



## Condominium Law Q&A

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**Question** – I thought I read somewhere that condominium associations, which are having difficulty in collection of maintenance fees from unit owners, would now be allowed to file appropriate action to garnish wages? Since the only recourse, right now, for many associations is to lien unit owners, it obviously does nothing to alleviate the increasing financial burden caused by those unit owners who continue to be in arrears, yet also continue to live in their units if they pay their mortgages. I read through the new 2008 Legislation, but it did not address this issue. Do you know anything about this? Thank you. – M.M., W.P.B.

**Answer** – Under the Homeowners Association Act, a property owner is "jointly and severally liable" with the previous owner for all unpaid assessments that came due up to the time title to the property was transferred. In other words, the seller and the buyer are both on the hook for the full amount due to the association at the time the property is sold, and the association can proceed against either party or both parties to recover the debt. However, the seller and the buyer are responsible for their portion of the debt. For instance, if at the time of the sale of the property \$500 is due to the Association for assessments, interest, attorneys fees and costs, both the seller and the buyer would be liable to the Association for the \$500. However, if the buyer pays the Association \$500 to satisfy the debt, he can seek reimbursement of the full \$500 from the seller, since the assessments came due when seller was still the owner of the property. The "rules" above also apply when there is a short sale. A short sale is when

a mortgage holder agrees to accept less than the full amount due on a mortgage when a property is sold because of the homeowners' economic or financial hardship. The proceeds from the short sale go to the lender in full satisfaction of the mortgage. Put into simpler terms, the lender agrees to accept a reduced amount to cancel the seller's debt. This is usually done by the lender to avoid the expensive and time consuming foreclosure process. If the property is sold through a short sale, the debt to the association is commonly paid off at closing, since a payoff letter is usually requested from the Association beforehand. However, if for some reason the past due assessments are not paid at closing, both the buyer and the seller would be liable to the association for the unpaid assessments and any assessments currently accruing. If there is no short sale, the bank will probably move forward with obtaining a foreclosure judgment. The association's lien is essentially extinguished or "wiped-out" by the foreclosure. Once the foreclosure judgment is obtained by the Bank, a foreclosure sale is typically set and the property is sold to either a third party or the Bank takes title to the unit. If a third-party purchases the property at the foreclosure sale, that buyer is obligated to pay the entire amount due to the association. However, as of July, 1, 2008, if the Bank takes title to the unit at the foreclosure sale, then it is only required to pay the assessments which accrued or came due during the 12 months immediately proceeding the time it takes title or one percent (1%) of the original mortgage debt. At any rate, the new owner, whether it is a third-party

purchaser or the Bank, would also be responsible for paying the current assessments going forward.

**Question** - I am disabled and own my duplex unit outright. I bought in 2005, and they had over \$200,000 in reserves and maintenance fees were \$100.00. We now have \$20,000 on hand and \$100,000 in arrears. In 2006, the manager filed a potential sink hole claim on my unit. There was supposed to be insurance. We paid \$246,000 for the insurance, which was cancelled and all claims denied. They have investigated and confirmed the sink hole. Now, we are facing bankruptcy. Those that are paying their maintenance fees are paying \$400 dollars per month. The insurance is now \$600,000 with Lloyds. There are 240 units and 120 buildings. Who is responsible? The insurance company says the association submitted a false application. What happens in bankruptcy to associations? Is the corporation dissolved? I thank you in advance for any light you may shed on this matter. V.M., Palm Harbor

**Answer** - The situation you described is quite common these days. With the escalating insurance premiums, electricity, and cost of maintaining the common areas, community associations are finding their reserves dwindling and assessments increasing.

Compounding the problem is the mortgage crisis which has forced an increasing number of unit owners to fall into arrears with both their mortgage payments and association assessments. Community associations, in turn, have had to curtail some services and over-assess the unit owners to cover the shortfall created by unit delinquencies. Bankruptcy will not solve the problem. So long as the association has the power to assess, which it does, it will not be able to liquidate, although it may be able to reorganize; thus deferring the payment of obligations over a longer period of time. In my new book on common interest ownership, I point out to those who are considering buying a condominium or a lot governed by an HOA the importance of recognizing that, as a unit owner, you will be responsible for paying your share of the common expenses, regardless of how high those expenses might be. Boards are not given the latitude, which owners of single family detached homes have, of putting off repair projects when times are hard. As fiduciaries of the unit owners, they must maintain the property and levy assessments at such level as may be required to meet all of the common expenses. There are many benefits of common ownership, but there are also responsibilities; timely paying assessments is among the most important.

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