

COLLECTION REMEDIES

Some owners believe it is unfair when the board initiates collection remedies. What is really unfair, however, is when a non-paying owner forces the rest of the owners to pay more. When an owner is not paying his “fair share,” it is you, the delinquent owner’s neighbors, who suffer, in that you are being forced to pay a “greater share.”

When association members do not pay there are a number of collection remedies available. The goal of these remedies is to encourage timely payment and to discourage late or nonpayment.

Association boards must demand that payments be current to pay association operation expenses, such as insurance and maintenance services. Because paying operating expenses timely is critical to the administration of an association, there are a number of remedies available to associations when its members do not pay. In Ohio, courts recognize the importance of smooth administration and will uphold and enforce the collection remedies available to association boards.

The first remedy available to associations is the imposition of an administrative late charge. Generally, governing documents define when payments are due and at what point payments are considered “late.” Using these guidelines, the board can enact rules that spell out due dates, define whether or not there is a grace period and set the amount of the administrative late charge.

Collection letters are another avenue open to associations when attempting to collect on delinquent accounts. Collections letters are official, legal notices sent to delinquent owners and their content is governed by the Federal Fair Debt Collection Practices Act. As a result, collection letters are mailed by the association’s attorney, not the manager or the board. The collection letter will inform the delinquent owner of the collection remedies available to the association and the costs that could be charged to the owner if the association is not timely paid in full. Some delinquent owners complain when they do not receive a “neighborly” reminder from the board. However, board members are good-will volunteers and should not be forced into the uncomfortable position of debt collector.

An additional remedy available to associations is placement of a lien on the delinquent owner’s property to secure the debt. Many associations file liens on any balance that remains unpaid for thirty or sixty days. A lien is filed with the county recorder, becomes public record, and often affects the delinquent owner’s credit rating.

Foreclosure is another remedy available to associations to recover delinquencies. A foreclosure is a type of lawsuit that seeks to terminate the ownership rights of members who do not pay. Foreclosure action will result in the sale of the home if the owner does not come forward and pay all delinquent fees, late charges, and the association’s legal fees. The Ohio Supreme Court has specifically upheld governing document provisions that assess the association’s legal fees against the delinquent owner. In other words, it is

permissible for the association to charge the delinquent owner the costs of the collection letter, lien, and foreclosure legal fees.

Whenever you hear of a situation where your board is initiating collection remedies, realize that the delinquent owner, not the board, caused the action to be taken. More importantly, realize that the board is attempting to force the delinquent owner to pay his “fair share” so you do not have to pay a “greater share.”