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Cooperative vs. Condominium Lien Priority & Collections Strategy in New York

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When a co-op shareholder stops paying maintenance or a condominium unit owner stops paying common charges, the board needs to recover the money owed. Boards should be aware of the proper steps for moving quickly to collect or they may introduce other risks. An experienced co-op and condominium attorney can help boards understand their legal options early in the process and develop a collection strategy that protects the association's interests.

The best collection strategy depends on the property value, the mortgage balance, the association's lien position, and the likelihood of actually recovering the money. **Lien priority**—who gets paid first when there are competing claims—makes the calculation look very different for a co-op than for a condo.

Why does lien priority matter in co-op and condo collections?

The two forms of ownership may look similar to a homeowner, but they are legally very different. While a co-op shareholder owns shares in a corporation, together with a proprietary lease to the apartment, a condominium owner owns the unit as real property. These different forms of ownership are governed by different laws, which affect a board's rights and options when payments fall into arrears. Because of these legal distinctions, many cooperative and condominium boards rely on a co-op and condominium attorney when evaluating collection options, enforcing governing documents, and protecting the association's financial interests.

Co-op collections: A stronger lien position

For cooperatives, lien priority is governed in significant part by **Article 9 of the New York Uniform Commercial Code (UCC)**. A co-op has a **first-priority lien** on a shareholder's shares and proprietary lease for unpaid maintenance.

Why does that matter? Because the shareholder's lender may have a financial incentive to step in and pay the arrears.

If the co-op forecloses, the lender's subordinate interest could be wiped out. As a result, lenders often choose to pay the maintenance arrears to protect its larger investment. The amount paid may then be added to the shareholder's mortgage balance.

For a co-op board, first-priority can be an effective collection tool without requiring the board to proceed all the way through foreclosure and a sale. Understanding lien priority can significantly improve recovery efforts for cooperative boards in New York (including Manhattan and Westchester County) while avoiding unnecessary litigation expenses.

Condo collections: When does foreclosure make financial sense?

Condominium lien priority is governed by **Article 9-B of the New York Real Property Law,** also known as the **Condominium Act**, including **§§ 339-z and 339-aa.**

Unlike a co-op, a condominium's lien for unpaid common charges comes *after* the first mortgage/lender. It's a critical difference.

Working with a knowledgeable condominium and HOA attorney can help condominium and HOA boards determine whether foreclosure, a money judgment, or another legal remedy is the most effective course of action.

Consider this example: A condo is worth $1 million, but the owner owes $900,000 on the first mortgage. If the condominium forecloses its lien, the first mortgage remains in place, leaving little equity to satisfy the condominium's lien.

Before pursuing foreclosure, a board should gain an understanding of the mortgage balance, the value of the unit, and whether the owner's lender has already begun foreclosure proceedings.

If the lender is already pursuing its own foreclosure, the board should understand how that proceeding could affect the condominium's potential recovery before spending money on its own foreclosure action. In some cases, pursuing a separate foreclosure may produce little or no recovery and simply add legal expense.

That's not to say there aren't other options. A condominium or HOA can also pursue a money judgment against the delinquent owner. This can give the board another way to recover the money owed, including, where legally permitted, by going after other assets the owner may have.

Boards don't necessarily have to choose between the two. Depending on the circumstances, foreclosure and a money judgment can be pursued in the same lawsuit, giving the condominium or HOA more than one potential path to recovery.

Why timing matters in co-op and condo collections

There's another important difference between co-ops and condos.

A co-op's lien for unpaid maintenance arises automatically under the UCC law. For a condominium, however, the lien must be recorded with the county clerk or other appropriate recording office.

Even if the condo board ultimately decides not to foreclose, filing the lien establishes the condominium's secured position, which will matter if the unit owner later files for bankruptcy.

When should a board contact a co-op and condominium attorney?

The property management company should generally make the first contact with the owner when a

delinquency accrues. There may be a temporary hardship that can be addressed through a payment plan or other agreement.

But, if the owner doesn't respond, the delinquency continues, or a workable payment plan can't be established, it's time to engage an experienced co-op and condominium attorney. In particular, boards should not wait until the arrears have grown substantially before getting legal advice.

An experienced co-op and condominium attorney can help the board evaluate the facts to determine a course of action, including:

- The cooperative's or condominium's lien priority
- The property's value and outstanding mortgage balance
- Whether a lender has begun foreclosure proceedings
- Whether foreclosure is likely to result in a recovery
- Whether pursuing a money judgment makes sense

An attorney knowledgeable in condominium and cooperative law can also identify related issues involving governing documents, lender rights, and potential property disputes that may affect the board's collection strategy.

The board should also make sure its attorney is well versed in bankruptcy law. Counsel who understands both co-op and condominium law and bankruptcy law can help a board evaluate its options and avoid pursuing a strategy that is unlikely to produce a worthwhile recovery.

Lasser Law Group represents cooperative and condominium boards throughout the New York metropolitan area, including Manhattan and Westchester County, and brings experience in both real estate and bankruptcy to complex collection issues. Learn more about how lien priority can affect co-op and condominium collection strategy. If your board is dealing with unpaid maintenance or common charges, Lasser Law Group can help you assess your options and determine the most appropriate collection strategy for your situation. Please contact us to learn more.

Co-op and condo collections FAQs

Does a co-op lien have priority over a lender's lien?

In New York, a co-op's claim generally takes priority over other lenders' claims against a shareholder's co-op interest.

Does a condo lien have priority over a first mortgage?

Generally, no. New York Real Property Law §339-z makes sums unpaid on a first mortgage of record an exception to the condominium's lien priority.

Can a condo board pursue a money judgment instead of foreclosure?

Yes. Section 339-aa expressly allows a money judgment action for unpaid common charges without foreclosing or waiving the lien.

Does a condo board have to file its lien?

Yes. Under §339-aa, the lien becomes effective after a verified notice of lien is filed with the appropriate recording office.

Why should a condominium or co-op board work with a co-op and condominium attorney?

A professional co-op and condominium attorney can evaluate lien priority, foreclosure options, bankruptcy concerns, and collection strategies to help boards make informed legal and financial decisions while protecting the interests of the association.

Can a condominium and HOA attorney help with collection matters?

Yes. Attorneys who represent condominiums and homeowners' associations often assist with unpaid assessments, lien enforcement, foreclosure actions, governing document interpretation, and other collection-related legal matters.

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