

NOWACK HOWARD presents

Community Advisor

E-NEWSLETTER FOR
COMMUNITY ASSOCIATION
CLIENTS AND FRIENDS



ALERT!



HOA and Condominium Collections Q&A

With May's assessments coming due this week, condominium and homeowner associations with monthly assessments continue to be concerned about the impact of the COVID-19 crisis on their owners' ability to pay. Last Thursday, I had the honor of co-presenting a webinar for the national Community Associations Institute to address frequently asked questions about collections during the pandemic from volunteer leaders and community managers from around the country. Over 1000 Board members and managers joined the call live. You may access the audio of the webinar on YouTube here. Although we had to overcome several audio glitches, we were able to answer many of the commonly asked questions.

As noted in our April 1 Alert on collections and our firm webinars earlier this month, we know the impact of the crisis has been immediate on many associations' finances. We believe associations must continue to address delinquent accounts to avoid significantly prolonged recovery for your associations. The associations that successfully come out of this crisis will be those in which the members understand the payment of assessments is a "must pay" bill and where the Board is flexible in working with the members to enable payments to continue.

Q: Are homeowners legally responsible to pay assessments during the crisis?

A: Yes. The Georgia Condominium Act, the Georgia Property Owners' Association Act, and governing documents do not allow a member to be exempt from the responsibility to pay.

Q: Are homeowners entitled to a refund or to deduct any amount if the amenities are closed?

A: No. A homeowner's obligation to pay assessments is absolute; payment of assessments is considered an obligation of every member that is not contingent upon the association providing services.

Q: Should the Board agree to waive assessments? Late fees? Interest?

A: Boards do not have the authority to waive assessments. In fact, the Georgia Condominium Act and Property Owners' Association Act obligate Boards to impose assessments in strict accordance with their association's declaration. Boards have the authority and discretion to make good-faith business decisions, which include waiving late fees and interest, when appropriate. Boards should review requests for a waiver of late fees and interest on a case-by-case basis while keeping in mind the far-reaching consequences of the current crisis.

Q: How do you recommend Boards handle delinquencies that started with this crisis?

A: Foremost, Boards should encourage homeowners to contact the Board, while still following the CDC social distancing guidelines, to discuss their individual situations, not just stop paying.

Q: What are some examples of flexibility a Board can allow for persons who contact the Board?

A: Offer payment plans, waive interest and late fees, delay collection actions. Payment of some amount is better than receiving nothing. Any agreement with an individual member must be in writing. Contact your NowackHoward attorney for assistance.

Q: What about members who become delinquent and do not contact the Board? Any flexibility?

A: Yes. We recommend associations give additional time for payment before collection action is commenced. For example, if the usual process is to send 30- or 60-day collection letters to owners, change the timeline to 60- or 90-days before the initial collection letter is sent.

Q: Once amenities are reopened, should Boards deny use for delinquent owners?

A: That answer depends on the period when assessments became delinquent. We do not recommend that action for members who first became delinquent during the crisis. Boards should exercise enforcement for members who were already in legal action and those who already had a significant balance.

Q: What do you recommend for dealing with owners who had pre-existing delinquencies?

A: The crisis is not a free pass for those with pre-existing amounts due. For most accounts with pre-existing delinquencies, we recommend the Board proceed with its normal collection procedures to the extent allowed by the crisis and court-imposed restrictions. Demand letters should be sent to delinquent owners. Depending on the financial condition of the association, the Board should consider accepting a reduced amount to settle delinquent accounts to get the funds into the coffers. That is one of the business decisions a Board is authorized to make.

Q: What should the Board be doing now?

A: Communicate with your members about the need to continue to pay as normal and that any modifications to assessment due dates and obligations will be addressed as the Board looks at the association's revenue. And, encourage your members to communicate their situations with the Board. Since policies are enacted as responses to or in an anticipation of responding to an issue, Boards should be determining what policies, like issues of flexibility and extending due dates, are likely to be needed once current financial information becomes available. Additionally, Boards should develop policies for implementing collection action for crisis-induced delinquencies. Contact your NowackHoward attorney to assist you with that.

Q: Are there other actions a Board should consider to afford members some economic relief?

A: As explained in our April 3 Alert, Boards may consider applying for the U.S. Small Business Administration Economic Injury Disaster Loan or Advance Loan (known as EIDL), which potentially offers economic relief to community associations that need it due to temporary loss of revenue. Applications for EIDL must be made directly with the Small Business Administration (SBA) and can be made online at <https://covid19relief.sba.gov/#/>. Questions concerning the application process, eligibility, and eligible covered expenses should be directed to the SBA at 1-800-659-2955 or the SBA's Southeast Regional Office at 404-331-4999.

Boards may also look to reduce association expenses including the following:

- Stop automatic transfers to the reserve account, if allowed by the association's governing documents;
- Decrease discretionary services or the frequency of those services;
- Cancel or postpone non-essential repairs and improvements to common property;
- Look at renegotiating association contracts for both price and services provided;
- Prepare upcoming budgets based on the evolving financial condition of the association, including a line item for expected increased bad debt; and
- Ask those members who can pay in advance or pay more than due, to do so for a credit on their account as a way of temporarily subsidizing those who cannot pay in full.

The attorneys of NowackHoward continue to be here for your community during this crisis and beyond for both your association's collection and general counsel needs. Please stay safe and well and let us know how we can help you or your association in any way.



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