

Dealing With Delinquencies: Make Sure Your Association Has a Collection Policy

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Practice Area: Community Associations

A homeowner association depends on the regular income from assessments to pay for services, amenities and common maintenance expenses. Without the timely collection of assessments from homeowners, the association simply cannot function properly. Unfortunately, most community associations at one time or another have to deal with homeowners who default on their assessments. Having a clearly defined policy for payment and collection of assessments, and consistently enforcing it, is essential for every association.

A collection policy gives homeowners notice of what is expected of them and what will occur if they do not pay their assessments. This promotes compliance and prevents homeowners from being surprised when collection action is taken. Additionally, adhering to a policy ensures that the action is taken as a matter of business and is not personal. Taking collection action against a homeowner, who is a neighbor and possibly a friend, can be unpleasant. A collection policy makes life easier because it gives you predetermined, step-by-step direction for dealing with delinquencies.

The policy must clearly communicate the steps the association will take to collect assessments. It should be written and distributed to all homeowners. Usually, the board of directors can enact it as part of the association's rules and regulations. Like all rules and regulations, however, the policy must be consistent with the law and the association's governing documents.

In general, a collection policy may include the following:

- When assessments are due and when they are considered delinquent. For example, monthly assessments are due on the first day of each month and are considered delinquent after a 10 day grace period.
- The penalty for being delinquent. Tip: Keep this simple. For example, charge delinquent owners a one-time late fee the month they are delinquent rather than a late fee that increases every day or month until the balance is paid.
- When delinquent accounts are referred to an attorney for collection. Receivables do not get better with age. The longer a homeowner is delinquent, the larger the debt becomes, and the more difficult it is to collect. Associations have several legal remedies to collect delinquent assessments, such as filing a lien, foreclosure, and small claims actions. Your lawyer should, in each case, discuss with you the options and the likelihood that attorney fees will be paid by the debtor. Associations are commonly advised to refer an account to an attorney when a homeowner is two months behind in paying assessments.
- How a partial payment is applied to the account. If the homeowner makes a payment that only partially satisfies the debt, your policy should indicate how that payment is going to be applied to the account.

In sum, adopting a collection policy will benefit your association. To have an effective policy, it is essential that it is simple and clearly defined, it is made known to all the homeowners, and most importantly, it is consistently and promptly enforced.

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