

When condo owners don't pay their fees

BY JAMIE HEIBERGER-JACOBSEN
PRESIDENT AND FOUNDING PARTNER
HEIBERGER & ASSOCIATES, P.C.

The rising cost of living, coupled with the economic downturn, has made bill-paying difficult for many New York City condo owners, who increasingly are falling behind on monthly common charges.

How can boards remedy the situation, prevent residents from defaulting on fees and protect their buildings?

In recent years, maintenance fees and common charges have risen rapidly in co-ops and condos throughout the city.

According to an analysis by appraisal firm Miller

Experienced management companies will accurately anticipate operating costs and can advise developers ... about appropriate fees early on.

Samuel Inc., average co-op maintenance charges at the end of 2007 were up by 30% from 2002; fees increased by only 9% during the five-year stretch between 1997 and 2001. On the condo side, common charges increased by 11% more in the past five years than they had in the previous five years.

With skyrocketing fuel prices, combined with other

items like insurance rates, water and sewer costs, ordinary buildings are being forced to charge even more. It is not surprising that certain owners, especially those who recently may have experienced lay-offs, are feeling the squeeze.

Analysts have seen a greater increase in fee-payment defaults in condos than at co-ops, a likely result of less stringent financial requirements in condos.

While the strict financial standards set by co-ops often cause complaints among prospective buyers, it appears that they have helped New York co-ops avoid, at least for the near term, the housing crisis hitting other American cities.

On the other hand, condos owned by those with adjustable rate mortgages could become more expensive during the next several years as mortgages reset to higher rates. At that time, an owner's first priority would be to pay the mortgage and then the buildings' fees.

In new condo buildings it often takes several years before the costs of running the building are fully understood. This is where an experienced property management company can make a significant difference. Experienced management companies will accurately anticipate operating costs and can advise developers and salespeople about appropriate fees early on, eliminating the need to increase fees later and cause concern among residents.

Large condominium buildings appear to be better insulated against delinquent owners because their common charges make up such a small part of the building's operating budget. On the contrary, small or boutique condo buildings can feel the effects of even just one owner withholding fees, since his or her share in a 10-unit building could account for a 10% loss. In order to compensate for lost revenue, a condo board has the right to divide



that one owner's share among all the existing owners who make regular payments, raising each owner's fees.

As one would expect, increases resulting from a neighbor's nonpayment do not create goodwill with paying owners. Therefore, it is extremely important that condominium boards establish strict and straightforward bylaws relating to common charges. Condo boards must also be sure to enforce them.

Several years ago, there was a case at a small pre-war condo in Midtown where seven owners were past due on fees, and the board had neglected to do anything about it. The building had fallen into horrible financial shape and its physical condition was deteriorating. However, once the board commenced foreclosure

proceedings, the delinquent owners paid their bills, along with legal fees and interest, and the owners were able to remain in their homes.

Generally, condo boards secure liens for common charges that go unpaid and can begin foreclosure proceedings against delinquent owners. However, just starting a proceeding is usually enough to prompt owners to

Some condo boards are elevating their standards and requesting to see more information from prospective buyers.

fulfill their obligations.

In the event that things go further, boards should know that the mortgage lender's lien typically receives first priority over that for the common charges. It is possible in a foreclosure that the board will not even receive its past due common charges.

Current home financing standards are growing stricter by the day, and this might be a form of market-based natural selection against the would-be delinquent owners. In addition, some condo boards are elevating their standards and requesting to see more information from prospective buyers.

Boards should review their bylaws regularly, under the guidance of an attorney, to assess whether the laws fit the current climate. They also must act early with warning notices, as soon as an owner falls behind on payments.

There will never be a guarantee that owners will not default on their common charges, however boards must take a proactive role in order to ensure that their interests are protected.