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Suspending a Delinquent Owner's Right to Vote

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Can an Association suspend the voting privileges of owners who are delinquent in the payment of their assessments? Due to the increase in Association delinquencies, this question comes up a lot. Because state statutes and case law do not specifically address this issue, the answer to this question is typically document specific. However, before you suspend voting privileges, there are certain things that you must look for in your governing documents.

To begin with, do your documents have a provision that allows the Association to suspend voting rights? Many times you can find this provision in the "easement" article of the CC&Rs (strangely enough), but sometimes it can also be found in the "general provisions" article or "Association powers" article. Less often, it is in the article on assessments. If you cannot find it in your CC&Rs, be sure to check your Association's Bylaws, as sometimes this provision can be found there as well. Typically, it would be located under "powers" of the Association or the Board, or in an assessment collection section.

Once you have found your suspension provision, look to see if owners' voting rights are automatically suspended after a certain time period (typically after the owner is 15 days delinquent) or if the Association or its Board has to take some sort of affirmative action before the suspension can take place (such as providing notice and an opportunity to be heard within a certain time frame). Many times governing documents grant owners certain due process rights before their right to vote may be suspended. If so, you need to be sure to strictly follow the requirements of the provision to avoid any legal issues. Only when an owner's voting rights have been properly suspended may you exclude their vote on Association matters.

Lastly, even though you may have the general right to suspend voting privileges, a suspended owner may still be able to vote or participate on specific issues. This all depends on the wording of the applicable voting provision in your governing documents or the statute. For example, your CC&R amendment provision may state that the CC&Rs can be amended by a 67% vote of those owners "entitled" or "eligible" to vote. Since a suspended owner is not "eligible" or "entitled" to vote, they may properly be excluded from the CC&R amendment vote. However, if your CC&R amendment provision lacks the qualifiers above (i.e., amendment requires 67% of all owners), those owners that are suspended arguably may still vote on the amendment – even though they may not have the right to vote for directors.

If your documents are not entirely clear with respect to who is “entitled” or “eligible” to vote, we recommend consulting with the Association’s attorney for guidance before suspending any owner’s right to vote. The more important the vote, the more important this analysis becomes.

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