



Condo Connection

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Wilson, Blanchard Management Inc. – *Your Solution to Property Management*
www.wilsonblanchard.com

Welcome!

By Karen Reynolds & Jeff Lack, Co-Editors

Welcome to the first issue of Wilson, Blanchard Management’s new quarterly newsletter – the WB Condo Connection. This newsletter is intended to highlight Ontario condominium related articles and educational items that may be of interest to Boards of Directors and condo owners.

Our newsletter will be published quarterly, with a different focus topic being presented each issue. The newsletter is published online and available for download on our website (www.wilsonblanchard.com) as well as in hard copy format to the President of each of our Boards of Directors.

We hope you enjoy both the format and content of

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our newsletter and we welcome your comments. Please direct any comments, suggestions and / or article topic requests by email to newsletter.editor@wilsonblanchard.com or by mail to:

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How to Combat Large Accounts Receivable Balances

By Jeff Lack, BAcc, CGA

Are the Accounts Receivables at your corporation out of control? Are owners paying on a consistently late basis? Is the corporation running into overdrafts to pay its bills because of this? Most importantly, are you taking the proper steps to correct the problem?

Signs of Trouble

The first step that is necessary is to recognize you have a problem. If the Accounts Receivable balance on your Balance Sheet is the only figure you look at each month, you may not recognize



you have a problem until it is too late to correct it. Does a balance of \$5,000 indicate collection issues? It might if your average monthly receivables balance is only \$200. However if your building is a two-tower high-rise with 400 units and a \$4 million budget, \$5,000 may be perfectly normal.

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In order to determine whether a problem exists, trends and details must be examined. What has the balance of your Receivables been in the past – is the balance increasing every month? How old are your receivables? Examine your detailed accounts receivable listing to determine if balances are approaching (or have exceeded) the 3-month lien expiration period as prescribed by the Ontario Condominium Act (“the Act”) in Section 85(2). If so, have these arrears been secured through the Registration of a Lien? Are the same owners consistently late every month and do some owners carry one or two month balances on a consistent basis? This may result in difficulties paying the corporations expenses and in some cases force the corporation to fall into overdraft, resulting in additional bank charges and interest. Why should the majority of owners, those that do pay on time, have to cover additional bank charges and interest paid by the corporation (through increased common element fees in the next budget) as a result of a handful of owners that don’t pay on time?

Interest and Late Fees

When owners don’t pay their condo fees on time, it costs the corporation money – either in lost interest income or additional interest expenses & bank charges. In the long run, this costs all owners money as it results in higher common element fees.



“When owners don’t pay their condo fees on time...it results in higher common element fees (for all owners).”

In order to alleviate this, the corporation has the power to charge interest and late fees for unpaid common fees and / or special assessments. The interest and late fees not only offset the loss that the corporation incurs as a result of the late payments, it also acts as a deterrent to owners in the future. Let’s face it – if an owner can only afford \$300 this month and must choose between paying down their credit card balance, which carries an interest rate of over 20%, or their condo fees carrying an interest rate of Nil%, which will they choose? They may choose differently if their condo corporation charges a late fee of \$10.00 and interest at a rate of 24% per year.

It should be noted however that the power to charge interest and late fees is not inherent. It must be legally documented in the declaration. Failing this, a by-law must be passed and ratified by the owners and should be communicated to all owners prior to being implemented.

Change Your Lien Policy

As previously mentioned, the Act specifies a maximum of three months before a Certificate of Lien must be registered against a unit in order to secure arrears. The legal process of taking such action involves a significant cost (it can be in excess of \$1,000 for the registration of a Lien), however as this cost is fully

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recoverable from the owner – Section 85 (3)(c) of the Act – the threat of a lien generally results in the collection of all arrears.

However, we continually see repeat owners receive a Notice of Lien (the “threat” letter) and pay off their arrears before a lien is registered. In paying their arrears, they avoid the Lien registration cost and know that another Notice of Lien will not be issued for 3 months. Three months later, they have made no payments and the process repeats itself – threat letter, payment in full, 3 more months before a payment is made. In the meantime, the corporation must carry on paying its bills on a regular basis with no condo fees being received.

What’s worse, we often encounter owners who “play the lien game”. That is, they know the process of issuing a Notice of Lien occurs as soon as they fall 3 months in arrears. As such, they consistently carry a balance of two months. They fail to pay January and

February. On March 1, they pay their January fees. That way, they are still only 2 months in arrears. On April 1, they pay February. Again, only March and April are outstanding so a Notice of Lien is still not sent. In this sense, the corporation is short two months common fees indefinitely.

In order to avoid this, the Board of Directors can choose a lien policy of less than 3 months – the *maximum* prescribed by the Act. Section 85(1) indicates that “if an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner’s unit...” There is no minimum time period specified. By decreasing the lien policy to 60 (or even 30) days, the gap between default of payment and the commencement of collection activity is shortened. The result is fewer accounts receivables, less stress on the corporate bank account and more interest income / less interest expense & service charges for the condo.

Lien & Collection Procedures

By Jeff Lack, BAcc, CGA

There is often confusion regarding the procedures required, and the time lapse involved in commencing lien proceedings against units in arrears. This is further complicated when the lien policy is not 3 months as recommended (but not required) by the Condominium Act of Ontario (the “Act”). In order to simplify the understanding of the steps involved, all lien procedures, regardless of the policy, should have similar timing working backwards from the date that the lien is to be placed.

Most condominiums follow a 3-month lien policy in accordance with the Act. The Act states that a lien must be legally registered prior to the arrears becoming 3-months old in order to secure the

balance owing. If an arrears balance passes the 3-month limit, it is no longer “lienable” (the corporation loses its right to register a lien on the unit for any amounts over 3-months). However, the Act does not require the 3-month policy to be used – many corporations choose a shorter policy.

Lien Timeline

In order to properly register a lien, certain legal procedures must be followed. If these procedures are not followed accurately and in a timely fashion, the lien may not be enforceable in court. It is the timing of these procedures that often causes the most confusion.

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For all lien policies, the timing is as follows (working backwards from the date the lien is to be placed):

- Lawyers generally appreciate 2–3 working days notice to prepare the lien, search for title, register the lien and mail documents to the owner. Taking into account any weekend or holiday that may fall near the end of the month, the Certificate of Lien (Form 6) should be sent to the corporate lawyer approximately 5 days in advance.
- Prior to the Certificate of Lien, owners must be given reasonable notice that a lien is going to be registered. As such, a Notice of Lien (Form 14) is sent to the owner giving them 10 days notice (as required by the Act) to pay their arrears.
- Some time must be set aside for the internal procedures required to prepare and mail the Notice of Lien, whether done by the corporate lawyer or the management company.

As such, the entire process can take up to 20 days. WB's current policy is to send Notice of Liens on or about the 10th of each month, in

“A Notice of Lien must be sent approximately 18–20 days prior to the lien.”



order to have the liens registered by the end of the month. As such, for any lien policy that a corporation chooses, a Notice of Lien must be sent approximately 18–20 days prior the lien policy specified. For example:

- 90-day lien policy – Notice of Lien sent when approximately 70 days in arrears (i.e. January 1st fees not paid by March 10th).
- 60-day lien policy – Notice of Lien should be sent when 40 days in arrears (i.e. January 1st fees not paid by February 10th).
- 30-day lien policy – Notice of Lien sent when 10 days in arrears (i.e. January 1st fees not paid by January 10th).

Many Boards of Directors mistakenly think that a 30-day lien policy means that a Notice of Lien will be sent if the fees are not paid within 30 days – this is incorrect as it is a “Lien” policy, not a “Notice of Lien” policy. In order for a lien to be registered at 30-days, a Notice of Lien must be sent when the arrears are at 10-days.

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Beyond the Lien

What happens if an owner doesn't pay after being lien-ed? For units that are not owner-occupied, Section 87 of the Act allows the corporation to collect any rental payments directly from tenants until such time as all of the common expense arrears are paid off. This can result in a quick and relatively easy solution to clear up arrears on leased units.

Beyond this potential solution, the Act states that a "lien may be enforced in the same manner as a mortgage" (Section 85(6)). This means that the corporation can eventually commence Power of Sale proceedings in order to sell the unit and collect the arrears from the proceeds. However, this process involves several legal steps, from filing a Statement of Claim, allowing the owner time to defend the claim, filing the required documents for a Court Sheriff to evict the occupants, obtaining possession of the unit, allowing for the specified redemption period (a last chance for the owner to pay the arrears) and finally listing the unit for sale. This lengthy process can take anywhere from 6 months to a year, not including the time it takes the unit to sell and should be directed by the corporation's solicitor as a result of the legal filings and proceedings involved.



What about Bankruptcies?

As the condo corporation is a potential creditor in personal bankruptcy filings, the Trustee in Bankruptcy is required to inform the management company of any filing so that a Proof of Claim can be submitted. Over the past several months, we have noted a sharp increase in the number of Personal Bankruptcy filings being received in our office. This trend has been confirmed by the Office of the Superintendent of Bankruptcy Canada who announced that bankruptcy filings in the 12-month period ending January 2009 were up 15.8 per cent compared to the previous 12 months and there were over 50% more filings in December 2008 than in the same month in 2007. With the economic downturn continuing into the first quarter of 2009, as evidenced by employment insurance filings which are now 23 per cent higher than the level in February 2008, we can only expect to see a further increase in bankruptcy filings. So what impact does this have on the condo corporation?

In short, there is little impact as a result of an owner filing for personal bankruptcy. Liens are registered

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against units (the real estate) as opposed to individuals (the person). As such, filing for personal bankruptcy does not allow the owner to protect their condo arrears from the corporation (the creditor) as the Act treats Common Expense arrears in the same manner as a mortgage (Section 85(6)) allowing the corporation to fully collect all arrears upon liquidation of the property.

News & Notes

Congratulations to the winners of our "Name the Newsletter" contest. Liz Doris, Jennifer Maunder & Marla Polap all submitted the same name idea, WB Condo Connection!

Next Issue...

Our next issue is scheduled for Summer 2009. The focus will be on insurance for condominiums and there will also be information included about the new Renovation Tax Credit and how it will affect condominium common elements.



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