common charge defaults. With fewer unit-owners paying their common charges, boards are faced with the prospect of increasing common charges in order to collect the deficit from those unit-owners in good standing – unless they can collect the unpaid common charges from the delinquent unit-owners.

Most 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 unit-owner, 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 options 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.

COMMENT Our office has created a fourth option, which blends the benefits of the three standard options. Two 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 a collection plan involving 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 would 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). The DILF is executed simultaneously with

the agreement and held in escrow by our firm during the term of the payment plan. The DILF 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 further obligates the unit-owner to vacate the unit on the 27th day after recording.

Therefore, if a unit-owner defaults on his/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. ■

From the Desk of ALB:



A BOARD TRIED TO BAN A SHAREHOLDER FROM SITTING ON THE BOARD BECAUSE THE CANDIDATE DIDN'T HAVE A COLLEGE EDUCATION.



I WAS BEATEN UP BY THE CLIENT OF THE OPPOSING COUNSEL, WHO WAS THEN SO WORRIED ABOUT OUR FIRM SUING OVER ASSAULT THAT HE SETTLED WITH THE CO-OP WITHIN 48 HOURS OF THE INCIDENT.