

Lien on Me

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Ownership of property within a community association affords a unit owner the right to enjoy the easements and services provided by the association; in return, the owner is obligated, typically by the association's governing documents, to contribute his or her fair share for the maintenance of those services by paying an annual or a monthly assessment to the association. When a unit owner fails to pay such assessments, the cost of the services is unfairly borne by the other homeowners in the association.

Some payment defaults result from an unexpected event in the life of an owner who otherwise has the wherewithal and desire to continue paying (temporary layoff, illness, death of a family member, etc.). In those circumstances, a negotiated payment plan to cure the assessment arrears or a forbearance agreement may be an appropriate solution. Defaults arising from other non-payment situations may not be susceptible to an amicable or prompt resolution. In those cases, it is advisable to protect the association's interest by filing a notice of lien in the County Clerk's office as soon as practicable.

TOP FIVE REASONS TO FILE A LIEN PROMPTLY.

1. Filing a lien puts the world on notice of the debt. New York law provides the board of managers of a condominium, on behalf of the unit owners, with a statutory lien on each unit for unpaid common charges that becomes effective upon filing in the County Clerk's office. A properly recorded lien will prevent an owner from selling the unit until all amounts due under the lien are paid in full. Also, banks may decline to refinance a mortgage or provide a new loan to the owner until the lien is removed. With very limited exceptions, this lien is superior to all other liens except that of a first mortgage. For community associations that do not have statutory lien priority, early filing upon default is essential to establish priority of the association's lien.

This is especially important if the owner's financial difficulties will lead to other liens being filed against his/her real property. Thus, the board should file as quickly as possible to establish the priority of its lien.

2. The cost of filing is usually chargeable to the unit owner. Although some of the board of managers' powers arise from statute or case law, the authority to charge back legal fees to a defaulting unit owner is generally found in the association's governing documents. The fees associated with the board's legal counsel's effort to collect past due charges, including the cost of filing the lien, typically can be assessed to the owner, and generally must be paid to the association in order for the lien to be discharged. Accordingly, the monetary risk to the board of promptly memorializing the debt by filing a lien is minimal.

3. The lien has continuing effect. Once a proper notice of lien is filed, it will extend to subsequently accruing unpaid common charges and can include late fees, accrued interest, penalties, attorney's fees and any other assessments or charges, if provided

for in the association's declaration and by-laws. For condominiums, the continuing effect of the lien is established by statute and judicial authorities; for other

associations, it is typically provided for in their governing documents. Liens do not need to be updated to protect additional amounts which accrue each month, and the board can proceed with foreclosure based upon the original notice of lien, should that become necessary.

4. You cannot have a foreclosure without a filed lien. If, after exhausting all other options, an owner refuses to pay, the association's board has the option of suing the owner to collect the debt or for foreclosure of the lien. Generally, to be subject to judicial foreclosure, the lien must have been filed in the County's real property records. In a foreclosure action, if the lien is not earlier paid in full, a judgment of foreclosure and sale will be granted and a judicial sale will be held by a court appointed referee. The association may be paid in whole or in part from the sale proceeds or, if it submits the highest bid at the referee's sale, it will acquire title to the property and thereafter be entitled to rent or resell it. If there is a superior mortgage on the unit, the referee's sale will be made subject to it. (That will require the association to pay the mortgage debt to avoid the possibility of losing title in a mortgage foreclosure action). If, in the alternative, the association sues the owner on the debt and obtains a money judgment, it will become a lien on the unit and can also be enforced against other assets of the owner such as wages and/or bank accounts.

5. Prophylactic effect on other owners. A successful association depends on unit owners paying common charges promptly and in full. Unit owners may be tempted to deprioritize paying their monthly assessments or common charges if they believe the obligation will not be strictly enforced. A pro-active approach of filing liens when a unit owner is delinquent should help discourage delinquency.

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