

# Methods for Collecting Unpaid Condominium Fees

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*Special to the Legal*

Condominium ownership appeals to individuals who do not want to deal with the hassle of, among other things, landscaping, replacing an outdated roof or shoveling snow from the driveway during the winter. In order to enjoy this easier way of life, condominium unit owners pool their resources together by paying for the cost of maintaining and repairing the common areas of the condominium building. These payments are commonly referred to as "assessments."

Problems arise when one of the condominium unit owners in the building fails to pay his assessments. By losing any part of this revenue stream, general maintenance or repairs to the building may be delayed, or, worse, the other unit owners may be forced to pay higher assessments to compensate for the lost revenue. "Paying" unit owners, however, are not without recourse. In *Gateway Towers Condominium Association v. Krohn*, the Pennsylvania Superior Court examined the methods for collecting unpaid assessments.

## CONTRACTUAL OBLIGATION

At the time of closing, when an individual purchases a condominium unit, he assents to the terms and conditions contained in the condominium documents. The condominium documents generally include the condominium declaration, which created the condominium arrangement in the first place, the condominium bylaws and the condominium rules and regulations. Each condominium unit owner is a member of the condominium association. The condominium unit owners, as members of the condominium association, elect an executive board which, among other things, is in charge of collecting the condominium



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assessments, either voluntarily or by legal means.

## ENFORCING COLLECTION

The condominium association has two avenues of relief under Pennsylvania law to collect assessments from delinquent condominium unit owners. If condominium unit owners refuse to pay for the condominium assessments charged by the condominium association, then the condominium association can file a breach of contract action against the unit owner under the condominium documents. Generally, the documents require the condominium unit owner to reimburse the condominium association for the attorneys' fees and costs to collect the unpaid assessments. Under a breach of contract theory, however, the condominium association sues the unit owner personally and does not directly attack the unit owner's interest in the unit itself.

On the other hand, the condominium association has the right under the Uniform Condominium Act, 68 Pa.C.S.A. Section 3301, to foreclose on the unit owner's lien in a mortgage foreclosure action. Section 3315 of the Uniform Condominium Act provides that so long as the condominium association records the condominium declaration, the association has an unavoidable statutory lien for the unpaid condominium assessments. The purpose of the lien creat-

ed by Section 3315 is to secure payment of the past due condominium assessments.

The condominium association's lien may be foreclosed under Section 3315 in a like manner as a mortgage on any piece of real estate. Similar to the attorneys' fee provision contained in the condominium documents, Section 3315 specifically provides the condominium association with the right to reim-

bursement for attorneys' fees and costs incurred in the foreclosure action.

## METHOD OF COLLECTION

In *Gateway Towers*, the condominium unit owner failed to pay the monthly condominium fees assessed to his unit over the course of several months. The condominium association

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## AREA MORTGAGE RATES

Lender	Fixed Rates		Adjustable Rates	Jumbo Rates*	Commercial
	30 yr.	15 yr.	1 yr.	30 yr. fixed	Yes/No**
AAE Mortgage 877-793-1400	5.63/0	5.13/0	N/A	5.88/0	No
Madison First Financial 800-574-4890	5.63/0	5.25/0	N/A	6.00/0	No
Lighthouse Mortgage 800-784-1331	5.88/0	5.25/0	N/A	6.00/0	No
Hamilton Nat'l Mtg. 800-220-7334	5.63/0	5.13/0	N/A	6.00/0	Yes
National Future Mtg. 800-291-7900	5.63/0	5.13/0	N/A	5.88/0	Yes
Home Finance of America 800-358-5626	5.75/0	5.13/0	3.00/0	6.00/0	No
Turnstone Mortgage 800-757-7514	5.88/0	5.38/0	3.00/0	6.25/0	No
Century Mortgage Corp. 800-224-7006	5.38/3	4.63/3	2.63/2	5.63/3	No
Amex Direct Lending 800-426-1207	5.75/0	5.13/0	N/A	6.00/0	No
United Bank of Philadelphia 215-751-9950	6.38/0	5.63/0	N/A	6.38/0	No
American Family Mortgage 610-358-5324	5.13/2.25	4.63/3	3.75/3	5.13/3	No
State Farm Bank 877-734-2265	6.13/0	5.50/0	4.25/0	6.13/0	No

\* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$333,700.

\*\* Indicates if a lender offers mortgage loans for commercial properties. Call to discuss rates and terms.

Rates compiled by the National Financial News Services, a mortgage information and financial clearing house in West Chester, Pa. Rates may be for new applicants only; information on terms and other available programs may be obtained by calling the lender directly. Consumers wishing additional rate information call (610) 344-9953. Rates valid July 23, 2004. For additional information on mortgages, go to: [www.PhillyMortgageRates.com](http://www.PhillyMortgageRates.com)

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then filed a mortgage foreclosure complaint under Section 3315. Since there was no dispute that the unit owner failed to pay the condominium assessments, and because the unit owner did not contest the amount of the assessments, the trial court granted the condominium association's motion for summary judgment. The unit owner then filed an appeal to the Pennsylvania Superior Court.

As part of his appeal, the unit owner argued the parties had contractually agreed that arrearages in condominium assessments could only be resolved by a lawsuit of assumption, which, by implication, precluded commencement of the mortgage foreclosure proceedings. The unit owner stated that, under the provisions of the condominium bylaws, the condominium association could only seek to recover his unpaid balance by way of a breach of contract action and had no lawful basis on which to commence a mortgage foreclosure action. He further argued that the Uniform Condominium Act did not invalidate contrary provisions of the condominium bylaws.

The Superior Court concluded that the unit owner's argument was inconsistent with controlling statutory authority. Agreeing with the lower court, the Superior Court found the section of the condominium bylaws upon which the unit owner relied was permissive rather than mandatory. The Superior Court further found that the condominium bylaws did not, by any express term, restrict the form of action the condominium association could use.

The Superior Court then noted that, although Section 3315 cannot be read to invalidate existing provisions of the condominium bylaws or supplant existing remedies, it does provide an additional remedy upon which the condominium association in this case could properly rely. As the Superior Court recognized, nothing in the language of the condominium bylaws restricted the form of relief the condominium association could employ to recover unpaid assessments. Because no restrictions appeared in the condominium bylaws, the Superior Court reasoned the bylaws posed no impediment to the use of the additional remedy prescribed under the Uniform Condominium Act.

In so finding, the Superior Court ultimately concluded the provision of the condominium bylaws allowing the association to bring a breach of contract action to recover unpaid assessments did not preclude the association from commencing a mortgage foreclosure proceeding. In other words, although the condominium association had the right to proceed against the unit owner through a breach of contract action, the condominium association lawfully could also exercise its statutory right to foreclose on the lien provided by the Uniform Condominium Act.

### VIGILANCE IS THE KEY

The statutory lien created by the Uniform Condominium Act theoretically remains on

the condominium unit until the unit is sold. By failing to pay assessments, though, the unit owner could actually make the condominium unit unmarketable. To illustrate, if the unit owner originally purchased the condominium unit for \$100,000 with 100 percent financing and the unit appreciated in value to \$110,000, the unit owner could not allow a lien against the unit to accrue in an amount exceeding the difference in the original purchase price and the current value of the unit. Logically, the unit owner would not sell the condominium unit if the original purchase price plus the lien exceeded the current value of the unit, because the unit owner would lose money on the sale.

*Whatever the unit owner decides, the condominium association must remain vigilant in protecting its rights under Section 3315.*

Whatever the unit owner decides, the condominium association must nevertheless remain vigilant in protecting its rights under Section 3315 or it will lose the statutory lien. As a threshold matter, the lien is extinguished unless the mortgage foreclosure proceedings are instituted within three years after the assessment becomes payable. Three years is not a long time when you consider that most condominium associations and their executive boards consist of volunteers who either do not have the time, interest or fortitude to confront deadbeat neighbors.

Even if the condominium association commences a mortgage foreclosure action within the prescribed time, it may nonetheless lose

its statutory lien after all. Section 3315 specifically provides that the first mortgage and governmental assessments and charges encumbering the condominium unit have priority over the lien. If the condominium unit is sold at a judicial sale, the condominium association is only guaranteed to recover the six months of assessments due immediately preceding institution of the mortgage foreclosure action. After the unit is sold by the sheriff, the condominium association is entitled to more than the six months of assessment only if the sale price is in excess of the cumulative amount of the first mortgage, the governmental assessments and charges and the six months of condominium fees. Any unpaid condominium assessments would otherwise be lost.

### LESSONS LEARNED

In *Gateway Towers*, the Pennsylvania Superior Court recognized two separate and independent avenues of relief available to a condominium association when one of its condominium unit owners fails to uphold their end of the bargain. Either way, the condominium association must remain vigilant in its pursuit of the unpaid condominium assessments or effectively lose its ability to collect the unpaid amount.

As a result, the condominium association should, at all costs, promptly address a condominium unit owner's failure to pay assessments. Otherwise, the longer the condominium association waits to exercise its rights under Pennsylvania law, the less likely the association will be able to collect the unpaid assessments.