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Handling common expense fees during COVID-19

Why a condo shouldn't refund or provide relief from payment

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Over the course of the last few weeks, many condo corporations have been asking whether they can defer owners' common expense fee (CEF) payments or provide any sort of relief to owners who are not able to pay their CEF as a result of the COVID-19 crisis. They have also asked whether they can refund paid CEF if amenities have been closed.

The short answer is no. Why?

the condo corporation going to get the money to pay the expenses it incurs on behalf of all owners? Whether the condo borrows the money or uses its contingency fund to cover common expenses in the short term, at the end of the day the only people that will be paying are the owners. As such, asking the condo corporation to defer or refund your monthly CEF is like asking yourself for a loan or a refund.

Condo corporations are not banks, social agencies or government. The corporation's duties do not include lending money, which is in essence what a condo is doing when it defers CEF payments. Condo owners have other sources to turn to get relief to pay their expenses. They do not need to nor should they turn to the condo corporation. The condo corporation will continue to have on going expenses during this crisis and thereafter and will need money flowing into the condo to be able to continue to provide necessary services to residents. Someone has to pay the condo's expenses. In condo land, the "someone" is always the owners. There is no one else. In addition, delaying payments now does not mean you are forgiving them. As such, are you really helping those in a financial crisis now by allowing them to accumulate a larger amount to be paid down the road?

We must remember that the Condominium Act in Ontario creates a super priority on CEF and the fact that these fees have been given this super priority also signals the importance that has been placed on making sure CEF gets paid on time.

If you are still thinking about providing owners some sort of relief from CEF or a refund, here are a few more things to think about before you consider taking this action:

1. Can you actually do it? Does your operating account have enough funds to waive or reduce fees for all owners? Can you do this for several months? If you decide to do this you will need to make this is available to all owners. From my experience, most condos do not have any or large enough surpluses in their operating accounts to even allow them to defer CEF payments and still meet their expense obligations.

3. It is likely that you have not budgeted for the extra costs that will be incurred in light of the COVID 19 crisis. If you are fortunate to have a surplus in your operating account, you may want to save that extra money for expenses related to COVID 19 that you have not planned for in your budget in order to avoid or minimize a special assessment down the road.

4. There is no authority to refund CEF when amenities are not being used or closed during the COVID crisis.

In terms of collecting unpaid CEF, condo corporations should be following the established statutory procedures for liens that existed prior to COVID-19. There is no reason to change the established process and liens should be registered for any CEF not paid prior to the expiry of the three-month period despite any interim suspension of limitation periods which have been legislated by the Ontario government. It is not “reasonable” to not register a lien within three months of default. By not doing so, you are in essence giving up the condo’s super priority over mortgages and other creditors and creating a huge risk for the corporation as it may not be paid the money it is owed if a lien is not registered in time.

Depending on the condo’s financial status, a condo may consider a payment plan after the lien is registered and its priority is protected. However, it is highly recommended you speak to your legal adviser prior to agreeing to any payment plan.

Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the Condominium Act, 1998 and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or you can visit her website at www.hodislaw.com.