



Condominium Law Q&A

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Question – Our condominium association has followed all the rules concerning the collection of monthly maintenance fees. We call the owners and occasionally have to send letters. We have a few investors who were caught by the housing bubble bust that have just quit paying us and the banks. We placed liens on their units, and after sixty days, initiated foreclosure proceedings. We have significant legal fees and things have dragged out well beyond the six month point. Though we are supposed to get six months delinquent maintenance fees plus attorney's fees, we hold little hope as the units are worth far less than what is owed to the foreclosing banks. Is there any other recourse, such as, small claims court or attaching the owner's wages? Their water/sewer bill is part of the maintenance fee. Can we shut off the water as any municipality would do to a non-paying owner of a single family dwelling? They are making money renting these units while the rest of the owners pick up the tab. Any suggestion would be appreciated. R.J.S., Port Orange.

Answer – The issue you raise is the ongoing subject of debate across the nation and in the halls of both State Legislatures and Congress. In just the past few weeks, a sample of newspaper headlines tells the story: “Delinquent Condo Dues Pressure Fellow Owners,” “As Dues Dry Up, the Neighbors Pay,” “Deerfield Beach May Shut Off Water at Condo that Owes \$90,000,” “Foreclosed Condos Force Fees on Others.” The cause of the current situation reared its head several years ago, although at the time few understood the potential consequences of what was

happening. As reported in an article in the *New York Times* [“Fannie Mae Eases Credit to Aid Mortgage Lending,” by Steven A. Holes, September 30, 1999], under pressure from the White House and members of Congress, Fannie Mae and Freddy Mac were reducing lending guidelines designed to ensure that borrowers had the ability to meet their mortgage obligations. Presage as it may seem today, at the time, Peter Wallison, a resident fellow at the American Enterprise Institute, was quoted as saying, “If they fail, the government will have to step up and bail them out the way it stepped up and bailed out the thrift industry.” Shortly thereafter, community associations began receiving applications to purchase from newly qualified buyers, which applications evidenced the lack of financial ability to meet the association's monthly assessments, and for some, the inability to fund special assessments needed for capital improvements or uninsured casualty losses. When the screening committee questioned the buyer's financial qualifications, the answer was always the same, “I qualified for a loan, I am therefore qualified as a unit owner.” In many cases, the loans were for 100% of the purchase price, leaving no equity to secure non-payment of the associations' assessments. Some associations reacted by amending their documents to place a cap on the amount of a mortgage in relationship to the unit's value. But, in the end, even those amendments were of little help in holding back the flood waters of mortgage foreclosures and unit owner default in payment of their share of the common expenses. Those left holding the bag are the innocent unit owners, the overwhelming majority

of the 60 million unit owners living in 300,000 shared ownership communities across the nation, who are not in default of their mortgages and timely pay their commitments to their community associations. So, what's the answer? I am of the opinion that bank bailouts and restructuring of individual mortgages should be conditioned upon the obligations to community associations being brought current. Furthermore, the Small Business Administration should make low interest loans available to community associations feeling the financial stress of the economic downturn, just as

monies are being made available to State and local governments. After all, the role of a community association is clearly analogous to that of government in fulfilling its responsibility for maintenance of the common areas, provision of security, waste management, telecommunications, insurance, etc. What I have stated herein, I am advocating in Washington, D.C.. Perhaps my readers can lend their voice to the choir, and let your Congressmen, Congresswomen and Senators know how you feel.

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