

DOs and DON'Ts:

For Community Association Collections

In the current economy, the prompt collection of community association assessments is important to the functioning of the association. Assessments have been referred to as the “lifeblood of an association.” Accordingly, it is crucial that the board have a policy and use it to consistently collect the fees which it assesses to its owners. Below are some tips to enable you to more effectively collect assessments in a timely manner when the accounts become delinquent.

- DO** Review your Association’s governing documents to be sure what is and is not subject to collection. Before making a claim for late fees, interest, attorney’s fees, and accelerated fees, make sure the Association has the authority to do so.
- DO** Adopt a policy regulation which sets out the specific procedure which the board intends to follow, and distribute that regulation to all of the owners before you begin enforcement. You may want to record the regulation as well so that purchasers are deemed to have notice of the procedure when they close title to the unit or lot.
- DON'T** Charge late fees, interest or other charges without verifying that such charges are permitted in the association’s governing documents.
- DO** Include in your policy regulation a provision for the “application of payments” so that payments received when an owner is delinquent may be applied in the following order: late fees, interest, fines, legal fees and last to the assessment.
- DON'T** Charge late fees and/or interest on unpaid late fees, interest or fines. Judges look unfavorably on this practice. However, you may consider an “application of payments” regulation. Courts may be more apt to award judgment for interest and late fees on an outstanding balance consisting primarily of assessments due to such a policy.
- DO** Have a policy regarding acceptable payment plans for delinquent owners. For example, you may require that the account be paid in full within six to twelve months and may offer a reduction in the amount of late fees and/or fines if there is compliance.
- DON'T** Refuse to compromise in order to “teach the owner a lesson.” The trial judge has discretion and in many cases will reduce the late fees and attorney’s fees, and even the balance due, so if an Association must try the case, there is a risk it will not receive full compensation of its costs. The Association should consider these issues in deciding whether a settlement is appropriate.

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- DO** Send at least one letter from the Association notifying the owner of his or her delinquency and giving him or her a chance to make payment before the account is turned over to legal counsel for collection.
- DO** Utilize the services of an attorney to assist in the collection of delinquent assessments and consistently follow whatever policy you have set in place. Additionally, be patient; understand that it takes time for a case to move through the court system.
- DON'T** Ignore an owner's request for information concerning the delinquency and/or refuse to provide an owner with a breakdown of his or her account.
- DON'T** Pursue a delinquent owner who has filed for bankruptcy for the fees which became due prior to the bankruptcy filing without first consulting the Association's legal counsel. Such action can result in fines and penalties from the Bankruptcy Court.
- DO** Have your attorney closely monitor any owner who has filed for bankruptcy and let him or her know if the delinquent debtor in bankruptcy is not paying the post-petition fees.
- DO** Routinely copy all checks from your owners and make note of any employment information. Try to accumulate any asset information which will be helpful should an owner's account become delinquent.
- DON'T** Suspend any rights or privileges of ownership, parking or utilities without checking with your legal counsel to be sure such action is authorized by the Association's governing documents or by law.
- DO** Make your decisions based on the best interests of the Association.
- DON'T** Make decisions based on emotions.

For more information, contact Hill Wallack LLP's Community Association Law Practice Group at 609.924.0808.



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