

## New Challenges Force Condominiums to Reconsider Assessment Collection Strategies

Like the municipalities to which they are sometimes compared, many Washington condominium associations are struggling to maintain appropriate levels of services in the face of declining revenues. More owners are failing to pay the monthly assessments that fund maintenance and repair of buildings and common areas. Collection actions involve more cost and risk than they did a few years ago. Owner bankruptcies and lender foreclosures have become more common. These realities have compelled condominium associations and the attorneys who represent them to find new solutions to the old problem of debt collection.

It is important to note at the outset that liens and personal liability for unpaid assessments are extinguished by operation of the Washington Condominium Act unless proceedings to enforce the liens or collect the debts are instituted within three years after the assessments became due.<sup>1</sup> This places obvious pressure on Washington condominium associations to address delinquencies in a timely way.

Personal lawsuits involve obtaining judgments against owners and garnishing their wages or assets to satisfy debts. This can result in payment in some instances, but recovery can be thwarted by several factors. Owners may be unemployed and lack significant assets. Associations may be unable to locate owners' places of employment or assets. Owners may even file for bankruptcy and receive discharges of their personal debts.

Judicial foreclosures involve filing a lawsuit seeking the sale of the condominium unit to satisfy the owner's debt to the association. Non-judicial foreclosures involve retaining a trustee to sell the property after providing proper notice. Washington condominium associations have the power to initiate judicial foreclosures, but they do not have the power to initiate non-judicial foreclosures without specific authorization in their governing documents.<sup>2</sup>

Foreclosure actions result in payment in some cases, but there are again significant barriers to recovery. Steep declines in property values have reduced owners' ability to pay through refinancing and, in isolated cases, have even eliminated their desire to continue owning their units. Association foreclosures also do not affect mortgages on units, which are either mostly or wholly superior to association liens in terms of priority. A limited priority lien over mortgages is contained in the Washington Condominium Act, but that lien only includes assessments based on a periodic budget during the six months immediately preceding a foreclosure sale.<sup>3</sup> Condominium associations therefore do not usually receive payments from lenders exceeding that priority lien amount, and lenders can foreclose on units shortly after associations complete foreclosures. Worst of all, associations do not receive any money as a result of their foreclosure sales if there are no third-party buyers due to a lack of equity.

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<sup>1</sup> RCW 64.34.364(8)

<sup>2</sup> RCW 64.34.364(9)

<sup>3</sup> RCW 64.34.364(3)

Terminating a unit's utilities following the provision of proper notice is another collection option, but only if the condominium was created before July 1, 1990 and if the condominium's declaration specifies that the association has that power.<sup>4</sup> This is effective if the owner has the ability to pay or if the unit is leased by its owner, but it is not helpful if the owner lacks the ability to pay or if the unit is vacant.

Rent can also be intercepted if units are leased. Many condominium declarations give associations authority to demand that tenants submit rent directly to them when the owner is delinquent without taking additional legal action, and in some cases the association may be given the power to evict tenants that fail to submit rent payments as well. However, owners can respond by evicting tenants unless receiverships have been established.

Receiverships can be established over delinquent units during judicial foreclosure actions if the unit in question is not occupied by its owner.<sup>5</sup> Receivers lease units in order to pay unpaid assessments. This collection method has become more common, in part due to the Protecting Tenants at Foreclosure Act.<sup>6</sup> This federal law requires a foreclosing party to provide 90 days' notice before attempting to evict a tenant. It also allows a tenant under a lease executed before the foreclosure started to remain for the rest of the lease term unless the property is conveyed to a person that intends to occupy it as a primary residence. The Act makes it possible for associations to lease distressed units for lengthy terms and increases the likelihood that receiverships will generate enough income to justify their expense.

In light of the challenges discussed above, some condominium associations are utilizing more creative methods to address delinquencies. Very long payment plans are being approved as an alternative to legal action. Rights to use common areas and amenities, vote on association matters, and serve on the board are being stripped from delinquent owners. Owners are being pursued in different forums like small claims court to minimize legal expenses. Perhaps most radically, a few associations are deciding to do little more than record liens and wait for lenders to foreclose. All of these approaches deserve consideration if traditional collection methods are not working.

In my experience, condominium board members do not relish the thought of suing neighbors to collect unpaid assessments. They proceed with collection actions because they are obligated to act on behalf of all owners and exercise reasonable care in managing association affairs. Delinquent owners should keep in mind that boards are usually willing to suspend collection actions if reasonable payment plans are proposed.

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<sup>4</sup> RCW 62.32.200(1); RCW 64.34

<sup>5</sup> RCW 64.34.364(10)

<sup>6</sup> 12 USC 5220