

## **Association Records: Must an Association disclose names of delinquent owners?**

By statute, Associations are required to disclose financial records to unit owners and their agents on request. These records necessarily include information on owners who are delinquent in their assessment payments. However, no statutory provision gives Associations license to publicize the names or other identifying information of delinquent owners and Associations are advised to avoid such “shame sheets” for a number of reasons.

### **Required Disclosure of Delinquent Owner Information**

Several statutory provisions mandate that Associations maintain records of delinquent accounts and provide unit owners with reasonable access to those records on request.

Under the New Act<sup>1</sup>, an Association must maintain and disclose to owners on request financial records including information on the unpaid common expenses or special assessments for the owner’s unit and any other unit in the development.<sup>2</sup>

The HOA Act has a similar requirement that Associations maintain financial records “sufficiently detailed to enable the Association to fully declare to each owner the true statement of its financial status” and to disclose such records to owners and their agents upon request.<sup>3</sup>

Associations incorporated under the Nonprofit Corp. Act<sup>4</sup> or the Nonprofit Misc. Mutual Corp. Act<sup>5</sup> have an additional statutory mandate to maintain accurate and complete records of accounts, which must generally be made available to members of the Association for inspection.<sup>6</sup>

These provisions require Associations to keep detailed records of receipts and expenditures, which would necessarily include a ledger itemizing specific payments of assessments. Presumably, the ledger would indicate the date, amount, and from whom payment was received (or owing). Thus, Washington law requires Associations to maintain information on delinquent owners and to disclose the information to other owners on receipt of a reasonable<sup>7</sup> request to view them.<sup>8</sup>

### **Potential Conflict and Liability Related to “Shame Sheets”**

It is important to note the difference between an Association’s statutorily mandated disclosure of delinquent owner names to other owners upon request, and the widespread publication of delinquent owner names by the Association itself (i.e., in a newsletter or on the internet) in an effort to induce payment. For a number of reasons, Associations should avoid these tactics.

First, mistakes can happen and a homeowner may be the victim of a bookkeeper posting a payment to the wrong account or a simple oversight. Even without such an error, it is entirely possible that information that was accurate when published will remain online or in print long after it has become stale, i.e., because the delinquent owner pays or settles his or her account, which opens the Association up to potential liability for publishing inaccurate information.

Additionally, for every homeowner the publicity might shame into paying, there may be many more who never pay and instead become hostile and obstructionist toward the Board.

### **Best Practices**

There is no need for an Association to risk liability or conflict by publishing a list of delinquent accounts on its own. In the case of condos, Associations hold a statutory lien on a unit for any assessments levied against a unit from the time the assessment is due until the time it is paid.<sup>9</sup> HOAs generally have a similar right to

assess a lien for assessments set forth in the Association's CC&Rs. Although the Association generally need not record the lien for it to be valid, it may do so if it wishes, and recording the lien (or foreclosing it) results in the lien becoming public record, often disclosed in newspapers and on county websites. The King County Recorder's Office, for example, has an online records search feature where, by searching the name of an Association, any member of the public can view a record of every lien recorded by the Association.<sup>10</sup>

Additionally, most homeowners are less concerned about which of their neighbors is delinquent than they are about the Board's plan for recovering outstanding assessments. The Board could address this concern by making available the number of delinquencies and the total amount of the delinquent funds, along with the Board's plan to collect. For example, the Board could publish information to state: \$12,000 total outstanding; \$7,000 in foreclosure or lien status; \$5,000 in attorney-written notice; \$1,000 in Board-written notice status. This can be done while keeping names and even addresses of delinquent owners confidential.

### **Conclusion**

Although Associations have a statutory duty to maintain records of delinquent owners and disclose the information to other owners on request, this duty does not require Associations to publicize delinquent owner information.

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<sup>1</sup> RCW 64.34.372(1). This provision is applicable to Old Act condo Associations. See RCW 64.34.010(1).

<sup>2</sup> RCW 64.34.372(1); RCW 64.34.425.

<sup>3</sup> RCW 64.38.045(1)-(2).

<sup>4</sup> RCW 24.03.

<sup>5</sup> RCW 24.06.

<sup>6</sup> RCW 24.03.135; RCW 24.06.160.

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<sup>7</sup> Each of the laws discussed above require an owner's request for an Association's financial records to be reasonable and provide that the Association need only make reasonable accommodation to the request, i.e., by making the records available for viewing or copying at the owner's expense during normal business hours. RCW 24.03.135, 24.06.160; RCW64.34.72(1); RCW 64.38.045(2).

<sup>8</sup> The Kansas court reached a similar conclusion recently when it interpreted similar statutory language in *Frobish v. Cedar Lakes Village Condominium Association*, 2015 Kan. App. LEXIS 519. In an unpublished opinion, the court interpreted the Kansas Uniform Common Interest Owners Bill of Rights Act (Act). The Act contained language similar to that discussed in this chapter, which required Associations to keep "detailed records of receipts and expenditures affecting the operation and administration of the Association and other accounting records" and to disclose the information to unit owners on request. The court held that this language required Associations to maintain records of the names of delinquent property owners and to disclose that information to other unit owners when asked.

<sup>9</sup> RCW 64.34.364.

<sup>10</sup> <http://www.kingcounty.gov/depts/records-licensing/Recorders-Office/records-search.aspx>.