

# Delinquent Owners Pay Association's Legal Fees

Are you considering what bills to pay and what bills to put off? If so, think twice before failing to pay the association's maintenance fees. Besides administrative late charges, delinquent owners must also pay the legal fees incurred by the association in recovering the unpaid maintenance fees.

In the Ohio Supreme Court case of Nottingdale Homeowners Association vs. Darby, a unit owner contested the document provisions of the association allowing the assessing of the legal fees back against the delinquent owner's account. The Ohio Supreme Court upheld an award of \$12,268.89 in legal fees incurred by the Nottingdale HOA as a result of owner Darby's \$2,464.82 delinquent balance. In its review of the matter, the Ohio Supreme Court stated that:

“This is a case of first impression requiring us to determine whether two parties, in a non-commercial transaction, may lawfully contract to require, in a suit between them, the payment by the unsuccessful party of the prevailing party's attorney fees. We hold that they may do so. . .

[Darby asks] us to disregard the explicit terms of the declaration and bylaws by which [he] agreed to be bound.

[When Darby] purchased a unit in Nottingdale, [he] freely agreed to be bound by the terms of the declaration.

Accordingly, we hold that provisions contained within a declaration or bylaws requiring that a defaulting unit owner be responsible for the payment of attorney fees incurred by the unit owners' association in either collection action or a foreclosure action against the defaulting unit owner for unpaid common assessments are enforceable and not void as against public policy.”

Clearly, you should think twice before failing to pay the association's maintenance fees.

\*(The law firm of Kaman & Cusimano represents our Association)

# ASSOCIATION FEES: WITHHOLDING PAYMENT NOT AN OPTION

By: David W. Kaman, Esq.\*

A primary responsibility of every homeowner within a community association is to timely and fully pay the maintenance and reserve assessments. Every association is a not-for-profit corporation dependent upon payments for smooth operation. If only one owner fails to pay a thousand dollars worth of fees, then the association is forced to cut back on a thousand dollars worth of services such as painting or landscaping.

Prior to owning a home, many of us were renters and became familiar with Ohio landlord/tenant law. As tenants, if a basic service was not being provided by the landlord, we could “escrow” our rental payments. Ohio condominium and homeowner association laws are very different from Ohio landlord/tenant law. In associations, there is no “escrowing” of payments permitted and even if you are dissatisfied with association services, payment in full must be made. Ohio Revised Code Section 5311.18(B)(6) specifically states that:

In any foreclosure action, it is not a defense, set off, counterclaim, or crossclaim that the unit owners association has failed to provide the unit owner with any service, goods, work, or material, or failed in any other duty.

Some owners are under the mistaken belief that since they do not use all the facilities, they do not have to pay all of their assessment. This belief is also wrong. Even if you do not use the pool, clubhouse, or elevators, you still have the legal obligation to pay for these “community” facilities.

Finally, association maintenance and reserve assessments must be paid regardless of whether you receive a billing invoice or not. The association is legally required to inform all owners once a year of the amount the owner must pay and the due dates. The association has no legal obligation to send billing statements. Some associations will in fact bill monthly. Other associations use coupon books and others send no statements whatsoever. The obligation of the owner to pay exists regardless of receipt of a bill.

“Maintenance free” living within a community association is not “free” living.

