

HOA MINI REPORT

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A quarterly newsletter providing legal news and analysis of interest to homeowners associations in Eastern Washington. Please contact me at nick@gnbergh.com with any comments or suggestions. If you would prefer not to receive this newsletter, please let me know. Back issues of the HOA Mini Report are available at my website.



I hope you all had joyful holidays and that your prospects for the new year are bright. As always, I have a favor to ask. Postage and handling for mailing this newsletter is expensive and time consuming. If you would provide me with your email address, I will send future issues to you in PDF format, rather than by US mail. I will not share your email address with others.

No Time to Lose. All HOAs have delinquent assessment accounts. Many HOAs ignore them, sometimes for years. The reasons for this are varied. Some HOAs simply don't know what to do, and put off any decision out of fear of the unknown. Some HOAs are conflict-averse and don't want to fight with neighbors. Some HOAs think the costs of collection are too high to justify, especially if the past due assessment amounts are small. If you have accounts that are long overdue, you should resist these temptations; ignoring delinquencies only makes matters worse, and the longer the delay, the less likely collection becomes. In extreme cases, overdue assessments may become uncollectible, as a matter of law, usually six years after they first became due.

Delinquent HOA accounts become a problem for the entire community. When one homeowner doesn't pay, all other homeowners in the development must pick up the tab, either through increased costs or decreased services. Particularly with condos, high rates of delinquency may affect sales by interfering with finance arrangements for purchase of units, and may drive values down. In the case of non-condo HOAs, mortgages are almost always senior to HOA assessment liens, and waiting to take collection action only increases the amount of assessments that will be lost in a mortgage foreclosure. A board that unjustifiably ignores collection problems could be setting itself up for claims of mismanagement by the membership.

What then should a board do about delinquent accounts? Consider the following steps:

Strategize: Decide when you will begin collection actions and what steps you will take before and after. Some HOAs begin collection efforts as soon as assessments become delinquent; others, particularly those with annual assessments, wait longer. Some begin legal action without delay; others take intermediate steps, such as reminder letters and calls, to reduce conflict, misunderstandings, and hard feelings. Some HOAs grant relief in the form of term payments or forgiving interest or late fees in appropriate cases; others do not. When you have decided what to do, write it down as a collections policy. Let the members know about the collection policy, and follow through!

Educate: Often the best first step is to educate your members. Let your members know what they get for their dues, and why paying dues is a benefit and a bargain. Let the members know on a periodic basis how many members are delinquent (but best not to identify delinquent members by name or address), and the steps taken to reduce the number. Announce your success in collecting past-due accounts. Let your members know about the consequences of late payments, such as judgments, foreclosure and garnishment.

Notify: Invoices should be sent on a regular basis. Invoices should identify current assessments, past due assessments, if any, and late charges and interest, if allowed under your covenants. Invoices should include the homestead notice described in my October 2012 newsletter. If invoices are not paid when due, send past-due notices promptly, and in accordance with your collections policy. Be even handed and consistent. If you have decided

to act without delay, do so in all cases. If you have decided to take intermediate steps or grant accommodations in appropriate cases, do the same for everyone. The past due notice should not only specify the amount due, but should clearly state what steps will be taken and when, if the account is not brought current. Some HOAs use a series of notices before taking action, others proceed more quickly. Hire an attorney to prepare a final notice before formal action is taken, and to record a notice of assessment lien as soon as possible.

Play Hardball: If you have followed the steps above, you should have relatively few past due accounts left. Unfortunately, there are often some members who think they do not have to pay, and others who have fallen on hard times and are genuinely unable to come current in a manner acceptable to the HOA. In these cases, the board should undertake formal collection efforts in accordance with the collection policy. There are several alternatives available.

- Small claims court is available for claims up to \$5,000. Filing fees are very modest, and neither party is allowed to have an attorney represent them. The proceedings are informal. Downsides are (i) a board member will have to take time to prepare and handle the case, and (ii) winning a case does not mean that the account will be paid. Enforcing a judgment takes additional steps, and you may need to hire an attorney to take these additional steps.

- Collection agencies will handle the entire process for you. Downsides are that the agency will charge you a percentage of the recovery, typically 30-50%, and the collection agent's fees are not recoverable unless the agency uses an attorney to collect the account. You may have little or no control over how your accounts are handled.

- Attorneys will also handle the entire process for you. While the expense of using an attorney to collect past due accounts can be substantial, in most cases, the member will be responsible for reimbursing the HOA for attorney fees and costs, assuming the debt is legitimate, and the member has the ability to pay. You will also have more control over how the collection process is handled. An attorney will be able to evaluate your accounts and advise of weaknesses and pitfalls, and help formulate general and specific collection strategies. One way you can help keep expenses down is to have your attorney handle several accounts at once. This allows expenses for research, document review and pleadings to be spread among several similar cases.

Some accounts will never be collected, usually because there are no assets to collect from. However, on average, you should be able to collect far more accounts than you lose. On the other hand, if you don't try, you will never recover any past-due accounts.

This newsletter is not a substitute for legal advice. Please consult with your legal counsel for specific advice applicable to your particular situation.

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