

What happens if I don't pay my condo fees in Massachusetts?

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There is a reason why condo associations are aggressive in the collection of condo fees. Let me introduce you to the Massachusetts condominium "super-lien" provided by Massachusetts General Law chapter 183A. The super-lien allows condo associations priority over your lender in the distribution hierarchy in the event of foreclosure. This means that if the unit is eventually foreclosed on, the condo association would get paid before your mortgage. However, there is a limitation on what can acquire super-lien status, and there are also some important requirements.

A super-lien is limited to common expense assessments based on the condo association budget during the six months immediately preceding institution of an action to enforce the lien (including collection costs). What this means is that the amount that enjoys super-lien status is limited to what is due in the for condo fees in the six months prior to the date the suit is filed. This implicitly means the association must file suit to attain super-lien status. (Yes, the state is encouraging litigation here isn't it.) One practical fact that enters into play here is that it takes about four months or so for the condo association to fulfill all the state and federal collection laws required before suit can properly be commenced (notices, dispute period, etc.) before. So, it behooves the condo association to start collection efforts early for these reasons.

What if the condominium association doesn't sue? Assuming one stops paying condo fees on a certain date, if the condo association does not bring suit until, for example, nine months have passed, it would lose out on having past due months seven through nine attain super-lien status. What does it matter? If there is a foreclosure sale, the condo fees that do not enjoy super-lien status would get paid *after* the first mortgage was paid; as opposed to the fees that enjoy super-lien status that would be paid *before* the first mortgage was paid. For the condo association, this can mean the difference between getting paid what's due or not getting paid at all.

What about the time period after the suit is filed? This time period is not included and does not attain super-lien status by the original suit. But before you celebrate, know this— there is nothing stopping the condo association from suing you again in a separate suit for the past due condo association fees that were due after the first suit was commenced. So, if you have heard of stories about condo associations repeatedly suing condo owners for fees, now you may know the reason why.

Some other questions and answers are: Can they sue me in my personal capacity? Yes. Can they attach the rental payments from a tenant? Yes. How do they apply late payments? They apply to the amount most past due, unless you specify differently on the check. Can I withhold payment based on an unrelated dispute or get a set off for what is owed by a successful countersuit? Generally, no.

As you can see, the condominium association has an incentive to collect early and often. If you are having difficulty making your condo association dues or are in a conflict with your condo association, please feel free to give this office a call.

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