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Association Collection of Delinquent Assessments During Owner Bankruptcies

Florida Statutes recognize the importance of homeowner and condominium association assessments to the vitality of a community and have enacted methods to enable associations to collect delinquent assessments. However, when an owner files for bankruptcy an association may be temporarily enjoined from seeking the delinquent assessments, or prevented from collecting past due assessments altogether. The following is a general breakdown of bankruptcies as they relate to assessments, and recommendations for associations wishing to protect their interests.

Bankruptcy laws are designed to help debtors obtain a “fresh start” after experiencing financial difficulty and inability to repay creditors. Chapter 7 and Chapter 13 bankruptcies are the primary methods owners will seek to discharge their debts. In Chapter 7 bankruptcies, the debtor’s personal assets are sold to pay creditors. In Chapter 13 bankruptcies, the debtor pays creditors over a three to five year period through a court approved payment plan.

Upon filing for bankruptcy, an “automatic stay” is triggered and prevents creditors from commencing or continuing acts against the debtor. The automatic stay affords a debtor opportunity to reorganize or liquidate assets in an orderly manner. It is strictly enforced as to all association attempts to collect a debt, and even prevents tangential attempts to collect a debt, such as suspending an owner’s use of certain common areas or recreational facilities. As a result, all association collection activity must cease upon a bankruptcy filing.

Typically, debts incurred prior to an owner filing for bankruptcy, including assessments, are discharged and cannot be collected. However, an association can protect itself by filing a lien for unpaid assessments *before* the owner files for bankruptcy. The association’s lien will (likely) enjoy a secured status and will not be stripped by the bankruptcy. Securing a lien is important for both Chapter 7 and Chapter 13 bankruptcies. If an association has a secured lien prior to a Chapter 7 bankruptcy, it will be free to press forward with a lien foreclosure provided the property is not underwater. With a secured lien prior to a Chapter 13 bankruptcy, the association

can expect to be included in the payment plan. If an owner fails to abide by the plan, the association may continue the collection process and foreclose if necessary.

In Chapter 7 bankruptcies, assessments that accrue *after* filing for bankruptcy are non-dischargeable according to 11 U.S.C. § 523(a)(16), and therefore are still owed as they become due. Owners are required to pay for the continued benefits an association provides their home, unit, and common areas, which are derived from assessments. Owners who file Chapter 13 bankruptcies must also continue to pay assessments that accrue after filing for bankruptcy.

This discussion highlights the importance of an aggressive collections policy. Associations that drag their feet and delay pursuing liens for unpaid assessments are left with unsecured claims that may be discharged in bankruptcy. If an owner cannot afford to pay assessments, that owner may also have other debts which push the owner toward a bankruptcy filing. If the association neglected to pursue the collections process, it may never be able to recover those amounts due prior to bankruptcy. It therefore serves the association and its members to implement a uniform and strict assessment collections policy.

The Tankel Law Group routinely handles collections during owner bankruptcies, and will advise your association the best strategy to protect your community when facing a bankrupt owner.



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