

# CONDOMINIUM LAW ALERT

## Condo Associations Face New Collection Challenges

**April 2020**

As if the coronavirus pandemic and resultant economic fallout are not enough, the Commonwealth's efforts to protect consumers and their homes are imposing an additional, unintended burden on condominium associations. To assist residents who are facing severe hardship, the Massachusetts Attorney General on March 27, 2020 issued new regulations restricting consumer debt collections. Unfortunately, the regulations' broad reach falls too on condominium associations, many of which are struggling with unanticipated costs dealing with the unprecedented challenges presented by the COVID-19 pandemic. As we turn a new month, and delinquencies increase and age, cash-flow planning requires understanding these restrictions.

The new emergency regulations, [Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19](#), which were immediately effective, are intended to protect consumers from unfair and deceptive practices by creditors and debt collectors. They will remain in place until June 25, 2020 (90 days) or the end of the State of Emergency, if earlier.

The regulations restrict condominium associations, property managers and their attorneys from taking action to collect outstanding condominium common area expense assessments. The regulations prohibit the initiation, filing or threatening to file of any new "collection lawsuit", defined as, "any legal proceeding, including...civil actions, statements of small claims and supplementary process actions, commenced in any court for the purpose of collecting any debt or other past due balance owed or alleged to be owed." Further, the regulations do not allow a creditor or debt collector to "initiate, threaten to initiate or act upon any legal or equitable remedy for the seizure [or] attachment...of...property...for the payment of a debt to a creditor."

We strongly recommend that no new complaint to collect unpaid condominium common expenses be filed while these emergency regulations are in place and that any pending collection actions be put on hold. We also recommend that no notices be sent that threaten legal action for failure to pay any past due assessment. Although regular monthly invoices may continue to be sent, they should not contain any language that threatens action to collect any unpaid assessment.

Despite these regulations, there are still steps available to protect association's super lien rights. Property managers should continue to notify us of accounts that are delinquent, so we may evaluate what steps can be taken that do not violate the emergency regulations. For example, the regulations do not prohibit associations from working with a unit owner to come up with a mutually agreeable payment plan.

Additionally, since the regulations are intended to protect consumers ("debt" is defined to include money owed "for personal, family or household purposes"), they do not apply to commercial units. They also do not prohibit collection efforts for rental units or units held as investment property. While this means associations can file lien enforcement actions for these units, the Condominium Statute also contains a rent-collection procedure, long relegated to the sidelines by the effectiveness of lien enforcement notices and lawsuits, which may prove effective in the current environment.

Efforts are being made by the New England Chapter of Community Associations Institute (CAI), the Massachusetts Real Estate Bar Association (REBA) and others to obtain an exemption for condominium associations. However, until such an exemption is obtained, or until the emergency regulations expire, compliance is required.

## **CONTACT**

If you have questions concerning the new regulations or any condominium-related matters, please contact a member of our [Condominiums, Cooperatives & Homeowners' Associations Practice](#).