

**Condominium Association Collections:
Taking Advantage of Rent Assignments and Leases to Tenants**

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*Published in the *ACTHA News & Update* newsletter, June 2007.

When a condominium association obtains a judgment against a unit owner who fails to pay his/her monthly assessments, often the association winds up placing the unit for eviction with the local sheriff. Unfortunately, placing the unit for eviction and removing the defaulting owner (or an unsuspecting tenant who is renting from a unit owner) does little to aid the association in recovering the outstanding debt.

Fortunately, for condominium associations, Illinois law provides several alternatives for associations to collect money rather than waiting around for the unit owner to pay or, as we have seen more often, waiting for a foreclosure sale and a new owner to take possession of the unit.

Rent Assignments: After Judgment

In situations where a tenant is living in a unit owned by the defaulting unit owner, Illinois law allows the association to execute an assignment of rents and collect those rents to offset the outstanding debt.

According to 735 ILCS 5/9-104.2(b), as soon as the association obtains an order for possession, the unit owner's interest in receiving rent is automatically deemed assigned to the Board of the association unless and until such time the judgment is vacated. 735 ILCS 5/9-104.2(b). In other words, the Association may collect rent from the tenant(s) until the entire debt has been paid and an order vacating the judgment has been entered by the court. This option provides both a benefit to associations by immediately beginning to collect rent payments; and a benefit to tenants who have been diligent in making their monthly rent payments to the defaulting unit owner and do not wish to have their living situation terminated.

To facilitate the rent assignment, the Association can and should obtain an "Information Certificate of Assignment" from the clerk of court. The Certificate must be sent to current tenant(s) and serves as notice to the tenants that a judgment has been entered against the unit owner and that the unit owner's right to collect rent has been extinguished. As a result, the tenant(s) must immediately begin making their monthly rent payments directly to the Association under the same terms as set forth in the lease agreement with the landlord.

Often tenants question the legality of sending their payments directly to the association, no doubt fearing a backlash from the landlord. While this might seem at first glance as a breach of the tenant's duty to pay his or her landlord, the statute expressly provides that a landlord-unit owner may not sue the tenant for failure to pay rent that is

sent to the association. Because the certificate of assignment does not provide all of this information, it is helpful for the association or the association's attorney to send a letter to the tenant(s) along with certificate explaining that the unit owner has lost his/her right to collect rent and may no longer demand rent from the tenant.

What makes the rent assignment most advantageous for condominium associations is that it allows the association to immediately begin collecting monthly rent from a tenant – and often the monthly rent payment exceeds the monthly assessment the unit owner was paying to the Association.

The rent assignment is terminated upon satisfaction of the entire judgment, costs, fees, unpaid assessments and after accruing assessments and upon entry of an order vacating the judgment.

Leasing a Unit After Eviction

While the rent assignment is a great option for an association to begin collecting rent as soon as a judgment is entered, what may an association do if there is no tenant living in the unit? Section 5/9-111.1 provides that an association may locate a tenant and rent the condominium unit once the owner has been evicted. 735 ILCS 5/9-111.1.

Upon expiration of the stay of enforcement of the order for possession (generally 60 days from entry of the judgment against the defaulting unit owner), the association may place the unit for eviction with the Sheriff. Once the Sheriff has evicted the unit owner (or verified that the unit is vacant), the association may assume possession of the unit and make the unit rentable for a potential tenant. It should be noted that the statute only allows the association to rent the unit for up to thirteen (13) months from the date of expiration of the stay of enforcement. This allows the association approximately one month to make the unit rentable, locate a tenant and execute a twelve month (or less) lease agreement with the tenant. However, if an association needs more time to make the unit rentable and locate a tenant, an extension of this time may be extended by the court, but notice must be given to the unit owner who owns the unit at issue. 735 ILCS 5/9-111.1. Similar to a rent assignment, the association applies the monthly rent to the outstanding debt incurred by the defaulting unit owner.

If the unit owner pays the judgment while the association is leasing the unit, what happens to the tenant? Although a unit owner may make full payment of the account during the tenant's lease term, the statute does not obligate the association to immediately return possession of the unit to the unit owner nor assign the lease to the unit owner. To the contrary, the statute clearly states the association may continue to collect the monthly rent payments from the tenant, but any surplus amounts must be distributed to the unit owner.

Since condominium associations have experienced a substantial increase in collections that have proceeded to judgment against defaulting unit owners, it is

important that they exercise these remedies to avoid a substantial loss of uncollectible debt.