



COMMUNITY PROPERTY ADVISOR

VOLUME XXII

WINTER 2008

NUMBER 1

Wilkin & Guttenplan, P.C.

Certified Public Accountants
& Consultants

1200 Tices Lane
East Brunswick, NJ 08816
732-846-3000
fax: 732-846-0618
www.wgcpas.com

In this Issue...

- 1 BEST PRACTICES FOR COLLECTING DELINQUENT ACCOUNTS**
by Jeffrey A. Sirot, Esq.
- 3 IRS CREATES NEW TAX FORM FOR COOPERATIVE HOUSING ASSOCIATIONS**
by Leonard Nitti, CPA
- 4 NEWS AT THE FIRM**

Jules C. Frankel, CPA, MBA
Edward I. Guttenplan, CPA, MBA
Michael M. LoVerde, CPA
William J. McDevitt, CPA, CVA
Annette Murray, CPA
Vinay Navani, CPA, MBA, MST
Deborah A. Norwicke, CPA
Gary B. Rosen, CPA, CFE
Sefi Silverstein, CPA
H. Edward Wilkin III, CPA

Brian Geissler, CPA
Susan M. Klimcsak, CPA
Carol Koransky, CPA, MBA

Laura Crowley, CPA, MBA
Doreen Gordon, CPA
Melissa Marsicano, CPA
Daniel E. Manning, CPA
Leonard Nitti, CPA
Donna L. Peskin, CPA
Mohammed Salyani, CPA*

Janine Zirrieth, Administrator

*Licensed in MN

Best Practices for Collecting Delinquent Receivables

By Jeffrey A. Sirot, Esq.

Periodically, we invite guest authors to contribute to the CPA on timely and relevant topics. This article explores some of the issues and practices Boards should consider in discharging their fiduciary responsibility in the process of collecting receivables.

Jeffrey A. Sirot is an attorney concentrating in community association law at the firm of Greenbaum, Rowe, Smith & Davis LLP. Mr. Sirot represents numerous community associations and homeowners throughout New Jersey on a variety of matters, including collections. Mr. Sirot is a member of CAI-New Jersey and Chair of the Young Lawyers section of the Essex County Bar Association. He can be reached at jsirot@greenbaumlaw.com

Nearly every time our firm is retained by an association, we are amazed at the number of delinquent unit owners and amount of money owed to the association. This is revenue that the association has budgeted for its yearly expenditures and, if not collected, will ultimately be the responsibility of every other member of the association. Nothing irritates owners in good standing more than learning that they are subsidizing their neighbor's enjoyment of the benefits of community living.

Pursuing collection actions against delinquent unit owners is often one of the least challenging aspects of

community association representation for lawyers and, as a result, is all too often neglected. However, poor collection procedures are not only the result of disinterested lawyers. Indeed, delinquencies are often prompted by Board's sympathy towards their fellow residents who are experiencing financial or other difficulties. While such compassion is understandable, such a result is not only unfair to the members of the association who are current, but it may also violate the fiduciary obligations of Board members.

Therefore, the best practice to protect Board members against their own human frailty or oversight is to:

- Enact mandatory collection procedures
- Suspend privileges
- Hire effective legal counsel
- Encourage settlements
- Obtain monthly status reports from the association's attorney and review them at each meeting.

Enact Mandatory Collection Procedures

The authoritative treatise on community association law, entitled "Condominium & Community Association Law" contains model by-laws referred to by many legal practitioners throughout the

Best Practices for Collecting Delinquent Receivables *(continued from page 1)*

State. (Note: Please contact the author of this article for a copy of the model language).

The model provision contemplates thirty and sixty day delinquency notices, which should be served by the management company or Board to avoid legal fees. Thereafter, upon three month's delinquency, the association's attorney will

typically take over the collection process and all legal fees will be passed on to the delinquent unit owner. (Note: The ability to pass on legal fees may require an appropriate amendment to the governing documents.)

Moreover, the model provisions automatically accelerate the entire

year of assessments to create further incentive for owners to remain current. In Associations that have not enacted comprehensive by-law provisions, similar procedures can generally be established by an amendment, resolution or simply advising the attorney to follow such procedures. (Questions regarding the most appropriate approach should be directed to the Association's attorney for situation-specific guidance.)

Suspend Privileges

One of the most effective and inexpensive tools to motivate delinquents to cure their default is to suspend privileges with respect to the association's amenities and/or parking. If an association maintains a community pool, clubhouse, fitness center or other such amenities, the association may deny delinquents the right to use the amenities until their past due assessments are paid. In addition, if an association maintains common parking facilities or spaces (which would not include single family garages or driveways), the association may suspend the delinquent's right to park vehicles in the common areas. In order to suspend such privileges, the association's master

deed or by-laws must provide such authority, which may require an appropriate amendment.

Hire Effective Legal Counsel

Collections require a detailed knowledge of each county's procedures and of the applicable statutes. Unfortunately, many lawyers who do not devote a

substantial portion of their practice to community associations are unaware of the applicable law, particularly in regard to bankruptcy and foreclosures.

Moreover, the collection process is exceedingly detailed and time-consuming,

which requires staff support devoted to the collections process. Accordingly, it is recommended that Associations choose legal counsel that devote a substantial portion of their practice to community association law -- and specifically to collections -- as well as maintain sufficient staffing and resources to properly service the association.

Encourage Settlements

An integral part of the collection procedure includes settlements. Despite most by-law provisions, a Board can accept a payment plan to resolve a unit owner's delinquency.

We generally recommend that a Board waive all or a part of late fees upon entering into a settlement agreement, but never to waive legal fees incurred or any portion of the monthly assessments (assuming that the association's governing documents provide for the imposition of attorneys fees and costs upon the delinquent unit owner).

The best practice is to require the delinquent unit owner to enter into a written settlement agreement





IRS Creates New Tax Form for Cooperative Housing Associations

By Leonard Nitti, CPA

Effective for tax years beginning during 2006 the IRS has created Form 1120-C which all cooperative housing corporations are required to file annually. Historically coops have filed Form 1120 to report its income and expenses. Form 1120-C will provide the IRS with additional information unique to cooperative associations.

Among the additional items required to be provided to the IRS is a breakdown between

The image shows a sample of Form 1120-C, U.S. Income Tax Return for Cooperative Associations, for the year 2006. The form is divided into several sections: Identification, Income, Deductions, Tax and Payments, and Sign Here. The 'Income' section includes lines for Gross receipts or sales, Cost of goods sold, Gross profit, Interest, Capital gain, and Total income. The 'Deductions' section includes lines for Compensation of officers, Salaries and wages, Charitable contributions, and Total deductions. The 'Tax and Payments' section includes lines for Total tax, 2006 estimated tax payments, and Amount owed. The form also includes a section for the preparer's signature and a section for the taxpayer's signature.

patronage and nonpatronage income, expenses and net operating loss carryovers.

For additional information on the taxation of cooperative housing corporations please visit our website to read "Understanding the Unique Tax Aspects of Cooperative Housing Associations" published in the Fall 2005 issue of the Community Property Advisor.

Best Practices for Collecting Delinquent Receivables *(continued from page 2)*

wherein the unit owner agrees to the amount owed and will make monthly payments to cure the delinquency over a short period of time, in exchange for the suspension of collection efforts. If the unit owner misses a payment under the settlement agreement, all late fees are again due and the collection process is resumed without delay.

Obtain Monthly Status Reports from the Association's Attorney and Review Them at Each Meeting

Ultimately, Board members who do not diligently pursue delinquent unit owners may be in breach of their fiduciary obligation to the members of the Association. Thus, each Board should implement a procedure to monitor its receivables and collections. An effective approach to ensure that the Board manages this process is to require the attorney to submit monthly collection status reports to the Board. By reviewing each matter monthly, the Board will be able to confirm that no collection matters have fallen through the cracks.

Other Issues

There is much more to the collections process than was described in the preceding sections of this article. If settlement cannot be reached, the process often results in a judgment against the delinquent unit owner. Even after a judgment is reached, numerous steps are still required to legally enforce the judgment. Additionally, there are unique considerations when faced with bankruptcy, foreclosure and compliance with the Fair Debt Collection Practices Act and the New Jersey Fair Foreclosure Act. In addition to the value of having an attorney who can establish and sustain an effective collection process, their expertise can be of great benefit in properly analyzing and guiding the association through a wide variety of complex collections situations.

UPCOMING ISSUES:

- Association Surpluses, Deficits and Working Capital
- Payroll Considerations for your Association



NEWS AT THE FIRM

EMPLOYEE ANNIVERSARIES (Jan.. – March)

22 years	Sefi Silverstein
21 years	Mike LoVerde
20 years	Kristine Flores
15 years	Carol Koransky
11 years	Brian Geissler
	Bill McDevitt
9 years	Amanda Brady
	Len Nitti
8 years	Patty Pfaff
7 years	Mohammed Salyani
5 years	Kristina Solan

APPOINTMENTS, COMMITTEES, PRESENTATIONS, PUBLICATIONS...

Jules C. Frankel, Shareholder, has once again shared in ‘writing the book’ on CIRA accounting. Jules was a reviewer of the Audit and Accounting Guide for Common Interest Realty Associations May 2007 edition

Edward I. Guttenplan, Managing Shareholder has been named a trustee for the New Jersey Society of Certified Public Accountants. **Guttenplan**, will also be speaking on “Removing the Risks in Developing a Community Association” and “Mixed-Use Communities: Challenges and Solutions” at the

2008 International Builders’ Show in Orlando, Florida on February 15-16.

Congratulations to **Christine Hrycenko** and **Dan Fiorentino** on receiving their CPA license.

Annette Murray, Principal was appointed President-Elect and **Sefi Silverstein, Principal** was appointed Treasurer of Industrial/Commercial Real Estate Women, Inc. (ICREW).

WELCOME

W&G will host an internship program this winter for students from The College of New Jersey, Rider University, Georgian Court University and Kean University.

Welcome also to our newest staff member, **Andrew Tsang**.

This publication is prepared quarterly by Wilkin & Guttenplan, P.C. For further information or for complimentary copies or subscriptions, you may contact Jules C. Frankel at:

Wilkin & Guttenplan, P.C.
1200 Tices Lane, East Brunswick, NJ 08816
Tel: (732) 846-3000 • Fax: (732) 846-0618
E-mail: jfrankel@wgcpas.com



Information contained in this publication should not be construed as accounting advice. It is not intended, and should not be used, as a substitute for consultation with an accounting professional.
©2008 Wilkin & Guttenplan, P.C.



COMMUNITY PROPERTY ADVISOR

VOLUME XXII • WINTER 2008 • No.1

Wilkin & Guttenplan, P.C.

Certified Public Accountants & Consultants

1200 Tices Lane
East Brunswick, NJ 08816

TEL: (732) 846-3000
FAX: (732) 846-0618
WEB: www.wgcpas.com

Return Service Requested



America Counts on CPAsSM

PRST STD
U.S. Postage
PAID
Permit No. 21
East Brunswick
NJ 08816