

Risks of Collection Delay Under the Kentucky Condominium Act of 2011

By Vince Heuser*

Did you know that condominium liens now expire after 5 years? Yes, that's right! Under the new Kentucky Condominium Act, if you do not collect the dues within 5 years the lien expires!

If your association is just filing a "Notice of Maintenance Lien," instead of actually collecting the dues, the association is wasting resources by giving a notice that is already given in the master deed and failing to collect due when they come due. From many delinquent owners, the association will likely never collect a dime!

If your association would like to have a collection process that works, you may want to consider consulting with our affiliates and advisors. Take a look at KyCondo.com for additional information.

Arguably, a board that doesn't collect the dues is shirking its responsibility to protect the community. There could be liability for directors who fail to act as a prudent business owner would. Don't let delinquent owners bleed the rest of the association dry! Protect your investment and that of your co-owners.

The Kentucky Condominium Act (KRS §381.9101, et seq.) was adopted in 2011. Section 9139, of the Act provides that the lien expires in 5 years, unless enforcement action is taken:

KRS §381.9193, "Lien for assessments" provides:

"(5) A lien for unpaid assessments shall be extinguished unless proceedings to enforce the lien are instituted within five (5) years after the full amount of the assessments becomes due."

The Act also makes clear that filing of notice papers, as so many managers and lawyers do, is a waste of time:

KRS §381.9193(4), provides:

"... Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section shall be required." Associations need to know that lawyers who bill them for filing "liens" are billing for nothing. Managers who hire lawyers to do that are wasting association money.

The Act also provides the lien is subordinate to ad valorem taxes, a valid first mortgage and any mortgage recorded prior to an assessment made by the association. Notice that

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subsection (b) slips a surprise into the law. “A mortgage,” meaning a second mortgage, third mortgage, and arguably even a line of credit, can all come ahead of the association’s lien! Arguably an owner can dodge all your liens by placing a mortgage on the property after purchase:

KRS §381.9193(2). A lien under this section shall take priority over all other liens and encumbrances on a unit, except:

- (a) Liens and encumbrances recorded before the recordation of the declaration;
- (b) A mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the unit.

Many associations assess at the beginning of the year and allow payments on a monthly basis. Other associations assess each month. These procedures create a different result when calculating the priorities of liens.

Why does this matter, you may ask? At the end of the day, the ability to enforce association dues depends upon the ability to force the sale of the property in foreclosure. Certainly, if an owner has equity, the association should be able to collect the dues when a voluntary sale happens. Unfortunately, when an owner stops paying association dues, he or she is likely to have stopped paying the mortgage, too. When the late fees and attorney fees start being added, the owner is going to be under water very quickly. The mortgage company may foreclose on the property and the property may be sold at the courthouse. The property taxes and the holder of the first mortgage get paid first out of the proceeds of the sale. In addition, the liens recorded prior to any assessment of condo fees will also come ahead of that assessment. In other words, at a foreclosure sale, the association gets nothing and the buyer of the unit gets a clean, debt-free title. Thus, an association that delays collection will likely never collect. The board will have failed to protect the interests of the association owners.

There is an alternative. The association can be diligent and press the matter as soon as a delinquency occurs. Yes, it seems harsh, but really if the owners learn that the condominiums fees are not the place to skimp, the owner will more likely be able to stay in his or her unit and the other owners will not be enduring repeated losses for failure to enforce the Master Deed.

Don’t let your association waste your money! If you are on the Board, don’t risk director liability for failing to exercise proper oversight!

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