

Collecting Assessments in Hard Times

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One of the most difficult challenges for associations is the collection of delinquent assessments when the economy slides toward recession and real estate values decline. This article provides an overview of collection alternatives for condominium and townhome associations that are subject to the Minnesota Common Interest Ownership Act (“MCIOA”) and a list of common issues to consider in each case.¹

Methods for Collecting Delinquent Assessments

1. Foreclosure of Assessment Lien

Under MCIOA, an association has a lien for the full amount of any assessment for common expenses from the time the first installment becomes due. Unless the association’s declaration provides otherwise, fees, charges, late charges, fines and interest also are considered assessments and are secured by assessment liens.¹

A key issue with respect to liens on real estate is “priority”, the ranking of competing claims to the real estate. Priority determines the order in which claims are satisfied out of the proceeds of a foreclosure sale. Under MCIOA, assessment liens are ranked prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the declaration, (ii) any first mortgage encumbering the fee simple interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit, (iv) master association liens, and (v) mechanic’s liens, if any, that have priority over the assessment lien.²

It is important to note that assessment liens have priority over all mortgages granted by the owner, except for the first mortgage. In recent years, many owners have used second mortgages to purchase a home with little or no down payment, consolidate debt, or obtain funds to purchase goods and services. Foreclosure of the assessment lien terminates these junior mortgages, unless the owner or the junior mortgage holder pays the amount due to the association prior to the end of the redemption period.

The assessment lien can be foreclosed by advertisement (service and publication of notice followed by a sheriff’s sale) or by action (court proceedings followed by a sheriff’s sale).³ In most cases, the association’s goal in foreclosing an assessment lien is to obtain payment of the delinquent assessments plus collection costs; rarely does an association

¹ Minn. Stat. § 515B.3-116(a) (2007).

² Minn. Stat. § 515B.3-116(b) (2007).

³ Minn. Stat. § 515B.3-116(h) (2007).

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desire to own the unit. In many cases, the owner pays the delinquent assessments and collection costs prior to the date of the sheriff's sale. If not, then the association bids the amount of the debt at the sheriff's sale. If a higher bid is received, then the association is paid out of the sale proceeds. Otherwise, the association takes title to the unit subject to the senior liens and encumbrances and rights of redemption.

Typically, the owner has six months following the sheriff's sale to redeem the property. If the owner does not redeem, then each junior lien holder has an opportunity to redeem in turn. If the property is redeemed by the owner or by a junior lien holder, then the association is entitled to receive payment for the assessment lien, plus costs and disbursements of foreclosure and attorneys' fees authorized by the declaration or bylaws (in foreclosure by advertisement) or as determined by the court (in foreclosure by action).⁴

If the property is not redeemed, then the association will own the unit subject to senior liens and encumbrances. In that case, the association may sell the unit to a third party at market value, pay off the senior liens at closing, and retain any net sale proceeds. If the association does not sell the property and does not pay the senior lien holders, then a senior lien holder may foreclose its lien on the unit, in which case the association will lose title to the unit but will have no financial obligation to the senior lien holders. In any event, foreclosure will remove the delinquent owner, and the new owner will be responsible for payment of future assessments.

Proceedings to enforce an assessment lien must be commenced within three years after the last installment becomes due, or the association will be barred from enforcing the assessment lien.⁵

2. Collection Action Against Unit Owner

The person who owns a unit when an assessment becomes due is personally liable to the association for payment of the assessment. If there are multiple owners, then each owner is liable for the full amount of the assessment.⁶

An association may bring a claim to collect delinquent assessments in conciliation court or in district court. Generally, conciliation court actions are simple, informal, and efficient in comparison to district court actions.

A conciliation court claim for delinquent assessments cannot exceed \$7,500.⁷ If the amount of delinquent assessments exceeds \$7,500, the association may either reduce the claim to \$7,500 in conciliation court, or bring a claim for the full amount in district court.

⁴ Minn. Stat. § 515B.3-116(h)(4) (2007).

⁵ Minn. Stat. § 515B.3-116(d) (2007).

⁶ Minn. Stat. § 515B.3-116(e) (2007).

⁷ Minn. Stat. § 491A.01, subd. 3(a) (2007).

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The association may assess the owner's unit for reasonable attorneys' fees and costs incurred in connection with the collection of delinquent assessments.⁸

The association may be represented in conciliation court by an officer, property manager or other agent appointed by the board of directors. An authorized power of attorney, resolution, bylaw, or other evidence of authority acceptable to the court must be filed with the claim or presented at the hearing.⁹

Either party may appeal the conciliation court decision by removing the case to the district court for a new trial.¹⁰ In that case, the agent appointed to represent the association in conciliation court may continue to represent the association in district court.¹¹

If the association obtains a judgment against the unit owner in conciliation court (or in district court on removal from conciliation court), then the association may obtain a court order requiring the unit owner to mail to the association information as to the nature, amount, identity, and location of all the owner's assets, liabilities, and personal earnings, in sufficient detail to enable the association to obtain satisfaction of the judgment by way of execution on the owner's nonexempt assets and earnings.¹²

If the owner does not pay the judgment voluntarily, then the association may attempt to obtain payment by garnishing wages, or by working with the sheriff to levy on money, vehicles, watercraft, snowmobiles, or other personal property. This process can be difficult, because certain wages and property are exempt from execution of a judgment, other property may be encumbered by liens, and some owners hide or fail to disclose their assets.

Common Issues Regarding Collection of Assessments

1. Association managers, attorneys, and any other person assisting the association with collecting assessments may be subject to the Fair Debt Collection Practices Act and should comply with its requirements. Violations of the FDCPA may result in liability for actual damages, statutory damages and attorneys' fees.
2. If any installment of an assessment becomes past due by more than 60 days (or any shorter period of time specified in the association's declaration or bylaws),

⁸ Minn. Stat. § 515B.3-115(e)(4) (2007).

⁹ Minn. Stat. § 491A.02, subd. 4 (2007).

¹⁰ Minn. Stat. § 491A.02, subd. 6 (2007).

¹¹ Minn. Stat. § 491A.02, subd. 4 (2007).

¹² Minn. Stat. § 491A.02, subd. 9 (2007).

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then the association may, upon ten days' written notice to the owner, declare the entire amount of the assessment immediately due and payable in full.¹³

3. An association may record a lien statement in the county property records to notify potential buyers and lenders of the delinquent assessment. In some cases, merely informing the owner that a notice of lien statement has been recorded against the unit motivates the owner to pay the delinquent assessment and collection costs. Furthermore, if the unit is sold or refinanced, there is a good chance that the owner will pay the delinquent assessment and collection costs at or prior to closing in order to obtain a release of the lien.
4. Prior to taking action against a unit owner to collect delinquent assessments, the association should consider whether the owner is likely to have steady income or equity in personal property that the association can find and levy upon to satisfy the judgment.

Disclaimer

The information in this article is general information and does not constitute legal advice regarding action to be taken in any case. Associations should consult with their attorney for assistance with collecting delinquent assessments in conformance with their governing documents and as appropriate for their particular situation. If the association pursues one collection remedy, it may affect the association's ability to pursue other remedies, so the association should obtain legal advice early in the process.

¹³ Minn. Stat. § 515B.3-115(h) (2007).