

## **Delinquent Owners: Can an Association recover an owner's delinquent assessments from a tenant living in the unit?**

Owners, rather than their tenants, are members of the Association and therefore responsible for paying assessments.<sup>1</sup> A tenant's lease creates a legal obligation to pay rent to an owner-landlord, but tenants generally have no legal obligations to the Association, except to follow the Association rules. The Washington Court of Appeals has held that a tenant has no obligation to pay assessments where an owner has failed to do so.<sup>2</sup> Nevertheless, an Association may have options for encouraging a tenant to pay delinquent Association assessments owed by the unit owner.

First, many Associations require both tenants and the unit owner to sign an agreement, either included in or in addition to the lease, that obligates the tenant to pay delinquent assessments (through interception of rent, discussed below, or otherwise) if the owner fails to do so. That way, there is a contract between all of the parties to make clear the obligations of the tenant, who would not otherwise be bound by the terms of the Association's Governing Documents.

Associations may also be able to intercept rent paid for delinquent units. Many Governing Documents give Associations authority to demand that tenants submit rent directly to them when the owner is delinquent without taking additional legal action and, in some cases, the Governing Documents even grant the Association power to evict tenants who fail to submit rent payments.<sup>3</sup>

Next, an Association can limit a delinquent owner and his or her tenant's rights to use certain common areas and amenities, such as a community pool or cabana if their Governing Documents specifically authorize such an act.<sup>4</sup> If an Old Act condo provides utilities for the community (i.e., water, gas, electrical, cable) it may be able to shut off service to the delinquent unit, so long as it provides the tenant written notice of the shut-off and an opportunity to appeal.<sup>5</sup>

While these actions will not make the tenant legally responsible for the owner's delinquent assessments, they might help reduce further shortfalls by inducing the tenant to pay their rent to the Association and the interruption in services would almost certainly cause the tenant to complain to the owner about the loss of these services. The owner, in turn, might opt to pay the delinquent assessments rather than lose the tenant's rental income.

Finally, if an Association has filed a foreclosure lawsuit against the delinquent owner, it is entitled to ask the court to appoint a "custodial receiver" who takes over the property, rents it out, and pays the proceeds consistent with statutory guidelines. (They would in effect become the new landlord for any existing tenant). Under Washington law, the proceeds of a custodial receivership have to be applied in this order:

- 1) First to the costs of receivership and attorneys' fees connected to the receivership.
- 2) Then to the cost of refurbishing unit, if necessary.
- 3) Then to "applicable charges" (including ongoing assessments, any utility charges, etc.).
- 4) Then to costs, fees, and charges of the foreclosure lawsuit.
- 5) Then to payment of delinquent assessments.

Receivership can be an effective way to pay down a delinquency or, at the very least, "stop the bleeding" on a delinquent unit. Anytime you are dealing with a unit that is not owner-occupied, your attorney should take you through the analysis of

whether a receivership is a viable option to assist in recovery of the balance due. In the last several years, we have seen the majority of receiverships produce a good result for our clients. If this is an option you are unfamiliar with, be sure to ask your attorney for more information.<sup>6</sup>

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<sup>1</sup> See, *Graville Condo. Homeowners Ass'n v. Kuehner*, 177 Wn. App. 543 (2013) (Where a condo Association sought to recover unpaid assessments from an tenant, the Washington Court of Appeals held that the Association could not recover because the tenant was not liable for assessments under the terms of the declaration or the Condo Act.)

<sup>2</sup> See, *Graville Condo. Homeowners Ass'n*, 177 Wn. App. 543 (2013).

<sup>3</sup> For more information on an Association's right to intercept rent from a tenant, See, Condominium Law Group blog article entitled "Can condo Associations intercept rent from a tenant living in an owner's unit?" at <http://www.condolawgroup.com/2012/12/24/rent-interception/>.

<sup>4</sup> *Note:* Regardless of what the Governing Documents say, an Association probably cannot restrict a delinquent owner's (or his or her tenant's) access to common areas if the restriction unreasonably interferes with the owner's use of the land. Thus, an Association probably could not deactivate a delinquent owner's entry gate remote control to prevent the owner's use of the common area roads to get to the owner's home, especially if the common road was the only means of accessing the home. See Condominium Law Group blog article entitled "Restricting access to common area roads: a "high risk" activity for Washington HOAs" at <http://www.condolawgroup.com/2013/11/12/restricting-access-to-common-area-roads-a-high-risk-activity-for-washington-hoas/>.

<sup>5</sup> *Note:* Because, in this situation, the common element wires and pipes provide utilities. The Association does not contact the public utility provider, it simply disconnects the common element that serves the unit. The Association must give the occupants written notice of a threatened shut-off and a chance to pay their rent to the Association. However, the Association cannot force the tenant to pay the owner-landlord's past due assessments.

<sup>6</sup> For more information on receivership, See Condominium Law Group blog article entitled "Receivership-Brief Overview" at <http://www.condolawgroup.com/2013/11/14/receivership-brief-overview/>.