

Why condos can't forgive common element fees

11 October 2020

Everyone is being affected by the Coronavirus. Condominium owners are no different.

I am getting frequent phone calls and emails from concerned managers and board members trying to understand how they will be able to fund their building.

Can common element payments be deferred?

Can common element payments be forgiven for 1-2 months?

Can owners who don't pay common expenses be liened?

These are the common questions that everyone wants to know the answer to. Here are my responses.

Can Common Element Payments be Deferred?

Yes, they can be deferred. However, while condos can work out payment plans with owners, this is not something that I would recommend being implemented on a large-scale basis. Condo corporations are non-profit corporations. They are not banks who can simply refer payments and still stay in business. If condo corporations don't collect fees, they can't meet their budget obligations.

Condos can't use money that is allocated in their reserve fund, and can only use their operating account. If anything, corporations will need **more money** to meet the needs of their residents in these difficult times. Owners can and should seek help from their banks and the government (and perhaps defer their own mortgage payments), but condos will still need to collect fees in order to operate and protect the safety and security of its residents.

Can Common Element Payments be Forgiven for 1-2 Months?

The short answer to this is no. Each corporation has a budget. By forgiving common element payments, the corporation is going to end up in a deficit and not be able to provide essential services. Condominiums can't use reserve fund monies to operate the condo, and I strongly object to any suggestions that this is permitted, even in these circumstances. If condos start using reserve funds to operate then that is an extremely dangerous and slippery slope that condos may never recover from.

The money is going to have to come from somewhere, and no bank is going to lend money to make up for a deficiency caused by owners who have not paid their common element fees. This is not akin to a condo needing to borrow money to finance a specific project. While deferral arrangements can be worked out on a case by case basis, simply forgiving payments for all owners is not advisable, and will leave buildings vulnerable to the termination of essential services (i.e. property management, security and cleaning).

Can Condos Still Lien?

Yes, the lien process remains the same. While a recent emergency order has suspended limitations periods, in my view, this doesn't have any impact on the condo lien process.

If arrears continue for more than 3 months, a condo needs to lien to maintain its security. However, if payment plans are made and confirmed in writing, then the three month lien period can still be extended, as it only begins to run from when the unit actual went into arrears. In other words, if a condo agrees that payment is now due by April 15, and payment is not made on that date, the 3 month lien period will begin to run from April 16 and a lien would need to be registered by July 16.

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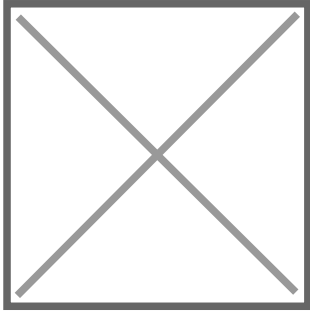
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Stay safe everyone!

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