Can HOAs Exercise Leniency During Hard Times?

Reprinted from the "HOA Homefront" Newspaper Column

By Kelly G. Richardson, Esq. CCAL

Amidst a state-wide shutdown of all non-essential businesses, many homeowners are already feeling the pinch of reduced employment or business income, and calls are already arising in many HOAs for the association to be lenient regarding delinquencies. While emotionally the immediate response is to not push assessment collection, the matter is not so simple for the association board of directors.

Associations of course depend upon assessments from each member to pay the community's common expenses. Those expenses benefit each homeowner and generally must be paid in bad times as well as in good times. If, for example, 10% of the members fail to pay their fair share of the expenses, the other 90% may wind up paying that extra shortfall – an 11% increase for them. The management fees, landscaping expense, utilities and insurance are examples of expenses which are relatively constant. The HOA cannot stop paying its utilities or insurance, just as the individual non-HOA homeowners still must pay their bills. Many other association obligations arise from binding contracts, so the board cannot just decide to stop paying. So, association boards are obligated to insist that all members pay their fair share of the HOA expenses and to diligently pursue such delinquencies.

Should members who are having financial difficulties stop paying and request leniency? That may be a very bad idea, because it essentially asks the board to give some homeowners extra consideration and thereby violate its duty of acting in the best interests of the HOA as a whole. Furthermore, the HOA is duty bound to pursue the delinquency, which could add collection costs, late charges and interest to the assessment (making the owner's problem even worse). Keeping the HOA assessments current should be a high priority for each HOA homeowner.

What can the HOA do? If the board cannot simply ease up on paying assessments, does it have any other options? Deferring maintenance or terminating binding contracts could prove to be a short-sighted approach. However, can the board identify services which can be temporarily cut back without breaching a contract or jeopardizing safety? Perhaps some temporary reductions or deferrals of expense-causing activities might help the HOA prepare for cashflow problems.

The Governor has ordered a moratorium on evictions, and financial institutions have agreed to a 60-day moratorium on foreclosures. Lenders have agreed to defer up to 90 days of mortgage payments, per the Governor's March 25 press release. This does not appear to include HOAs, so HOAs can still pursue delinquencies.

This is a difficult time for everyone. Boards should exercise compassion, but not in a way which violates their duties to the association. Homeowners should be cautious to keep their assessments current, to avoid further negative consequences and costs. If an owner begins to fall behind, it is a good idea to come up with a plan and seek a meeting with the board as soon as possible. If homeowners become delinquent and ask to meet with the board to discuss a payment plan, that discussion is required to occur within 45 days of the owner's written request under Civil Code 5665(b). Such a meeting must be in closed session, per the same statute.

Neighbors should help each other and communicate before small problems becomes big ones.

Kelly G. Richardson, Esq. is a Fellow of the College of Community Association Lawyers and Senior Partner of Richardson | Ober | DeNichilo. This article was previously published in HOA Homefront™, a syndicated column appearing in 13 newspapers throughout Southern California. Send questions to Kelly@RODLLP.com. Past Columns can be found at www.HOAHomefront.com. Articles are of an educational purpose and are not a substitute for legal advice.