

# Community Association Management *Insider*

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## COLLECTIONS

### **Plan for Increases in Assessment Delinquencies in 2008**

Even in good economic times, a community association can face serious financial problems if even a few members do not pay their assessments on time. All too soon, reserves can become depleted and the community could have to make trade-offs about which bills to pay and which services to forgo.

“Rising interest rates, falling property values, and increased lender foreclosures and member bankruptcies are the economic realities that association boards of directors must face as they prepare the 2008 association budget,” says Maryland attorney Thomas C. Schild. These economic conditions will persist as the subprime mortgage crisis of the past year has yet to be resolved.

In light of these economic conditions, Schild expects an increase in the number of community association members who are delinquent in paying assessments. Every community association board should plan ahead now to address the expected rise in unpaid assessments, says Schild. He recommends setting a tough

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## Assessment Delinquencies

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but fair collection policy that will put assessments closer to the top of members' lists of bill-paying priorities.

"Although boards cannot prevent delinquencies, making sure that your collection policy includes proper penalties to address the expected increase in the number of delinquent members can cushion the financial impact on the association," says Schild. He recommends reviewing your governing documents and collection policy to make sure you have set the following consequences for late payments.

### Accelerate Balance

Consider including in your collection policy the right to demand payment of the outstanding amount of the entire annual assessment if monthly payments are not made on time. This can be a powerful incentive. Faced with the prospect of paying a whopping annual assessment all at once, the member will not find the smaller monthly bill so bad.

Because this is a severe remedy, you should give written notice of your intent to invoke it. The collection policy should also give members a grace period from the time they get the written notice to a deadline by which to pay the monthly installment to avoid balance acceleration.

### Charge Late Fees and Interest

Charge a late fee for any common expenses that a member does not pay by a set time after the due date. The late fee should be high enough to be an incentive but not so high that a court will find it an unenforceable penalty. Unfortunately, there is no magic number here. What is reasonable varies from state to state and even from court to court. Speak to your attorney about what amount to set.

To improve the chances that a court will enforce your late fee, your policy should state that late fees are so-called "liquidated damages." This means that the fee you've set is a reasonable approximation of the expected damages you'll suffer if

members pay late. In other words, you're seeking reimbursement for the time and expense of record keeping, sending notices, making phone calls, and meeting with the delinquent member.

Charge interest, too, retroactive to the date the assessment became delinquent. State law will tell you the highest annual percentage rate you can charge. Go for that top number, but do not go over it. If you do, you could face charges of usury, a legal term for charging an illegally high rate of interest.

### Charge for Returned Checks

Paying on time with a bad check is as bad as not paying at all. To avoid this scenario, say that in addition to whatever late fee applies, the member must pay you for your trouble if the check is returned. Consider two charges for returned checks: a set fee

that covers your administrative hassles and reimbursement for whatever bank charges you incur as a result of the returned check. Again, call the set fee "liquidated damages" to increase the chances that a court will enforce it.

### Suspend Privileges and Amenities

Members' assessments pay for or make possible a number of privileges, including voting privileges, use of recreational facilities, and parking privileges. A delinquent member should not get a say in association business and enjoy privileges for which everyone else has paid. Suspend those privileges until the member pays. But again, make sure you are on sound legal footing to get the courts on your side in case of a challenge—check your governing documents and state law.

As with balance acceleration, because these are extreme remedies, give the member notice and time to make good before suspending any privileges or amenities.

### Refer Matter to Attorney

Your collection policy should let members know you will hire an attorney when you have to. Describe what you may have the attorney do—file a lien against the member's unit, sue the member for payment, and/or foreclose on the unit. The policy should state to members that if this becomes necessary, they will be responsible for attorney's fees and collection costs if allowed by your governing documents and state law.

#### Insider Source

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