



MULCAHY ANSWERS

For Office Condominiums

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Effectively Collecting Delinquent Assessments

By Kristen L. Rosenbeck, Esq. and Beth Mulcahy, Esq.

The recent decline in the economy and down turn in real estate have created a significant increase in delinquencies in office condominium associations. In response, our firm recommends that associations adopt a collection policy regarding owners' non-payment of assessments and other charges. With an established policy in place and by acting quickly, the association is more likely to be successful with collections.

A board should consider adopting a collection policy that considers sending a late notice letter, imposing late fees and filing a notice of lien upon no response. The collection policy should outline when reminder letters are sent, when late fees are imposed, when a lien is recorded and when the file is turned over to the association's attorney for legal action. If these efforts are unsuccessful, an office condominium association may consider filing a lawsuit, pursuant to authority granted under the association's governing documents. If granted the authority, the association may collect through two options: (1) Obtain a monetary judgment against the owner; or (2) Foreclose on the unit for the balance of the lien.

MONETARY JUDGMENT – JUSTICE COURT

An office condominium association may file a lawsuit in justice court and obtain a judgment against the delinquent owner personally or against corporate assets. With a judgment, the association can garnish the owner's wages, bank accounts, rent payments or levy and execute on other real or personal property.

Benefits: (1) A relatively quick means of obtaining a judgment for delinquent assessments (approximately 6 months); and (2) A cost efficient means of obtaining a judgment (approximately \$700.00 in legal fees).

Disadvantages: (1) The judgment may not be collectible if the individual/corporate entity has no assets or tenants; and (2) If a debtor files for bankruptcy, the owner may be discharged from the debt and proceedings or efforts to collect the debt may be halted due to the bankruptcy's automatic stay.

FORECLOSURE OF THE LIEN AGAINST THE UNIT – SUPERIOR COURT

An office condominium association may foreclose on a lien against a unit for unpaid assessments, late fees, collection costs and attorney fees incurred in the collection of delinquent assessments by filing a lawsuit in Superior Court requesting a judgment which orders a sheriff's sale of the unit and a deficiency judgment against the owner if the proceeds of the sheriff's sale do not cover the judgment. However, an association can only foreclose if assessments are delinquent for 12 months or in the amount of \$1,200 (whichever occurs first).

Benefits: (1) The delinquent owner will no longer be the owner after the sheriff's sale; the owner may be evicted after the statutory time period after the sale (30 days or 6 months, depending on whether the unit is abandoned) and a new owner will be responsible for assessments from that point forward; (2) Most often an owner will contact the association seeking to make payment before the sheriff's sale takes place; and (3) If the unit is sold at the sheriff's sale for an amount in excess of the judgment balance, the association shall recover the full amount owed to the association.

Disadvantages: (1) The estimated legal fees/costs are approximately \$2,000 to \$2,500; however, the fees are recoverable against the owner; (2) It takes approximately 6 months to 1 year from the date the lawsuit is filed until the sheriff's sale is conducted; (3) If the owner files for bankruptcy, the lawsuit/sheriff's sale may be halted due to the bankruptcy's automatic stay; (4) if the owner ceases payments to the mortgage/first deed of trust company, a trustee's sale may wipe out the association's lien before the sheriff's sale takes place; and (5) the owner may redeem the unit within 30 days to 6 months (depending on whether the unit was abandoned prior to the sale date) after the sheriff's sale by paying the full amount owed to the association.

MAKE AN INFORMED DECISION

Our firm recommends that the association research the delinquent owner's credit history, corporate assets, financial condition and status of the first deed of trust prior to instituting legal action.

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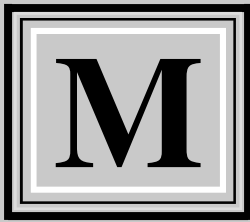
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Your invitation is enclosed!
Save the date: April 2, 2008

Please join the
MULCAHY LAW FIRM, P.C.
for a discussion on
The Legal Aspects of Office Condominiums
April 2, 2008

MULCAHY LAW FIRM, P.C.

Beth Mulcahy is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the legal representation of over eight hundred (800) community associations throughout the State of Arizona.

After receiving a Bachelor of Arts degree in Political Science from Marquette University in Milwaukee, Wisconsin, Beth earned her *Juris Doctor* degree from Marquette University Law School where she was on the Dean's List and a member of the Marquette University Law Review. A native of Wisconsin, Beth is licensed to practice law in the State of Wisconsin and the State of Arizona.

Beth has published numerous articles regarding community association law and frequently lectures on community association issues for seminars, conferences and workshops at state and national levels. Beth is a member of the National and the Central Arizona Chapter of Community Association Institute (CAI), a nonprofit organization supporting the interests of community associations and the Arizona Association of Community Managers (AACM).

Beth sits on the Board of Esperanca, Inc. a nonprofit charity that provides disease prevention, education and treatment to the poorest communities of the world.

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Kristen L. Rosenbeck graduated from Valparaiso University with a Bachelor of Arts degree in Biology where she actively supported her school as the Student Body President. Kristen graduated in the top third of her law class receiving her *Juris Doctor* degree from Marquette University in Milwaukee, Wisconsin in 2001. She maintains licenses to practice law in both the State of Wisconsin and the State of Arizona.

Kristen's legal practice focuses on the representation of office condominium associations and residential community associations throughout the State of Arizona. She represents associations on interpretation and enforcement of documents, guidance on state and federal laws, collection of delinquent assessments and policy creation. Kristen is experienced in litigation and transactional law.

Kristen is a member of the National and the Central Arizona Chapter of Community Association Institute (CAI), a nonprofit organization supporting the interests of community associations and the Arizona Association of Community Managers (AACM).

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ANSWERS OC is not intended to offer specific legal advice or responses to individual circumstances or problems.

If legal advice is required, please consult individually with the MULCAHY LAW FIRM, P.C.

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