

## Special Considerations for Collections Involving Rental Property

In many respects, collecting from a delinquent homeowner who is leasing out his or her unit is no different than collecting from any other owner. However, many boards struggle with some of the unique considerations that are presented when an owner is leasing the property to another party and is living elsewhere.

### Tips For Collecting Assessments on Rental Properties

- **Make sure you have current contact information for owners:** The Association's rules or governing documents should require owners of rental units to inform the board that they are leasing the property to a tenant, to provide a copy of the lease to the association and to provide the association with current contact information for both the owner and the tenant(s). These records should be updated at least annually or whenever there is a new lease or a renewal of a lease executed. When appropriate, association should fine owners who fail to comply with these requirements. Having current contact information helps to ensure that notices are getting to the owner in a timely manner and assists the association and its attorneys with locating the owner for service of process or other legal notices if necessary. Also, if you can get the owner to provide a work phone number or any employment information, that may assist in future collection efforts as well.
- **Apply collection policies evenly to all owners:** All owners have an equal obligation to pay their assessments when due. Owners of rental units are not excused from paying on time just because they are having issues with their tenant(s) or the tenants have stopped paying rent. Conversely, boards should resist the urge to be more aggressive in their collection efforts against investor owners to avoid potential claims of discrimination or unfair dealing.
- **Encourage owners to sign up for ACH:** Owners who live off-site will especially benefit from this service if it is made available by the association, as it makes it much more convenient for them to make their payments and helps ensure that payments are made on time. Make sure that owners are notified if they need to submit a new authorization form to cover any increase in the assessment amount. Having bank account information will also assist in collecting any judgment that may be obtained against a delinquent owner who fails to pay their assessments.

### Dispelling the Myths

Board members and property managers often ask whether there is some way for the association to collect rent payments directly from tenants to cover delinquent assessments owed by the Unit Owner/landlord. While other states have enacted statutes providing procedures by which an association can demand rent from a tenant and even evict the tenant if he or she fails to comply with the demand, Minnesota has yet to adopt any such statute. As such, associations in Minnesota are limited in their ability to collect rent monies from tenants of delinquent owners.

- **Associations cannot “lien” rent monies.** There is no easy short cut by which an association can attach or make a claim on rent money that is being paid by a tenant to a delinquent owner. Legal proceedings to attach specific assets of a debtor may be brought in conjunction with an action for a judgment on the debt. However, unless the creditor has a perfected security interest in the assets, such proceedings require proof by the creditor that the debtor is intentionally hiding assets or is attempting to fraudulently transfer said assets to avoid the claims of creditors. In most cases involving unpaid association assessments, this will be too difficult and/or expensive to justify the costs of pursuing an attachment order. Similarly, obtaining a court-appointed receiver to collect rents on a property and apply them to the balance owed to the creditor may be an option but is usually cost-prohibitive in association collection matters.

As with any other delinquent owner, the association has the option of obtaining a judgment against the owner of a leased property and then attempting to collect on that judgment. While it is theoretically possible to do a third-party levy or garnishment on rent monies owed to a judgment debtor, in practice this is very difficult to accomplish successfully, as it requires the association to serve the levy or garnishment notice on the tenant at a time when the rent payments are actually due to the landlord but have not yet been paid. Additionally, the notice must be served with a check made out to the tenant for the \$15.00 levy or garnishment fee, meaning that the association must know the identity of the current tenant in order to issue this check. Instead of trying to intercept the rent payments directly, it is usually easier to levy or garnish the debtor’s bank account(s) right after the rent payment has been deposited. This still requires some strategy with regard to timing of the notice, but the possible window of time when the rent money is in the bank account is typically bigger than the window of time within which a levy on the tenant would be successful.

- **Assignment of Rents.** There has been a suggestion by some that an association may be able to amend its declaration to include a provision requiring owners who lease their units to grant the association an assignment of rents that would somehow permit the association to collect rents directly from a tenant if the owner became delinquent in his or her assessments. It should be noted that even with such a provision in the governing documents, an association would likely still have to initiate a court action for a receivership in order to actually collect the rents from a tenant. Additionally, it is questionable whether such a provision would be enforceable in any case. The Minnesota Common Interest Ownership Act (“MCIOA”) and most associations’ governing documents already provide for a lien in favor of the association against any lot or unit within the association for unpaid assessments, as well as the ability to foreclose that lien. This lien serves as security for payment of the assessments. It is doubtful whether a provision that requires some but not all owners to provide additional security for the payment of assessments could be enforced, particularly where the criteria for determining to which owners this additional requirement applies is based on the rightful exercise of said owner to lease his or her unit rather than on the owner’s credit history or other financial factors that actually bear a relationship to the owner’s ability to pay the assessments. As such, this type of provision could be deemed discriminatory,

particularly if the owners to which it applies or their tenants happen to be members of any protected classes.

In short, there is no magic solution to collecting assessments from investors or any other owners. The key to collecting assessments from any owners is to adopt a collection policy, uniformly follow it, and refer delinquent homeowner accounts to an attorney or other professional experienced in community association assessment collection. The sooner an account is referred for collection, the better the association's chances are of actually collecting the delinquent amounts.