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Help Me, Help You: A Check-List for turning over accounts for legal action.

By Rachel Nagrant

You have one or more unit owners who have not paid their assessments. The Board has decided to proceed with legal action. Now what? In theory it seems pretty simple, you forward the account information to the attorney's office. However, there are steps that you can take when turning an account over that could save the Association attorney's fees in the long run. Therefore, below you will see a check-list of common information that should be given to the attorney's office when beginning the collection process:

1. The unit owner has an off-site address. It is very common that unit owners have additional addresses, aside from the unit. Before a lawsuit can be filed, Illinois Law requires the Association to send out a statutory demand to the last known address of the unit owner. Therefore, when the unit owner has provided the Association with a different address, it is important that the attorney be given this address, so that the demand is valid. If this information is not given to the attorney and suit is ultimately filed, it could result in the Judge throwing out the entire case and you'd have to start all over.
2. Deceased unit owners. It is likewise important to let the attorney know when you have information about a unit owner being deceased. This is because when a lawsuit is filed, the unit owner is named as a defendant and must be served. However, when a unit owner is deceased, there is an entirely different process of serving the necessary parties. A lot of time, and attorneys fees, can be avoided if this information is given to the attorney when the account is turned over.
3. There was a prior lawsuit filed. It is not uncommon that over the years, Associations change management companies or legal representation. When there has been a prior lawsuit filed by a different attorney, it is crucial that the Association give that information to the current attorney. One reason is that there are some amounts that cannot be collected from a current collection action when there was a prior lawsuit. If these amounts are sought, the Judge could find that it is sanctionable to have tried to get the amounts twice. Therefore, the Association could get in legal hot water by failing to provide this information. A second reason the attorney should be told of prior lawsuits is because in some cases, instead of having to start an entire new action, the Association can simply file a motion in the old case. This would be far more cost-effective and efficient.
4. Association has possession of the unit. In some instances, even without a prior order for possession, a unit owner may have voluntarily given an Association possession of a unit. This information should also be given to the attorney, because it is possible that the

Association can avoid costly litigation when it voluntarily has possession of a unit. Instead, the attorney can possibly draft an agreement with the unit owners to rent the property. In order to properly advise you of the best way to proceed, the attorney will need to know this information.

5. The unit is vacant. Similar to deceased unit owners, unnecessary legal fees can be avoided when a unit is vacant.

Again, this list is not exhaustive, but hopefully it gives you a better idea of what information would be helpful to the attorney when turning over an account. It is also very important to keep the attorney informed if the circumstances change after the account is placed with legal. When in doubt, it never hurts to provide more information than necessary, and let the attorney sort out what is or is not relevant.