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Homeowner Association Collection Policies

An effective and organized policy for the collection of assessments is an essential element in establishing and maintaining a strong condominium or homeowners' association. The failure to pay maintenance assessments results in an unfair burden upon the homeowners who do pay, could lead eventually to the deterioration of the association's property and to financial difficulties for the association. The following are the elements of a good collection policy.

1. **Accurate bookkeeping.** Complete and accurate financial bookkeeping results in confidence in the accuracy of the association's records and generally promotes voluntary and prompt payment from the homeowners. The association should have a system to answer accounting questions from the owners. Owners must know the status of their account. Payments must be accurately and promptly recorded. Corrections must be made properly. Associations that have an efficient and accurate system of bookkeeping generally have fewer problems with delinquent owners. When they do have a problem, their records are prepared for use in court and accurately reflect the status of each owner's account.

2. **Late payment policies.** A strong collection policy encourages timely payment, discourages late payment, and remains flexible to accommodate distressed homeowners who need time to pay their assessment. To do this, the association must establish and communicate with its members a clear and comprehensive policy. Late charges must be uniformly and strictly imposed. The late charge should be high enough to encourage timely payment and to defray the additional expense of late accounts. A clearly defined procedure may be established to enable temporarily distressed homeowners to pay their assessment over time without causing the association to risk a loss. Late charges could be waived if the homeowner requests relief early on and if he or she complies strictly with the payment plan. However, the association must not become too lenient or lax in its collection effort. Strict guidelines should be established. Unless a payment plan is in effect early and being followed, delinquent accounts should be turned over to the association's attorney for collection action without delay and without exception.

3. **Timely Action.** Timeliness is the key to successful collection action. Delinquent accounts must be turned over to an attorney a set number of days after assessments are due. The homeowners should be informed, ahead of time, when the accounts will be turned over to the attorney. For example, a good policy will provide that delinquent assessments will be turned over after 45 days. At that time, the accounts must be promptly turned over. The longer that the association waits, the more difficult it is for legal action to be successful. Delay in turning over the accounts will lead to the impression that delinquent owners can get away with not paying. In addition, the chances of mortgage foreclosure or bankruptcy increases daily. Bankruptcy or foreclosure can preclude recovery of assessments. When a case is turned over to the attorney, complete information on the account must

be given. This includes the name of the homeowner, the mailing address of the owner if he does not live in the unit, the unit address, and a complete breakdown of all unit charges and credits to the account from the last date that the account was fully paid up all the way to the present date. Failure to provide complete and accurate information causes unnecessary delay, additional expense and may affect recovery.

4. ***Efficient Legal Services.*** When an account is turned over to the Law Offices of Marshall N. Dickler, Ltd., the following procedure is followed in order to promptly collect the delinquency. Immediately upon receipt of the documents, we review the account breakdown to be sure that all of the necessary information is recorded and to check for possible inaccuracies or other problems. If all the information is given, we order a tract search from the title company to confirm that action is being taken against the record owner. The tract search often indicates a different name as the titleholder of the unit than what the records of the association show. The tract search also tells us of any liens on the unit, including mortgages, mortgage foreclosures, divorces, probate, bankruptcy or other matters that affect the title. After the tract search arrives, we carefully review the search and investigate any unusual circumstances. We then send a "Notice and Demand" letter to the record owner using the owners name as it appears of record, and mail the notice to the last known mailing address of the owner.

The delinquent owner has 30 days, from the date that the demand letter is mailed, to pay the full amount requested. The amount of the demand letter includes the cost of the tract search and our attorneys' fee for preparing the letter.

Many times the owner contacts us to discuss the debt, request clarification, or investigate any problems or questions. Sometimes our investigation reveals an error in the association's records. Most times we are able to convince the owner that the association has a valid debt and that the owner must pay. In any case, the collection action usually ends at this stage when we receive full payment from the homeowner.

If after 30 days the owner has failed to make payment, we will file a forcible entry and detainer (eviction) action. The trial will be scheduled for 2 to 3 weeks from that date. At the trial, we appear before the judge and prove-up our case. Often times the court enters judgment in favor of the association, granting possession of the unit and awarding damages in the amount of the notice letter, plus our attorneys fees and court costs. Normally, the court orders the delinquent owner to pay the judgment in 60 days or else the sheriff can come to evict the owner from the unit and hand over possession to the association. Most of the time, the owner will pay the full amount of the judgment within 60 days. In rare cases, we are forced to have the sheriff come to evict the owner. In those cases, the association can then rent the unit. If there is a renter already in the unit, the association becomes entitled to the rent.

In some cases, the owner will contest the lawsuit and demand a full trial. The court usually continues the hearing one or two weeks. We will then request the manager or an officer of the association to testify in court regarding the amount due to the association. Sometimes, the owner will raise a proper defense and may win all or part of the case. Usually, however, the association receives the amount actually due plus attorneys fees and costs.

5. ***Conclusion.*** Each aspect of a good collection policy contributes to the whole so that a smooth and efficient system is created. Accurate bookkeeping, late payment policies, timely action and efficient litigation together constitute a good collection policy. When all four elements are operating, the association enjoys prosperity and runs smoothly and efficiently. Then the board and the managers can concentrate on their goals of improving the association.

Our role in the association's collection policy is to provide effective legal services without delay. We are

dedicated to continually acquiring expertise in the area of assessment collection and to applying our knowledge with diligent and vigorous action. We believe that our collection actions are performed with the least delay at the lowest net cost to the association.

If you would like additional information on improving your collection policies or would like to consult with us on solving any specific problems you may have, please feel free to call our office. We will be happy to assist you in any way.

ASSOCIATION RULES

Does your association have adequate rules? Are enforcement procedures in place providing for a due process hearing, fines and other penalties? Rules can cover gangs and gang activities, pets, parking, renters, noise, decorations and other matters. Rules and covenants will be the subject of other newsletters. We would be pleased to assist with these matters.

ASSOCIATION TAXES

Condominium taxes can be reduced. The board can agree to try and get a reduction for all owners. There are a number of procedures which can be followed to get a tax reduction. You are not forced to wait for an assessment triennial or quadrennial. This is most often on a contingent fee basis. Call us.

SWIMMING POOLS

Do you know the Illinois law governing your swimming pool: requires a state license; requires a manager operator; prohibits one person from swimming alone or even being in the pool area; and may require a life guard? This can be an area of major concern. We can help you comply with the law and reduce your exposure to suit.