

Failing to File Timely Report can have Big Consequences

Corporation Could be Dissolved by State

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The vast majority of community associations (condominiums, cooperatives, mobile home associations, homeowners associations, master facility associations, and country clubs) are chartered as not-for-profit corporations under Florida Statute Chapter 617. As a not-for-profit corporation, the association is obligated to comply with a myriad of reporting and filing requirements. Today, we will take a look at the necessity of the annual filing of the Florida Uniform Business Report (UBR).

The UBR is supposed to be filed by May 1 of each year. However, the state usually extends a "grace period" until early September for filing. The UBR informs the State and members of the public of the identity of the current directors and officers, the official legal address of the corporation, and the identity of the association's registered agent. The registered agent is an agent appointed by the association, as required by law, to be served with lawsuits and other official papers involving the legal affairs of the association.

Failure to file the UBR will result in what is known as administrative dissolution of the corporation. Unfortunately, each year, a few associations I deal with forget to file their UBR (most often due to transition between management companies, internal board disruptions, etc.).

A corporation that has been dissolved may be reinstated. There is a penalty (\$175.00) plus the requirement that all past filing fees be paid (the filing fee is \$61.25). While a corporation is dissolved, it cannot maintain or defend legal actions in the state courts. What this means is that if there is a lawsuit filed against an association which has been dissolved, the directors of the association are often named individually as parties to the

suit. While this does not necessarily translate to personal liability for the director, it is obviously a situation to be avoided.

Information about UBR filing, checking on your corporation's current status, and the like, can all be reviewed through Florida's Secretary of State, through its Division of Corporations. Web access for the Division of Corporations is found at <http://www.sunbiz.org/>. If you've missed the boat, there's still time to file your report.

Now on to reader mail.

QUESTION: We have a 6 unit condominium complex. We have been setting the condo dues to cover all current monthly obligations, the condo management fee and a modest \$10 monthly to build up our depleted reserves. We have one resident who is severely delinquent and owes the association the equivalent of 15 months dues. Without reserves and this delinquency, when we have a repair or a large monthly bill such as annual flood and property insurance, we have to rely on the other property owners to cover our debts. Needless to say this has created a financial nightmare and great animosity to the defaulting resident. The problem is, we understand we can impose a lien, but that does not pay our bills. The unit is homesteaded and mortgaged and our question is, can we force payment in any way to allow us to pay our bills as an association? Could you explain our options? T.E. (via e-mail)

ANSWER: There are many benefits to living in a small condominium. In many of the smaller associations I deal with, there is a near family-like sense of community.

There are also drawbacks. The purchasing power and economies of scale that go along with larger groups are absent. As applied to your situation,

one owner not paying their assessment has a major impact on your financial condition, here nearly twenty percent.

First, I think the association needs to face the reality of the situation and include a “bad debt” component in your budget. While this does not mean that you have to write off what you are owed, the other unit owners need to chip in and make sure that the association can operate on a financially solvent basis, which is required by the state’s condominium laws.

Unfortunately, there are typically few alternatives available to an association other than lien foreclosure. Although the unit may be subject to homestead pro-

tection, homestead protection does not shield against foreclosure of the condominium association’s lien.

There are some cases (particularly mortgage foreclosures and bankruptcies) where the association may not be able to collect the full amount it is owed. However, in the majority of cases, the initiation of foreclosure proceedings will result in the owner finding a way to meet his or her obligation to the association. If not, then the unit can be sold at foreclosure, and the current owner replaced with one who can meet the financial obligations affiliated with your community.

If nothing is done, the likelihood is that things will only get worse. I would recommend that the association retain legal counsel to address the problem. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.