

What Impact Will the Coronavirus Have on Your Community Association's Ability to Collect Maintenance Fees?

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As the Coronavirus (COVID-19) hits home, the uncertainty of its far-reaching economic ramifications has left community associations wondering if this crisis will impact their ability to collect monthly maintenance fees. This is a major concern since the collection of maintenance fees is the very lifeblood of a community association. Without an income stream, essential services cannot be provided. This life-transforming global pandemic has impacted all aspects of our lives, including how our children attend school, how we socialize, how we complete work and whether we remain employed. Community associations should be prepared for the impact that the crisis will undoubtedly have on revenue streams and collection efforts.

What Community Associations Should Prepare For

Many people are facing a reduction in income or job loss altogether and will find it challenging to keep up with their community association's monthly maintenance fees. Perhaps others don't understand why they have to continue paying when they are now restricted from using certain common and recreation areas. Still others, who have ignored their obligations for months or even years, may be looking for additional time, in light of the crisis, to avoid collection efforts. All of this may have a significant impact on the monthly income stream that your association relies on to operate.

Vendors performing essential services will want reassurances from management that invoices will be paid on time to avoid service disruptions. To maintain stability and keep essential operations in place, associations need to maintain a steady level of monthly income to support the ongoing operating costs.

The federal and state governments have issued guidelines and restrictions on certain creditors during this uncertain time, some of these restrictions may impact an association's ability to collect debt. Creditors like mortgagees, landlords, and credit card companies have been proactive in addressing these concerns, offering flexible payment plans and forbearance options. Other services like the U.S. mail and bank transfers may be delayed in light of the crisis further prolonging payments.

Message to the Membership

Associations should be proactive in reaching out to their membership during these uncertain times, to provide insight and guidance with respect to their financial needs to maintain operations. A clear and precise explanation to the membership should be crafted explaining the essential services, such as landscaping, building maintenance, and management, that are paid for through their maintenance fees. An example of such a letter is provided at the end of this article. In addition, any members who do not already pay maintenance fees electronically should be encouraged to do so at this point. Unanticipated delays with the mail service may exacerbate an already dire situation.

While associations have a duty to continue to collect assessments to the maximum degree possible, this unprecedented scenario calls for relaxation of the typical aggressive collection process and opening a dialog with those who have fallen into delinquency to determine whether reasonable accommodations can be granted to encourage continued payment to the association. This does not suggest that delinquencies should be allowed to increase before action is taken. Rather it suggests that as soon as new delinquencies occur, a discussion should be had with counsel and the delinquent member. Associations need to have a clear picture of what the future holds and encouraging communication will help to facilitate this goal. While your association should not promise a payment arrangement for all members, which some will take as a signal that it is not necessary to pay the full assessments, the board and management will be able to evaluate individual situations and perhaps offer waiver of late fees in certain circumstances or payment plans in others. Entering into voluntary settlement arrangements may be more cost effective than engaging in litigation. Of course, each situation is different and we encourage you to consult with counsel when entering into any payment arrangement to ensure it protects your association's interests.

Ability to Commence and Prosecute Collection Proceedings & Impact of COVID-19 on Other Collection Efforts

Legal collection efforts should commence with a written notice to the homeowner from counsel. Assuming management is able to provide an accurate account ledger for counsel to verify the debt, a demand will be generated and issued. The United States Postal Service has confirmed that, as of this date, it is experiencing only minor operational impacts as a result of the COVID-19 pandemic.

While all New Jersey state courts have been closed for most in-person proceedings since March 18, 2020, and deadlines have been tolled through March 27, 2020, we still have the ability to file complaints and motions electronically. Those matters can be reviewed remotely by court staff. Motions may be heard telephonically or by video conference with the court. Schedules for nonjury proceedings such as landlord-tenant and small claims hearings will be staggered to prevent large groups of people from gathering in a confined area. We anticipate that some matters will be delayed slightly due to a disruption in service, but barring additional orders that may further restrict business and/or governmental activity we anticipate that most matters will proceed without substantial delays.

There is no indication that the enforcement of money judgments should be impacted by the crisis at this point, however, Governor Murphy has put through multiple acts for relief to help people on the verge of being removed from their homes during the pandemic. One in particular, State Assembly Bill #3859, which

was adopted in Executive Order No. 106, effects our industry as it has put a stay on certain aspects of evictions and foreclosures. The language of the new law is as follows:

While eviction and foreclosure proceedings may be initiated or continued during the time this Order is in effect, enforcement of all judgments for possession, warrants of removal, and writs of possession shall be stayed while this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. This Order does not affect any schedule of rent that is due.

Sheriffs, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction or foreclosure processes during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice.

The Governor's Order does not impact our ability to initiate and pursue association foreclosures up to the point of judgment, however, at least for now, an association will have to wait until the Order is lifted on the enforcement of the judgment of foreclosure or the removal of a debtor from his or her property.

Beyond this, to the extent permitted in your association's governing documents, an association maintains the right to record a lien against the real property located within the community, assuming it is still owned by the debtor, to secure repayment of the debt. Currently, most County Clerk's in New Jersey are operational; while they are not open to the public, we have verified that they are able to accept electronic filings. You should consult with your association's counsel regarding specific collection matters and efforts on behalf of your association.

Budgeting Matters

Your Community Association may consider delaying non-essential projects until this imminent crisis passes. While essential services must remain in effect, it is prudent to defer spending on items like upgraded furniture or other enhancements. If your association is having significant financial issues due to the COVID-19 crisis you should consult with counsel, management and your association's accountant before making any drastic decisions concerning the use of funds designated for reserves or otherwise. Specific matters should be evaluated on a case by case basis.

Becker New Jersey Community Association Practice Group is here for you.

If you have any questions about this or any other community association matter, please feel free to contact any of the attorney's in our New Jersey Community Association Practice Group.

Form of Letter to Owners Concerning Payment of Assessments

[to be adapted as necessary]

Dear [insert community name] Owner:

We are living in unprecedented times. Because of declared New Jersey and federal states of emergency your association has taken extraordinary action consistent with putting the health and safety of the residents uppermost in mind. In accordance with the mandates of local, state and federal governments to maintain social distancing to decrease the spread of coronavirus, this has meant the closing of certain common facilities among other matters.

Some have suggested that this should lead to a reduction of monthly fees since the association is no longer having to devote resources to closed amenities. Unfortunately, this does not impact the association's expenses in a significant enough manner to result in a modification of the annual budget. For instance, while certain expenses may temporarily decrease, other expenses are expected to increase during the crisis such as professional consultants' fees, efforts to sanitize certain common areas, making arrangements for people working off site and the like. Further, with continuing uncertainty about the length of the crisis it would be imprudent to reduce the association's income while expenses that cannot be anticipated may yet occur. It remains your association's responsibility to continue to maintain the community's infrastructure as close to usual as possible.

In order to maintain the association in a strong financial condition the board has suspended all discretionary expenditures during the pendency of the states of emergency.

We realize that this is a trying time for all of us. We trust that despite the current crisis we will all work together to keep [insert name of community] safe and healthy as practical and support each other until this passes. Please keep in mind that management is dealing with numerous additional burdens related to the virus, hence, it is necessary to keep our individual concerns in perspective for the good of the community as a whole.

Very truly yours,

[____ Association Board]