

March 25, 2009

CARPENTER HAZLEWOOD DELGADO & WOOD

E-NEWSLETTER

Can We Shut off Association Services When an Owner Doesn't Pay? By Mark K. Sahl, Esq.

In the current economic environment, our firm is often asked this critical question by frustrated community managers and board members alike. It is only logical that owners not paying their share of expenses for Association services should not be allowed to enjoy those same benefits. Often, discontinuing services can be a helpful collections tool. But the simple answer to this question is that it depends. It depends on the provisions in the Association's CC&Rs. Before restricting any owner from a service or access to common area amenities, it is essential to check your community's documents. In addition, here are a few helpful guidelines about certain association services.

Water Shutoff - If the governing documents allow for water shutoff (typically in a condominium project where the association pays for the utilities and controls the water meters) we always caution associations from completely shutting off water supply to a unit. The Association could face potential exposure if one of the delinquent homeowners is seriously injured or becomes ill due to the lack of water in their unit. Thus, due to health and safety, we recommend that after notice to the owner/residents, the Association may reduce the water pressure to a "trickle."

Parking Passes/Gate Entry - If the Association's documents allow parking pass or gate entry privileges to be suspended, the Association *may* be able to take advantage of this option. However, the Association cannot prohibit a homeowner from access to the homeowner's own property. Centuries of real estate law protect a property owner's right to access his property. Certain parking privileges may be altered, but blocking an owner's access completely is too much. Taking away a "clicker" and making an owner stop at the guard gate is usually permissible.

Recreation Room/Pool Privileges/Voting - If the Association's documents allow the Association to restrict privileges to recreational facilities and activities, or to suspend voting rights, there is generally little risk in doing so. However, the Association must be certain that the homeowner is delinquent before imposing such restrictions and that delinquency records are accurate.

Cable TV Services - Many Associations with bulk cable agreements provide basic cable TV or internet services to homeowners through assessment payments. It seems absurd to think that a delinquent owner should continue to have access to this service. Even if the Association's CC&Rs do not expressly allow for restricting the cable, the risk to do so would be very low. But the challenge here is that the cable provider may be unwilling (or unable) to disconnect these services for individual owners. Unfortunately, this issue is best addressed when negotiating the cable service agreement, not when contemplating a delinquency list. If the service provider is willing to add shutoff language to the bulk agreement, cable shutoff would be an effective, low risk collection tool if the governing documents permit restriction of services.

In sum, few would argue the effectiveness of these collection options, but before restricting these or any other services or amenities, check the governing documents. For better legal protection, it may also be advisable to check with the association's attorney about these collection actions.



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