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RECOUPING UNPAID ASSESSMENTS - A NEW APPROACH

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The recent recession has caused many condominium and homeowner associations to struggle with unit owners who refuse to pay their assessments. After all, from the point of view of a unit owner facing a foreclosure or going through bankruptcy, paying the condominium or homeowner association assessments is low on their list of priorities, especially since they do not expect to be a long term resident. The logic from the unit owner's point of view is clear - why pay assessments when you can occupy the unit for no money at all until the bank eventually completes the 1 to 2 year long foreclosure process?

Many condominium and homeowner associations end up doing nothing because they know that the lien of their assessment is of little value because it is behind the lien of the mortgage. Unfortunately, they often fail to appreciate that they may have considerable leverage from their ability to evict a non-paying unit owner. An eviction can often be completed in about 60 days - the blink of an eye by litigation standards. A unit owner who is hoping to live free in his or her unit for a year or two while the foreclosure works its way through the crowded court docket, usually "re-prioritizes" their cash flow when faced with the prospect of the Sheriff moving their belongings to the curb.

Similarly, although prosecuting an eviction during a pending bankruptcy may not be possible, once the bankruptcy is over, the eviction becomes a viable tool for extracting payment.

As in all litigation, there are no guarantees and no "sure things." However, once an eviction is filed, the unit owner's point of view dramatically changes. It is much cheaper to pay assessments to the association about to evict you than to pay the rent that would be charged if the unit owner were forced to find another residence.

Paying legal fees and being involved in an eviction is always burdensome and annoying. But in the circumstances presented by today's real estate market, the investment required for an eviction will probably pay a handsome return.

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