

An Alternative Collection Method: Retaining Insurance Proceeds Intended for the Delinquent Owner's Unit

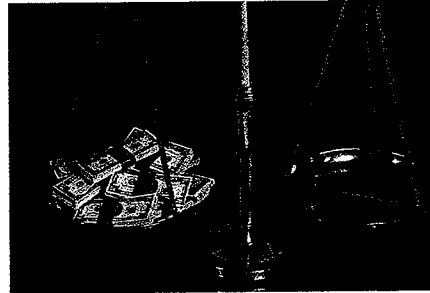
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Almost all community associations have struggled at some point with collecting assessments from delinquent owners. For most of these delinquent owners, the traditional collection process is effective for bringing in the dollars. This includes collection letters, liens, collection phone calls and, when necessary, filing a lawsuit to obtain a money judgment against the owner. However, for a few owners, traditional collection efforts are ineffective. Those owners will dig in their heels, ignore the association and simply refuse to pay. To combat this problem and obtain payment, board members are implementing alternative plans to show delinquent owners that there are consequences for their failure to pay assessments.

Collection policies and plans are important because an association's board of directors has a fiduciary duty to the owners within the condominium or community development to collect assessments and properly handle the association's financial affairs. Associations are exploring all avenues and creating multi-faceted plans for collecting from delinquent owners. One method that is gaining popularity involves how the association handles monies received from the insurance carrier for a claim on a delinquent unit.

Imagine how frustrating it would be for a board to have money in their hands and have to turn it over to a delinquent with no payment on the outstanding balance to the association. Unfortunately, this is what happens when insurance proceeds are processed on a delinquent owner's unit. A claim is made, monies received, and unless the association has a specific provision in its governing documents authorizing the board to apply the funds differently, the board must provide the money to the delinquent owner. Associations are starting to move forward and change their documents to deal with this issue.

Some associations are amending their declaration to provide that the board may utilize insurance proceeds attributable to one unit to reduce that unit's delinquency before handing the remaining money over to the owner. Associations that have implemented this program find it to be a



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successful way to collect a delinquency in these rare situations. For those associations that desire to adopt this provision, it is recommended that the board first discuss this issue with the association's insurance carrier to ensure that application of this collection method would not violate the terms of the policy. Additionally, it is recommended that the amendment provide that any surplus remaining after application of the proceeds to any delinquency shall be paid by the association to the affected owner to make the needed repairs. The owner would then be obligated to use personal funds to make up any shortfall in the repair costs not covered by the remaining insurance proceeds.

Associations should be aware that a declaration provision of this nature has never been considered in a court of law, which means that the industry is not certain whether a judge would find a provision of this nature to be a reasonable collection method. As with many amendments that similarly have not been considered in a court of law, the Board should evaluate the benefits against the risks associated with this amendment. To assist in this evaluation, each association should discuss its individual needs and the risks with a legal professional before moving forward with an amendment of this nature. ■

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