

Paddington Green
Winnipeg Condominium Corporation #85
Collection of: Condo Fees, Assessments, Delinquent Accounts & Fines Policy
Rules, Fines and Enforcement

Collection of Condo Fees, Assessments, Delinquent Accounts & Fines

Condominium fees / Assessments are the life-blood of condominium corporations. Unit owners who do not pay their condominium fees or comply with all of the rules and regulations set forth in the Paddington Green condominium documents can have a negative effect on the value of the condominium and the quality of life of its inhabitants.

A condominium corporation needs a cohesive and consistent collection process to thrive and not merely survive.

MISSION STATEMENT

1. We want to collect as close to 100% of assessments as humanely possible.
2. The collection procedure must be enforced in a consistent and uniform basis.
3. The collection procedure be written and form part of the governing documents of the condominium corporation.
4. We believe in communication with owners as the cornerstone of an effective collection policy.
5. Owners must be treated with respect throughout the collection process.
6. The collection procedure must be clearly communicated to all owners as delinquencies occur.
7. The collection process provides for graduated sanctions for untimely payments.

DELINQUENT ASSESSMENT COLLECTION POLICY:

1. Regular assessments are due on the first (1st) day of the month.
2. After a five (5) day grace period from the date when due, a \$50.00 late payment fee shall be applied.
3. Special Assessments and Year End Reimbursement Assessments are due on the date(s) specified upon imposition and each installment thereof shall be delinquent if not received by the Corporation within five (5) days after it is due, a \$50.00 late payment fee shall apply to the delinquent assessment.
4. A \$60.00 fee shall be charged on NSF payments (cheques / automatic bank withdrawals returned as “non-negotiable”, “insufficient funds” or any other reason) and a \$50.00 late payment fee shall be applied.

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5. **ARREARS:** The property manager shall:
- a) Prepare an Arrears and / or NSF letter to be sent in the manner set out in the condominium declaration (see Section 4.04 of that document) to owners that are more than five (5) days delinquent and / or are being charged a \$50.00 late payment fee.
 - b) If an owner is a landlord, complete a Notice to Tenant to Pay Rent to Condominium Corporation to be sent to the Tenant and a copy to the owner/landlord to reimburse the corporation for outstanding condo fees (common expenses and reserve fund contributions).
 - c) Upon common element fees going further into arrears, the board shall instruct the property manager to contact Jason (our lawyer @ Pitblado LLP) to demand repayment and register a lien as may be necessary to preserve the corporation's right to lien, upon which Jason will send the notice(s) and if necessary register a lien and commence mortgage foreclosure proceedings. Note: The property manager will need to have the exact amounts owing with relevant dates for the purposes of commencing collection. The cost of the proceedings (notice, lien, etc.) will normally be paid for by the unit owner as same would normally be secured by the lien, and paid for by the unit owner at the time the arrears are collected.
6. **FINES:** Unless a particular policy sets forth a specific fine for an offense, the standard \$100.00 fine will be used when Declaration, By-Laws or its Rules & Regulations or other offenses are brought to the attention of the Corporation.

If the Property Manager or the Board receives or discovers information that indicates that anyone is violating any of the provisions of the Winnipeg Condominium Corporation # 85 Declaration, By-laws, or its Rules & Regulations, Policies & Practices, a written notice shall be sent to the unit owner responsible for the person or thing creating the offense. Generally, the first notice will contain a warning indicating the nature of the offense and requesting that the offense be corrected and notice of fine if not corrected within seven (7) days.

For a continuing contravention, a written notice setting out the particulars of the contravention and the amount of the fine and the number of times and frequency at which the fine will be imposed for the continuing contravention with a thirty (30) days notice to answer the particulars, including the opportunity to be heard in person at a Board meeting, and to remedy the contravention or cause it to be remedied prior to imposing the fine shall be sent to the applicable unit owner.

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- a) **Fines and Procedures for Certain Offenses:** The rules and regulations for Parking, Pets, Balconies / Patios and Noise have specific fines and procedures contained in that policy. In that event, the enforcement, fines and procedures in that policy shall be applicable.
- b) **Continuing Offenses:** If the offense is periodic where the offense is temporarily abated but then recurs regularly, the Corporation may treat each new event as a separate fine or may treat it as a continuing offense (i.e., situations where a vehicle cited for an offense is driven on and off the condominium property on a regular basis) in which event one fine will be applicable every 7-days.
- c) **On going Continuing Offenses:** If the continuing offense is on going, it shall be considered to be a new offense every thirty (30) days that the offense continues unabated during that time and a fine will be applicable every 30-day period where the offense exists. If there is a continuing offense that has been corrected, the person in violation shall have the duty to report the correction to the Property Manager or Board in order to stop the fine.
- d) **Appeal Procedures:** Once a unit owner receives a notice of a fine, the unit owner shall have thirty (30) days from the postmark date on the notice of fine to file a written request to appeal the fine before the Board of Directors and may also contain any information the person appealing the fine wants the Board to consider in the appeal of the fine. Such information may include information as to why the person believes no offense has occurred, or the person's plan to cease or correct the offense, or that the offense has already been corrected. If the person requests to personally appear before the Board, the Property Manager will arrange a time to put the matter on the Board's Agenda and notify the person who filed the appeal of such time. If no request is made to appear before the Board, the Board will consider the appeal solely upon the information submitted and the person will have no further right to personally appear before the Board unless the Board requests additional information from the person appealing. Hearings shall be informal and no rules of evidence shall be in force. The person may bring any information, witnesses, witness statements, letters or other information they think is relevant to the hearing (but should bring 5 copies) or the person may submit such information a week prior to the hearing, in which case the Corporation will generally make copies and distribute them to each of the Board members for review prior to the hearing. A maximum of 15 minutes will be allowed for the hearing unless the person appealing asks for more time when the appeal is filed. The Board will generally not rule on the matter at the end of the hearing. The Board may continue deliberations to a

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future meeting. As per Section 218(7) of the Act, the board must give the unit owner written notice of the decision and as per Section 218(8) a unit owner has a right to appeal the board's decision to the Director of Residential Tenancies within 30 days after receiving written notice of the decision.

7. All payments received by the Corporation, regardless of the amount paid, will be directed to any penalties first, then to the oldest assessment balances, until such time as all assessment balances are paid, and then to late charges and costs of collection unless otherwise specified by written agreement.
8. The Corporation may recover all reasonable costs incurred in collecting any delinquent assessment, including reasonable legal fees.
9. The Board may, for good cause based upon the Board's sole discretion, agree to a payment plan which permits payment of the delinquent assessment(s), late charges, interest and collection costs.
10. Unless the Board agrees to a payment plan as specified in number 9 above, all amounts due pursuant to this policy, and all other assessments and related charges thereafter due to the Corporation until all such amounts are paid, must be paid in full and the Corporation shall not be required to accept any partial or installment payments from the date of the institution of an action to enforce the payment of delinquent amounts to the time that all such amounts are paid in full.
11. After institution of lien foreclosure action, all payment plans or settlements require board approval.
12. All above-referenced notices will be sent in the manner set out in the condominium declaration (see Section 13.11 of that document).
13. The Board of Directors of the Corporation may revise this policy, either generally or on a case-by-case basis, if it finds good cause to do so.

ENFORCEMENT MECHANICS

The Manitoba Condominium Act offers condominium corporations a number of options to address non-compliance of unit owners, which are discussed below. It is important to note that there are legal requirements that must be fulfilled when undertaking some of the following actions. Therefore, it is recommended that the corporation utilize their legal counsel to initiate the more advanced actions.

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MONETARY PENALTIES AND COLLECTION ACTIONS:

The debt collection process will usually involve sending a series of timely demand letters to a unit owner who is delinquent on either condominium, penalty fee or fine payments. Since it is in the best interest of the corporation and the unit owner to resolve these issues as quickly as possible, the first demand letter should prompt the unit owner to focus on the problem and offer suggestions for ways to address the problem. If these actions are unsuccessful, the condominium corporation may need to proceed with one of the enforcement options discussed below.

NOTICE OF INTENT TO LIEN:

The **notice of the intent to lien** is sent to the delinquent owner by the management company. It serves as both a warning regarding the imminence of liening the unit and the final non-legal request for the owner to become current in payment of his assessments.

If any portion of any such assessment, late charge or cost of collection remains unpaid after the original due date, a "Notice of Intent to Lien" will be prepared and will be sent in the manner set out in the condominium declaration (see Section 13.11 of that document). The Notice will, among other things, state the current charges owed by the owner(s), and any additional information required.

LIEN:

Note:

- 1) **A registered lien secures the payment of:**
 - (a) **each amount owing under all the condominium corporation's liens against the owner's unit that have not expired at the time of registration;**
 - (b) **each amount that the unit owner fails to contribute to the common expenses or reserve fund as it comes due after the lien is registered;**
 - (c) **all interest owing on the amounts described in (a) and (b); and**
 - (d) **all reasonable legal costs and expenses incurred by the condominium corporation to collect or attempt to collect the amounts described in (a) to (c) including the costs of preparing and registering the lien and its discharge.**
- 2) **Lien arises by operation of law BUT it expires unless a notice of lien is filed in the Land Titles office within three (3) months;**
- 3) **Filing a notice of lien includes: Search owner's title, filling out and signing the prescribed Form C16.1 (includes affidavit verifying claim and setting out when owner was notified) and registering the Lien in the Land Titles Office,**
- 4) **Lien needs to be notarized by the President and a copy placed in the Unit Owner's file, and**
- 5) **The Corporation must notify the owner at least 7 days in advance unless a sale is pending and must notify encumbrancers on or before the date of filing to file a notice of lien.**

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If all such amounts have not been received after the original due date thereof, or ten (10) days after the mailing of a "Notice of Intent to Lien", whichever is later, Notice of Lien will be prepared and recorded as to the delinquent property and the owner(s) thereof, and all resulting collection fees and costs will be added to the total delinquent amount secured by the Lien.

LIEN RECORDING:

Note:

- 1) Liens do not expire once registered: Corporations can wait for the owner to sell or refinance or can exercise Power of Sale;**
- 2) Lien Pros: collects monies owing, can rid corporation of problem owner (e.g. chronic late payers) and if sale is successful, all legal costs are recovered;**
- 3) Lien Cons: can cause community rift, may be out of proportion to amount owing and if sale is not successful, legal costs are payable by the corporation.**

The recording of a lien against a condominium unit is the most important action the corporation can take. It secures payment of the delinquent assessments and acts as a "wake-up call" for the delinquent owner. Because the Condominium Act sets forth strict and explicit requirements for a valid condominium lien, the preparation, recording and service of the lien is best handled by the corporation's legal counsel.

The condo corporation and/or its management company can facilitate the lien preparation process by ensuring that each owner's unit file contain certain essential information, including: (1) Unit number; (2) Copy of the owner's deed; (3) Mailing address for owner of record; (4) tax identification number for the unit; and preferably (5) a clear unit ledger reflecting assessments, late charges and legal cost separately and identifying any payments made by the owner as well as the current balance. Once prepared by the lawyer for the corporation, the lien must be timely recorded with the Land Titles Office.

It is important to note that a lien is a serious matter. If a lien is registered against a unit, the unit owner may lose his or her right to vote at owners' meetings.

Furthermore, in most cases, if a lien is not 'discharged' (paid in full) the condominium corporation can file a notice of exercising Power of Sales with the Land Titles Office, upon notice to the mortgage financiers. The lien takes priority, and therefore, a mortgagee will often pay the amount of the lien, and then demand reimbursement of the payment from the unit owner, together with interests and reasonable costs. If a unit owner fails to pay the mortgagee, after demand for payment has been made, the entire amount of the mortgage may be considered due and payable.

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A condominium corporation may have the right to request the court to enforce the lien, which could jeopardize a unit owner's mortgage and financing, and ultimately even result in a forced sale of the unit.

If the unit owner has rented out their unit, it is also possible for the condominium corporation to seek payment from the rent of a tenant, plus interest and the cost of collection.

DISCHARGING LIEN: Upon receiving payment in full of the amounts covered by a registered lien, a condominium corporation must:

- (a) prepare a lien discharge in a form approved by the district registrar and submit it to the district registrar for registration;
- (b) give written notice to the unit owner affected by the lien that the lien has been discharged; and
- (c) give the unit owner a copy of the status of title document issued after the discharge is registered.

PAYING TO DISCHARGE LIEN: A holder of an encumbrance — other than a unit mortgagee — may pay the amount necessary to discharge the condominium corporation's registered lien and may:

- (a) in the case of a money encumbrance, add the amount it has paid to discharge the lien to its encumbrance and collect that amount from the unit owner
 - (i) as money in default under the encumbrance, or
 - (ii) by an action for debt; or
- (b) in the case of any other encumbrance, collect the amount from the unit owner by an action for debt.

SALE AND FORECLOSURE OF THE LIENED CONDO UNIT:

Note:

Power of Sale: can sell the unit by public auction or private sale (with LTO price approval), will take priority over any mortgage (so long as the rules are followed) and excess proceeds are distributed.

The most difficult decision made by a condominium board is directing legal counsel to begin sale / foreclosure action on a condominium lien. Some corporations prefer to wait until a certain minimum dollar amount of delinquency has been exceeded. It is recommended that foreclosure action be keyed to a specific number of months of delinquency rather than a dollar amount. i.e. 4 months

CONCLUSION

Enacting a comprehensive administrative resolution on collection procedure and adhering to it on a consistent basis is the best hope for a condominium association to minimize uncollected assessments.