

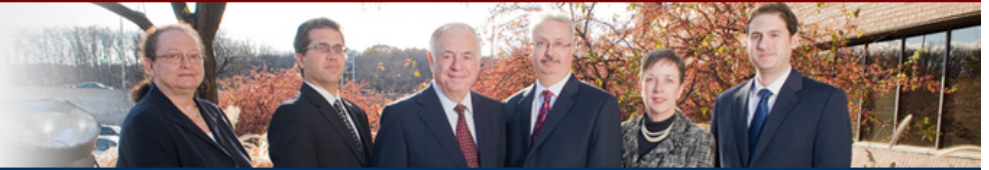
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Using Evictions To Collect Assessments In Condominiums And Homeowners Associations

Illinois law allows condominiums and homeowners associations to evict owners and occupants of units who do not pay assessments or other charges. It allows associations to collect rent from existing tenants or rent the unit and apply the rent against assessments and other charges. It allows associations to get a judgment for assessments, attorneys' fees and other costs in the eviction suit. The association does not pay on the mortgage or other unit owner obligations if it gets possession.

There are other procedures which can be used by associations to try and collect assessments. Associations can file a lien foreclosure or can start a collection action. Both are slower, more expensive and generally less effective than evictions. Filing a lien usually has no effect.

Eviction of an owner to collect assessments has been available for more than 20 years. However, its use is not well known or understood. This article details the steps before, during and after an eviction action and some considerations. It is an overview and is not meant to be exhaustive of all considerations.

ADOPT RESOLUTIONS

In noncondominium homeowners associations, before evictions can be used, the association board must vote to use evictions and pass a resolution to follow some of the Condominium Property Act meeting and operating procedures. Unit owners are notified of the vote and resolution before evictions are utilized. We can supply the resolution and a detailed explanation of what requirements are imposed. In all associations it is advisable to pass a resolution authorizing the attorney to prepare and sign the legal documents on behalf of the association. This eliminates time delays and unnecessary expense.

WHAT CAN BE COLLECTED

Evictions can be used to collect assessments, late charges, fines, penalties, prior legal charges for other matters, maintenance charges, repair charges, and any other expense that is chargeable against the unit and unit ownership. The court can decide whether these charges are proper and if the amount is reasonable and recoverable. That includes deciding whether attorneys' fees incurred before the eviction, either in related matters or for unrelated matters, are proper, are reasonable and are recoverable.

TIMING COLLECTION

Associations should initiate collection actions to recover assessments when the assessment is no more than 60 days delinquent. Any further delay places the association in a position of being unable to recover, due to bankruptcy or foreclosure. However, delays should not prevent associations from pursuing recovery even at a later date. The wise approach, generally, is to initiate the eviction action.

DETERMINE OWNER

The legal unit owner, as identified on the county records, must be sued in an eviction action. The association should have the attorney check the records, either directly or through a title company, to determine the actual legal owner. That is called a "tract book search" or "ownership search" of the records. It may also show any mortgages, foreclosure suits or bankruptcies. The attorney must be told if the owner is a nonresident, the name of the tenant and whether the association wishes to evict the tenant. Generally, tenants are not evicted because the association can receive rent directly from them when it secures a judgment.

SENDING NOTICE LETTER

When the ownership search is completed and the legal owner is known, the attorney takes the first step in the suit process. The attorney prepares and sends out a Notice and Demand Letter. The letter is required by statute. It is sent to the legal owner at the owner's last known address. The letter must be sent certified mail, return receipt requested. It must identify the unit, the amounts due and the period for which the amounts were due. The letter can include legal fees for the letter and the ownership search costs. It must give the owner 30 days in which to pay the amount demanded. If the full amount demanded is paid within the 30 days, the demand is satisfied, all amounts due are paid, and the matter is concluded. If there are additional amounts due because another month has started, a new Notice and Demand Letter may be necessary. If less than the full amount is paid, the association can proceed with the suit or can send a new Notice and Demand Letter. There are some difficulties with either choice. We can discuss these if the situation occurs.

FILING SUIT

At the end of the 30-day period in the Notice Letter, if full payment is not made, the association's attorney should prepare and file an eviction suit. The suit can ask for possession of the unit, for a judgment for unpaid assessments, attorneys' fees and costs, personally against the unit owner and against the unit. Because an eviction suit is a summary-type action, the court trial date can be set 14 days after the suit is filed. Generally, trial is set about three weeks after filing if the owner lives in the county or in the unit.

SHERIFF

The sheriff acts quickly in eviction cases and will try to serve the owner with the suit before the court trial date. In most cases the sheriff will be successful at serving the owner with the suit. If service is achieved, the trial will proceed on the court date. If service is not achieved, the sheriff can be asked to serve the owner by publishing notice and mailing a postcard. That process takes at least two weeks so that the trial date will be delayed for two to three weeks while this alternate service of summons is completed. In some cases it may be necessary to have the sheriff make a second attempt at service or have a special process server make a second attempt.

If service is achieved, either by the sheriff handing the summons to the owner or by publication, the trial can proceed on the next court trial date. That is generally either approximately three weeks after the suit is filed, or six weeks if there was no service the first time. If the owner appears, then the court may proceed. The owner

may ask for a continuance of the trial to a later date. Because of the summary nature of these cases, continuances are for one, two or three weeks.

TRIALS AND JUDGMENTS

In evictions the primary issue is whether the amounts were due and not paid within the time allowed in the declaration or Notice and Demand Letter. If the court determines the amounts were due or some amounts were due and not paid in the time allowed, then the association should get a judgment for possession of the unit, a judgment for the amount found due by the court, a judgment for attorneys' fees the court wishes to award, and for costs for the suit. The use of the sheriff to evict will be stayed a minimum of 60 days and a maximum of 180 days by statute. If the unit owner is served, the court will order a judgment against the owner and a judgment against the unit for the assessments due, attorneys' fees and costs. If the owner has been served only by publication and does not appear, the court will order a judgment for possession of the unit and a judgment against the unit for assessments, attorneys' fees and costs.

After the court orders judgment, the unit owner generally makes arrangement to pay whatever amounts are outstanding. After the judgment the association can insist that the owner pay all the amounts ordered by the court plus any subsequent assessments, late fees and other charges. The owner must pay everything due and be current. If that occurs, then the association may file a dismissal and/or satisfaction. However, the law requires the unit owner to go to court and file a motion to dismiss the suit based upon full payment.

If a tenant is in the unit, the entry of a judgment is an automatic assignment of the right to receive rents. A court certificate advises the tenant it must pay rent to the association. There are specific requirements for applying the rents received. It can be applied to pay all obligations. If a bankruptcy is filed after a judgment for possession, it will not stop payment of rental from a tenant or the right to continue with possession of the unit if the association has possession. The filing of the foreclosure against the owner will not stop payment of rent to the association. The completion of a foreclosure may not stop receipt of rent by the association, if the unit has been properly leased in accordance with the statute.

If the unit is abandoned by the owner and there is no tenant, or if the owner voluntarily leaves the unit, the association can take immediate possession after judgment. If the unit owner remains in the unit, the association cannot, personally, forcibly evict the owner. It must use the sheriff to evict the owner. The court order includes a stay, prohibiting the sheriff from assisting for the period of time in the order. At the end of stay period if the unit owner has not left the unit, the association can ask the sheriff to evict. The sheriff will then go to the unit on a set date and evict the owner. In Cook County, the sheriff will arrive with a number of deputies, and they will physically remove the contents of the unit. In other counties the association must secure a locksmith to unlock the door and a moving company to physically remove all possessions. The sheriff in those counties will supervise the mover and locksmith and prevent any disruption or interference.

Once the association has possession, it can rent the unit. If necessary, it can clean and repair the unit and add those costs to the amount it can recover. Under current law it can enter into a 13-month lease from the time of the end of the stay and apply the lease proceeds against the amount due to the association.

If the owner files bankruptcy before a judgment of possession, the eviction process can be interrupted. If a foreclosure is pending and is far along, it may not be possible for the association to proceed quickly enough with an eviction and get possession. These issues should be discussed with our firm.

This law firm has been doing evictions for collecting assessments for more than 18 years. The process is highly automated with reports issued every month detailing the progress of the work along with copies of the documents mailed or filed in court. We welcome the opportunity to assist you in collecting association assessments or other charges using evictions. Please contact us with any questions or with any matters needing attention. You can ask to speak with Marshall Dickler or directly with the eviction and collection department.