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How a Condo Board Can Collect Arrears By Using a Little-Known Tool Called DILF

By **Adam Leitman Bailey**

Oct. 16, 2012 — With the recent economic downturn, condominium boards have been plagued by unit owners defaulting on their monthly common charge. With fewer unit-owners paying, boards are faced with the prospect of increasing common charges in order to collect the deficit from those owners in good standing — unless they can collect the unpaid charges.

Most boards that attempt to collect delinquent common charges are faced with essentially three choices: Enter into a payment plan with the defaulting owner, sue for money damages, or foreclose. But there's a fourth way.

The problem with payment plans is that when an 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 money owed, 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 recent regulations creating more red tape for foreclosure proceedings, this can be a long process.

Legal Lesson

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 that a large percentage of the unit-owners were delinquent in common-charge payments. The board further advised that prior counsel had employed a collection plan involving payment plans and suits for money judgments. Many 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 rid the condominium of those 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.

I Can Quit You

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 owner on the 15th day succeeding the date of the recording of the DILF, and which further obligates the owner to vacate the unit on the 27th day after recording. Therefore, if a unit-owner defaults on his or her obligations under the payment plan (and does not offer a timely cure), not only will the board become the record owner of the unit but it will gain possession 27 days later via the notice to quit.

Essentially, the agreement tests a delinquent 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 that happens, then the common charges are paid in full and the owner keeps his or her unit. If the owner cannot, 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 rate of common charge delinquency dropped substantially. By utilizing this method, the board avoided raising common charges for all unit-owners.

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Photo by Carol Ott