

LEGAL ALERT

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— A Publication for Community Associations —

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BANKRUPTCY A BOARD MEMBERS GUIDE

In today's economic climate, collection efforts by an association have become increasingly more difficult. It is not unusual for an association to see a foreclosure halted by the filing of bankruptcy by a delinquent homeowner. Many associations simply throw up their hands and write off the debt believing that the bankruptcy has removed any chances of recovery of past due assessments. Other associations ignore the bankruptcy filing and continue with collection efforts, not realizing that this could subject them to stiff monetary fines for violating bankruptcy law. Taking either action could be extremely costly to the association.

We are often asked, "How does an individual homeowner bankruptcy filing impact an association's collection efforts?" Answering this question requires the examination of the two different types of consumer bankruptcy filings: Chapter 7 and Chapter 13.

Chapter 7 Bankruptcy

An association will normally be put on notice of a bankruptcy filing through the receipt of a notice from the bankruptcy court. When this occurs, the association must immediately cease all collection efforts. A Chapter 7 bankruptcy filing is often termed a "liquidation case". In this scenario, the debtor plans to sell off all assets to pay creditors. Normally, the debtor plans to give up his home to creditors. What are the association's rights and remedies when a debtor files Chapter 7?

Many associations are under the impression that once a Chapter 7 is filed, all hopes of receiving any past due funds from this debtor are lost. This is simply not the case. If a lien has been filed on the property at least 90 days prior to the bankruptcy filing, that debt is secured and will not be "wiped out" by virtue of the bankruptcy process. It is therefore crucial that the Association abide by a strict collection

policy to make sure that any debt is secured by a lien on a timely basis.

What about fees which accrue after the bankruptcy is filed? Pursuant to Section 523 (A)(16) of the bankruptcy code, a debtor must pay all assessments as they accrue from the date a bankruptcy is filed forward. For example, should an owner file bankruptcy on 1/1/2009, all association fees that become due after that date must be paid directly to the association in its normal fashion. Failure to do so will allow the association to have a debtor removed from bankruptcy protection through the filing of a Motion for Relief from Stay. If the court grants this motion, the association will then be free to pursue collection action against the delinquent homeowner.

Chapter 13 Bankruptcy

Often referred to as a "reorganization plan", a Chapter 13 plan is a proposal prepared by the debtor and the debtor's attorney for paying the creditors over a five year period.

Payments made according to the plan will be paid to the trustee for distribution to the creditors. Assuming that the association has filed a lien against the debtor's property, the debt will be secured and will have priority over unsecured claims such as credit card debt.

Through this process, the debt secured by the lien will be paid over the period of the bankruptcy plan. Therefore, an association has a greater chance of receiving full payment through this process than in a chapter 7 scenario.

As with a Chapter 7 filing, all fees which become due after the date bankruptcy is filed must be paid directly to the Association on the normal due date.

Proof of Claim

In order for an association to be recognized as a lien holder by the bankruptcy court in a Chapter 13 bankruptcy, the association must file a proof of claim. A proof of claim is a document that is filed by a creditor which informs the court that there is a financial obligation owed by that debtor to the creditor.

In many cases, an association will have a lien in place which secures the debt owed. Once the proof of claim is filed with the bankruptcy court, the bankruptcy trustee will list the association as a creditor to whom money is owed in the bankruptcy plan. The arrearage owed to the association will then be paid out to the association on a monthly basis through the bankruptcy plan.

Default

The question often arises, "what is the remedy for an association when an owner fails to make his/her maintenance payments after bankruptcy is filed?"

The first recommended course of action is to have the association's counsel send the debtor's counsel a letter outlining the obligation to pay the past due association fees on a timely

basis. In many cases, this simple letter will be sufficient to remedy the situation. If this does not remedy the problem, the association still has recourse.

The association has the option of filing a Motion for Relief from Stay with the bankruptcy court to have the owner removed from bankruptcy protection. Once this motion is granted, the association would then be permitted to pursue collection efforts, including foreclosure, in order to recover the outstanding debt. Furthermore, collection correspondence can be sent to the owner without the fear of financial sanctions for violating the bankruptcy stay.

THE INFORMATION SET FORTH IN THIS NEWSLETTER IS GENERAL AND SUMMARY IN NATURE AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE APPLICABLE TO YOUR ASSOCIATION. IF YOU HAVE QUESTIONS REGARDING THE CONTENTS OF THIS RELEASE AS IT APPLIES TO YOUR SITUATION, PLEASE CONTACT FOTH & FOTH CO., L.P.A. IN ADDITION, WE WISH TO REAFFIRM THE FACT THAT THE PRINCIPLES OF LAW CITED HEREIN ARE SUBJECT TO CHANGE FROM TIME TO

ASK THE ATTORNEY

Q: How long is the associations lien valid?

A: There is a common misconception that an assessment lien is enforceable forever—that if the association simply files a lien with the county recorder it will be valid (and must be paid) if the owner ever sells or refinances his property. Unfortunately, this is not correct. A lien is generally only enforceable for five years from the date it is filed. To avoid time barred from enforcing the lien, the association should file suit to enforce its lien or to seek a personal judgment within five years from the date the lien is filed.

INSIDE STORY HEADLINE

This story can fit 150-200 words.

One benefit of using your newsletter as a promotional tool is that you can reuse content from other marketing materials, such as press releases, market studies, and reports.

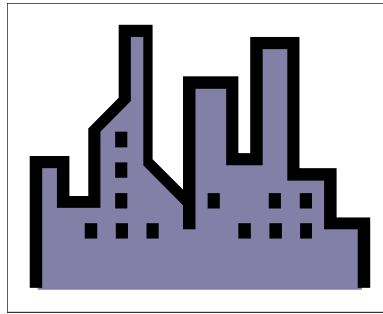
While your main goal of distributing a newsletter might be to sell your product or service, the key to a successful newsletter is making it useful to your readers.

A great way to add useful content to your newsletter is to develop and write your own articles, or include a calendar of upcoming events or a spe-

cial offer that promotes a new product.

You can also research articles or find "filler" articles by accessing the World Wide Web. You can write about a variety of topics but try to keep your articles short.

Much of the content you put in your newsletter can also be used for your Web site. Microsoft Publisher offers a simple way to convert your newsletter to a Web publication. So, when you're finished writing your newsletter, convert it to a Web site and post it.



Caption describing picture or graphic.

INSIDE STORY HEADLINE

This story can fit 100-150 words.

The subject matter that appears in newsletters is virtually endless. You can include stories that focus on current technologies or innovations in your field.

You may also want to note business or economic trends, or make predictions for your

customers or clients.

If the newsletter is distributed internally, you might comment upon new procedures or improvements to the business. Sales figures or earnings will show how your business is growing.

Some newsletters include a column that is updated every issue, for instance, an advice

column, a book review, a letter from the president, or an editorial. You can also profile new employees or top customers or vendors.

“To catch the reader's attention, place an interesting sentence or quote from the story here.”

INSIDE STORY HEADLINE

This story can fit 75-125 words.

Selecting pictures or graphics is an important part of adding content to your newsletter.

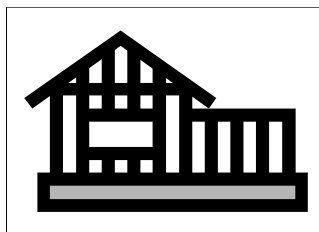
Think about your article and ask yourself if the picture supports or enhances the message you're trying to convey. Avoid selecting images that appear to be out of context.

Microsoft Publisher includes

thousands of clip art images from which you can choose and import into your newsletter.

There are also several tools you can use to draw shapes and symbols.

Once you have chosen an image, place it close to the article. Be sure to



Caption describing picture or graphic.

place the caption of the image near the image.