

Planning And Enforcing A Successful Collections Policy

Written By **Tyler J. Russell** (tjr@wardandsmith.com)

August 26, 2014



As economic conditions struggle to improve, many community associations ("Associations") face the continuing challenge of chasing payment from a number of delinquent members. In light of these present conditions, formulating and sticking to a sound collections policy can be important. However, many Associations do not give sufficient attention to their collection of unpaid dues. Some board members may not be comfortable asking their neighbors to pay past-due debts, while others may view the collections process as complicated and uncertain.

Nevertheless, with proper planning, Associations can craft enforceable policies that inform members of their obligations and limit potential losses that otherwise would be borne by the community at large.

What Is A Collections Policy?

A collections policy is a defined procedure for an Association to follow when collecting dues from its members. Many Associations implement collections policies to further the likelihood that members will pay dues on a timely basis and to provide a predictable framework of the procedures that will be followed in the event of non-payment.

Collections policies can be formal or informal, rigid or flexible, written or unwritten. There is no one-size-fits-all approach to developing and implementing a collections policy. In planning a collections policy, Associations must reflect on their individual needs and goals and on any particular requirements under their articles of incorporation ("Articles") or declaration of covenants ("Declaration"). However, there are general considerations that Associations can and should contemplate when proactively seeking to minimize losses due to non-payment by their members.

What Are The Association's Goals And Interests?

Because there is no one-size-fits-all solution, a collections policy can be tailored to meet the Association's general goals and interests. When planning the policy, the Association should consider whether it has any particular objectives that it could advance in the process. For example, if the Association has a large number of severely delinquent accounts, it may consider developing a collections policy aimed at more aggressively pursuing those debts. Each Association has its own needs and interests that may or may not impact the design of its collections policy.

What Sums Can The Association Collect?

To determine what it can lawfully recover, an Association should first look to its Articles and Declaration. Do these governing documents allow the Association to recover dues, late fees, interest, attorneys' fees, or other sums from its members? Do these governing documents contain any specific limitation on the Association's ability to recover debts? Unless the Articles or Declaration specifically provides otherwise, the North Carolina Planned Community Act ("Planned Community Act") and the North Carolina Condominium Act ("Condominium Act") grant authority to Associations to collect delinquent assessments, including the power to place liens upon, and foreclose on, the delinquent member's real property.

What Enforcement Remedies Are Available?

Typically, enforcement remedies available to an Association are specified in its Declaration. However, certain remedies for the collection of delinquent assessments are generally available to an Association unless otherwise specified in its Articles or Declaration. These include the Association's ability to file a Claim of Lien against the delinquent member's real property, and to enforce a Claim of Lien through foreclosure proceedings and/or a lawsuit against the delinquent member. Additionally, outside of legal process, the Association's governing documents may provide for the accrual of interest and late fees, the ability to recover the Association's attorneys' fees incurred in collecting past-due debts, or the Association's right to suspend a delinquent member's voting privileges, parking privileges, and/or right to use Association amenities and common area facilities.

What Else Can Be Included?

Collections policies can contain more than the Association's intended procedure for collecting past-due accounts. They also can include information for members relating to the forms of payment accepted by the Association, the address where payments should be delivered, the due date for payments, and the date when members' accounts will be considered delinquent if not paid earlier.

Collections policies also can outline generally the Association's willingness to accept payment plans to resolve past-due account balances and avoid the need for legal action. However, if payment plan information is included in a collections policy, it may be best to include flexible language that preserves the board's case-by-case exercise of business judgment when considering payment plan offers.

Does The Association's Policy Conform To The Law?

Remember, each Association's Articles and Declaration are subject to human error. It is possible that provisions in those documents may not be compatible with the governing law. In addition to the Planned Community Act and/or the Condominium Act, additional provisions of North Carolina and federal law may apply to limit or prevent actions taken to collect debts from Association members. The Association should carefully consider the remedies stated in its collections policy, with an eye toward compliance with North Carolina and federal law. To ensure statutory compliance when formulating a collections policy, the Association should involve knowledgeable legal counsel in the process.

Conclusion

There are a variety of ways for an Association to plan, draft, and enforce a collections policy. Once such a policy is developed, the Association should share the policy with its members to make sure everyone knows and respects the rules. Then, it must follow the policy as developed and enacted. By increasing awareness of the rules and making it easier for members to satisfy their obligations, Associations are likely to mitigate their account delinquencies and streamline the process for pursuing those delinquencies that may arise.

--

© 2021 Ward and Smith, P.A. For further information regarding the issues described above, please contact Tyler J. Russell.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.