



# Common Errors in Assessment Collection

Exploring Issues with Interest, Fines, and Enforcement

One of the most common and debilitating issues for community associations is dealing with owners who fail to pay their condominium fees. Most associations have their own policies for dealing with assessment collections as it applies to late or otherwise recalcitrant unit owners. These policies, however, do not always comply with The Rhode Island Condominium Act, rendering them ultimately unenforceable. In my experience reviewing thousands of association ledgers over the years, I notice the same common errors being made. A few of these errors include improper calculation of interest, unenforceable fines, and selective enforcement. Failure to correctly pursue a delinquency under the statute can expose the association to liability in an area that otherwise provides a lot of protection.

## Interest and Late Fees

Most associations either do not know that they can collect interest on the past-due assessment or are collecting at a rate that violates the statute.

**For example:** Let's say an association passes an amendment whereby delinquent accounts will be charged 10 percent per month on the total overdue amount. While that may seem like a good idea to generate revenue and/or force unit owners into paying on time, the association in the above example would not

be able to enforce their amendment as the interest rate violates the Rhode Island Condominium Act. Pursuant to RIGL 34-36.1-3.15, "any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding twenty-one percent (21%) per year."

In the above example, 10 percent a month of a \$200 fee would be 20 dollars in interest for the month as opposed to 21 percent per annum of \$3.50 per month. Query whether late fees are subject to scrutiny under Section 36.1-3.15. The Act does, in many areas, distinguish between interest and late fees and, in my opinion, associations do have a right to charge both a late fee and interest. That being said, associations must keep interest at or below the statutory amount and should keep their late fees reasonable in relation to the monthly fee. While it is never a good idea to consider late fees and interest as a source of revenue, it is worth having penalties in place to encourage compliance with timely payment. And while late fees and interest are not part of the association's super lien that is prior to the first mortgage, the assessments are still valid and enforceable liens on the unit if correctly assessed pursuant to statute and the condominium documents.

## Fines

Another common mistake in dealing with delinquent owners arises when fines are assessed to a unit.

**For example:** An association has a no-pet policy. A unit owner has proudly displayed her new tea cup Chihuahua around the complex. The executive board sends the unit owner a letter stating she is being fined \$100 a day until she removes the dog from her unit.

While the board is correct in that the statute allows for fines up to \$100 per day for residential condominiums, the fine is not valid unless the unit owner had an opportunity for a hearing before the board. Pursuant to RIGL 34-36.1-3.20, "An executive board may impose and assess fines against a unit owner as a method of enforcing the association's declaration, bylaws, and rules and regulations. Such fines may include, but are not limited to, daily fines for continued violative conduct in the future. Notice and the opportunity for a hearing must be provided to an alleged violator before a fine is imposed and assessed. All fines shall be a lien on the unit charged."

Boards often incorrectly believe that a unit owner's seemingly obvious violative behavior negates the need for a hearing. In fact, regardless of how obvious the violation may be, a fine will not be valid unless the unit owner has an opportunity to present their side of the story at a hearing before the board. If the unit owner, however, fails to attend a hearing after reasonable efforts are made to secure their presence, the board may proceed



with the hearing and agree to assess fines per the statute.

### Selective Enforcement

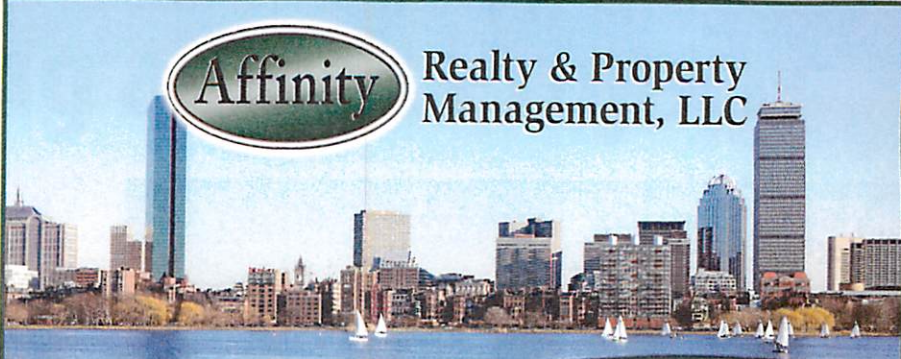
The executive board is charged with enforcing the condominium declaration, rules, and regulations. This enforcement, however, must be uniform.

**For example:** An association has a policy whereby they send accounts that are 60 days behind to the association attorney for lien enforcement proceedings. One unit owner just lost her job and is going through a hard time. The executive board feels sorry for the unit owner and decides to hold back this account from the attorney and give her a chance to get back on her feet.

Selective enforcement happens all of the time. No matter the reason, whether it is a result of friendships between unit owner and board members or perhaps when a board member is past due on his or her own account, it is never OK. Selectively enforcing the rules, regulations, and policies in regard to collections destroys all that is fair and reasonable surrounding the operation of the condominium and opens up the board to liability. Unit owners who are the victims of selective enforcement may raise this defense in court and be successful. It is important to remember that boards are statutory bound to exercise good faith in their operation of the condominium.

Considering the foregoing, it would be prudent for boards to regularly review, and if necessary modify, their collection policies to ensure compliance with statutory and ethical requirements. Even when a policy is operating successfully, it only takes one unfortunate instance to call the entire process into question and open the door to liability exposure for boards. ■

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