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Community Association Collections

Everything You Wanted to Know but Did Not Know to Ask

by Mitchell Drimmer, CAM

Boards of directors, managers, and even attorneys are more confused about the complexities of community association collections in Florida today than ever before. There is no consensus on what the statutory cap is, conflicting information as to what the ramifications are for associations if they foreclose their liens, and no standard on how to approach the problem of delinquent assessment collections.

So where does an association begin to approach this problem and how should they craft a solution? First, the board of directors needs to come to a consensus on what its beliefs are with respect on how to handle delinquent units and collections of the association's accounts receivable. Once done,

the board needs to make sure that the management is able to enforce actions that are consistent with the beliefs. I often suggest that an association adopt a uniform collections policy in order that everyone knows what the beliefs are and the consequences to non-payment of maintenance fees. It is more than just setting up a collections timeline—when to send out courtesy letters, late letters, notices, and lien units—but beyond that, it is essential that the board clearly communicates a clear action plan that they believe in.

So who do you believe and how can you choose wisely when the professionals in the industry have not finalized a standard of what can or should be collected? The answer is in the questions that you should ask your collection adviser, be it an individual or a firm focused on collections.

Structure the key questions in learning more about your collections service provider into four buckets:

Fees

How much do they charge? When do they require payment—as services are provided or deferred until collected? Are they contingent collections or guaranteed fees? Will they advance hard costs for pursuing foreclosures?

Information Access

How does the association get information—mailed statements, online access portals, various reports by unit, or for the entire association? Who has access—board, property manager, or other involved parties? How often is information updated—real-time, daily, or monthly updates?

Amount to Collect

How much does the service provider believe is collectable and what potential pitfalls might their strategy and/or tools expose the association to? Are collections procedures being performed in compliance with the federal Fair Debt Collections Practices Act and Florida Consumer Collections Practices Act? Is an attorney properly involved when it comes to matters involving specific legal actions?

Customer Service

How accessible is the firm to a delinquent owner who wants to get paid up? How does the board interact with the association—e-mail only, live customer service representatives, online portals, etc.?

While each of the four topic areas could be significantly expanded, the third really merits additional information. Ask your collection



provider what they consider a working definition of the “statutory cap?” You’ll find that there is a tremendous spectrum of opinion on this subject alone. Next, be sure to inquire about their perspective on risks they see in their approach and how, if at all, they seek to protect the association’s best interests.

Question your collection provider about what entitles a foreclosing entity to “safe harbor” provisions. Some may tell you that anybody who forecloses on a first mortgage is entitled to receive a write-off, and some may say that a bank needs to comply with a stringent procedure in order to qualify for safe harbor—lesser of 12 months or one percent of the first mortgage. Is the entity collecting your money aligning itself with the best interests of the association? If so, you can feel more comfortable that they will be successful if the association succeeds. However, it is always prudent to ask for and be aware of any potential risks that may not be immediately evident.

In essence, there are only four ways that a delinquent unit is going to be resolved and become a well-paying unit:

Owner Pays Up

The first and best way is for the owner to cure their delinquency either by making a lump sum payment or establishing a payment plan. Associations also need to ask their collection advisor about the costs of managing a payment plan. They should ask about operational issues with payment plans—such as frequency of distributions to the association from the agency, Internet access to ledgers, the availability of customer representatives via e-mail or telephone, payment portals, and the structure of such payment plans.

Short Sale

While most anticipate collecting 100 percent in a short sale, and this should be the typical amount asked for by the association, be careful of banks that will threaten the Safe Harbor/Statutory Cap at a future date in exchange for accepting a lower amount and new owner today. It makes perfect business sense for the bank to do so. The association needs to evaluate the specific situation to know when the bank is serious and when there may be room to allow the association to negotiate a better outcome for itself. A short sale should result in a very good outcome if the association understands how to properly evaluate its position and that of the bank. The board should also discuss in advance the parameters of cutting deals. Specifically, they should ask if they can legally discount the assessments owed and reduce them in order to make a deal. Some attorneys will say you can only discount interest, late fees, and collection costs, but not assessments without exposing the association to liability from unit owners claiming

disparate enforcement of the governing documents. Have an action plan before a short sale is presented to the association.

Bank Foreclosure

The third way a delinquent unit is settled is via a bank foreclosure. With the wide variance of interpretations regarding the safe harbor provisions, a board of directors needs to ask exactly what they intend to collect and how they intend to recover from the bank. It is important to also evaluate what, if any, are the risks of each course of action. A unit can owe \$20,000, and the net recovery can easily be anywhere from a negative unknown number to the full amount owed. It depends on how resolute your collection advisor is, their negotiating

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skills, knowledge of the foreclosure process, and incentive to collect as much as possible for their association clients.

Repossess and Rent

The fourth way is for the association to foreclose and take intervening title on a unit in order then to rent out the unit. Hopefully, the association can recover all of what is owed to them and bring that ledger down to zero before the first mortgage lender takes title. Many boards of directors are loathe to pursue this course of action, but it may provide a cash recovery stream and take a non-paying unit and turn it around. This strategy is not without some perceived risks and it would be prudent to also run the following concept by an attorney. There are attorneys who believe that the intent behind the foreclosure and the actions of the association after foreclosure may prevent the lien from merging into the title. However, specifics are important and making sure the collections team is communicating effectively with the association is critical when evaluating these options. Therefore, it is prudent to ask your prospective collections team how they view and handle association owned units and rental proceeds.

Clearly boards should be asking a prospective collection partner "What will happen if that is done?" and receiving various scenario options. In addition, they should also ask directed questions based

on their own learning and make sure the collection advisor's philosophy meshes well with the viewpoint of the board. Ultimately, all boards should first establish their own goals and objectives for collections, then institute consistent policies, and engage a collections partner who will help them accomplish their goals.

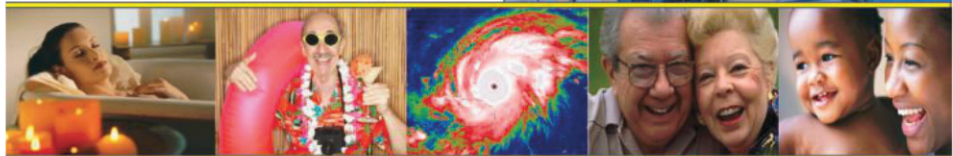
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