

# HABITAT

## ARCHIVE ARTICLE

### When Your Neighbors Don't Pay Their Monthly Dues

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<b>DESCRIPTION</b>	Simple solutions can save the day.
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<b>ABSTRACT</b>	There are several revisions that you can make to your bylaws that can make it easier to collect common charges.

There are several revisions that can be made to condominium bylaws to improve the collection of common charges and make the corporate governance of the building more efficient.

The Real Property Law requires that common charges should be based on a unit-owner's percentage of common interest, with certain exceptions for insurance and utilities. So most condominium bylaw provisions pertaining to common charges are similar in content and leave room for improvement.

Sometimes it can become problematic for a condo to deal with a unit-owner who is not paying common charges or is not abiding by the condo's rules and regulations. When a shareholder in a co-op fails to pay maintenance or breaks a co-op's rules, you can take the shareholder to housing court and threaten to evict the shareholder. However, because there is no landlord-tenant relationship between a condo board and its unit owners, this recourse is not available to condo boards. Instead, a condo board can sue a unit-owner in civil court to compel compliance with rules or to collect common charges. There are some simple bylaw amendments that can greatly improve the collection of common charges and rule compliance.

There are two methods of collecting common charge arrears in civil court. The first is a lien foreclosure; the second is through a money judgment action based on a breach of contract. The procedure for a lien foreclosure is set forth by statute and is also usually contained in the bylaws. If your condo's bylaws are silent on whether you can sue for a money judgment, I recommend amending them to include money judgment actions as part of the election of remedies available.

There are pros and cons to lien foreclosures and money judgment actions. One benefit of a lien foreclosure is that, upon completion, it wipes out junior liens, allowing the condominium to sell the unit free and clear of other legal encumbrances. This should result in a higher sales price. One disadvantage is that it is time-consuming and

expensive to complete. A benefit of a money judgment action is that, in addition to being faster and less expensive to obtain, it allows the condo to go after an individual's personal assets. In contrast, a lien foreclosure only provides for seizing the condominium unit. If you obtain a money judgment, in addition to being able to satisfy the judgment with personal assets such as bank accounts and wages, you can also potentially sell the property at a sheriff's sale. However, a sheriff's sale based on a money judgment will not wipe out junior liens on the property, typically resulting in a lower sale price.

It is also advisable to amend the bylaws to explicitly state that the condominium has the right to collect legal fees related to a money judgment action, as many bylaws only specify that legal fees may be recouped in lien foreclosure actions. I also suggest adding an acceleration provision, which enables the board to declare the common charges owed for the rest of the year due and payable immediately. This can compensate for the fact that unlike lien foreclosures, in which the lien continues to accrue over time through the sale date, thereby increasing the total amount of common charges that can be collected, a money judgment action freezes the amount due as of the date the lawsuit is filed.

When a condominium board files a lien against a unit for unpaid common charges, it is a cloud on the title that prevents the unit from being sold or being refinanced without those common charges being paid first. Therefore, it is always a good idea to file a common charge lien against a unit if an owner falls behind more than two or three months without a good explanation and a repayment plan in place. One recurring scenario in lien foreclosure actions is that a unit-owner will pay his or her common charges after the lien foreclosure is commenced, thereby requiring the lien to be extinguished, but then refuses to pay late fees and the legal fees incurred by the condo because, by statute, the condo's lien only includes common charges. An excellent way to prevent this is to amend the bylaws to provide that late fees and legal fees are deemed to be common charges.

A condo's bylaws should also be amended to provide that fines imposed for breaking the rules and regulations shall be deemed unpaid common charges. This will enable a lien to be filed against units owned or rented by people who refuse to comply with the rules and regulations and refuse to pay corresponding fines imposed.

Finally, it is essential that you record any amendments to the declaration and bylaws with the county office where the original governing documents were recorded. Otherwise, they will potentially not be considered valid and will not be binding on the condo's unit-owners.

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