

Dealing with Delinquencies: Problems & Solutions for Boards to Speed Up the Collection Process

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Overview of Arrears Collection: Challenges After HSTPA and Managing Estate Defaults

- **Challenges in Collecting Arrears**
- **Proactive Strategies for Co-op and Condo Boards**
- **Non-Litigation Approaches**
- **Legal Remedies**
- **Handling Estate Defaults**



Collecting Co-op Arrears in the Post- HSTPA Era:

- **Notice of Default,**
- **Notice of Termination**
- **14-Day Notice**
- **Notice of Petition and Petition**



Problems & Delays that Arise from HSTPA

- **Court Backlogs & Delays**
- **Procedural Delays in Court**
 - Service of process, time to answer, time to cure
 - Delays in motions for use & occupancy
 - 60-day waiting period starts from the first “real” court appearance
 - Submit Warrant requisition (4 -6 months)
 - Execute on warrant
- **Exceptions for Legal Fees & Late Charges**
 - **Mitchell-Lamas, HDFCs & PHFL buildings** have exemptions
 - Limits on collecting legal fees & penalties
- **Additional Actions for Non-Owner-Occupied Units**
 - **Demand Assignment of Rents**
 - **UCC-1 Foreclosure on Shares**
 - Purchaser assumes the issue of obtaining legal possession



Recommendations for Arrears Collection

- **Policy & Enforcement Strategies**
 - **HAVE POLICY IN PLACE, AND ENFORCE IT.**
- **Settlements & Legal Action**
 - Settle only in the context of court actions
 - Make any settlements enforceable
- **Engage Lenders Early**
- **Explore Non-Judicial Foreclosure**

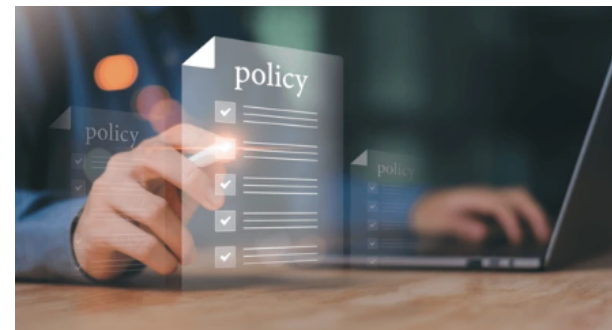


Collecting Condo Arrears

- **Typical Sequence of Condo Arrears Collection**
 - File a Notice of Lien
 - Start a money action (if collection is possible without foreclosure)
 - Initiate a foreclosure action
 - File motion for summary judgment
 - Organize foreclosure sale
 - Additional Actions for Non-Owner Occupied Units
- **Litigation is Expensive & Time-Consuming**
 - Long foreclosure timelines
 - High legal costs
 - Financial recovery happens at the end

Coping with Arrear Issues

- **Strategies to Cope with Delays**
 - **HAVE A POLICY IN PLACE, AND ENFORCE IT.**
 - Boards cannot “do nothing”
 - Ensure arrears ledgers match between management & attorneys
 - Update governing documents to allow legal fee & late fee collection



Non-Litigation Strategies to Promote Collection

- **Suspend Owner Privileges for Delinquencies**

- Voting Rights & Board Candidacy (may require By-law amendments)
- Leasing Restrictions (many by-laws require good standing)
- Loss of Amenities Access (Pool, Gym, Party Room, Concierge Services, Parking)

- **Publicizing policies and potential remedies**

- **Sending “Last Chance” Letters**

- Communicating potential enforcement actions
- Using legal intimidation tactics to encourage payment



Non-Litigation Strategies to Promote Collection cont'd

- **RPL 339-kk:** “(b) If a non-occupying owner rents any dwelling unit to a rental tenant and then fails to make payments due for common charges, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision (c) of this section, all rental payments from the tenant shall be directly payable to the condominium association.”

Legal Strategies During Foreclosure

- **Appointing a Receiver for Rent Collection at market rate under RPL 339-aa and/or By Laws**
 - **RPL 339-aa**
 - “In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to judgment of foreclosure and sale, if so provided in the by-laws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.” [Excerpt]

Legal Strategies During Foreclosure cont'd

- **Pros:**
 - Motivates compliance by legitimate threat of eviction for non-payment by owner- occupant, and requires payment of rent by tenant.
 - Reduces loss of common charges
- **Cons:**
 - Additional legal fees



Money Action vs. Foreclosure

- **Pros:**

- Legal Caption can have a dramatic effect.
- Generally, money actions are faster and cheaper than foreclosure

- **Cons:**

- Judgments are difficult to enforce without assets
- Requires additional steps for garnishing wage & collection



Summary of Tips Both Co-ops & Condos

- **Boards should always monitor arrears & maintain communication with management**
- **HAVE A POLICY IN PLACE, ENFORCE IT.**
- **Amend Governing Docs to permit charges for legal fees, authorize fines, treat these as Additional Rent or Common Charges.**
- **Ensure smooth management transitions**
 - Require outgoing managers to provide individual account profiles of delinquent Unit Owners to prevent evidentiary issues, accounting gaps, and write-offs.



Estate Defaults

- **What to do when a Condo Owner or Coop Shareholder Dies?**
 - Boards cannot transfer ownership to themselves
 - Steps to ensure maintenance/common charge collection:
 - Locate the decedent's estate
 - If no estate is found, the board should seek to have a public administrator appointed



Legal Strategy for Estate Defaults

- **Public Administrator Appointment Process requires:**
 - Certified Death Certificate of the decedent.
 - Identifying & Contacting Family members of the decedent.
 - Attorney Affirmation of Due Diligence
 - Waiting on Court Delays & Backlog
- **Ways to Expedite the Process**
 - Frequent Follow-Ups with Surrogate's Court:
 - Visiting the court **in person** to speak with the clerk.
 - Regular phone calls to maintain case visibility.
- **Obtaining the Death Certificate**
 - Best Option: Request a copy from a family member.
 - Challenges for Creditors:
 - Office of Vital Records requires proof of entitlement.
 - Lack of stock & lease (co-op) or deed (condo/unit owner) complicates requests.



Proactive Steps for Boards & Management

- Maintain emergency contact records
- Notify the Board immediately upon an owner/ shareholder's death
- Track who collects mail & belongings
- **Legal Steps to Initiate the Administration process:**
 - Issue Proper Notices
 - Engage with family to encourage quick action, we may be able to get them to act**



Importance of Administration & Alternative Solutions

- **No Transfer or Change in Occupancy**
 - Ownership cannot transfer until the estate is administered or probated.
 - Collecting necessary information early helps facilitate the administration process.
- **Why Trusts Are Gaining Popularity**
 - These challenges have led many people to establish trusts, as the transfer process operates independently of the estate creation process.



Conclusion & Final Thoughts

- Key strategies to minimize arrears risks
- Legal & non-litigation approaches for efficient collections
- Importance of estate management in preventing financial loss

Q & A

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