

For Board Members and Property Managers of Co-ops and Condos™

HABITAT

ARTICLE ARCHIVE

TITLE	<i>When the Cure Costs More than the Crime</i>
DESCRIPTION	<i>The decision to pursue legal fees incurred by a board when a shareholder defaults often becomes a larger issue than the original default.</i>
TOPICS	Defaults, Foreclosures
AUTHOR	Stewart Wurtzel, Tane Waterman & Wurtzel
MAGAZINE	November 2012 - # 294
ISSUE	
ARTICLE	Survey
TYPE	
PAGE #	42
ABSTRACT	Boards need to weigh the cost and risk of litigation at every stage of the process and determine under what circumstances, and at what cost, they should continue.
ARTICLE	Tane Waterman & Wurtzel
TEXT	Stewart Wurtzel, Principal

The decision to pursue legal fees incurred by a board when a shareholder or unit-owner defaults often becomes a larger problem and greater issue than the default that originally precipitated the lawsuit. In one instance, a condominium board brought suit in civil court to recover approximately \$18,000 in common charges withheld by a unit-owner who claimed to have suffered water damage in his apartment. The unit-owner, representing himself in court, made numerous baseless motions trying to convert the simple common charge proceeding into a fraud and negligence case. The court ultimately awarded the unit-owner an abatement of \$447 against the common charges but also awarded the condominium the balance of the common charges as well as over \$32,000 in legal fees and \$3,000 in sanctions. In two other instances, different boards needed to start lawsuits in order to obtain access to shareholders' apartments to make repairs. The shareholders voluntarily granted the access after injunction motions were served but refused to compensate the cooperative for legal fees. Even though access was obtained, the lawsuits continue as the buildings seek to recover the legal fees they were forced to incur.

Legal Lesson

Clearly, the legal fees incurred by the condominium in the common charge suit eclipsed the monies it was originally seeking to recover. Because the unit-owner represented himself pro se, the court granted him great latitude in his procedural actions before finally running out of patience. There, the unit-owner was so unreasonable that the board had little choice but to proceed or it would have had to capitulate on \$18,000 in arrears.

In the access lawsuits, the buildings incurred thousands of dollars in fees to enforce rights clearly granted to it under the governing documents. Both buildings made numerous attempts to obtain access before going to court, and litigation was a last resort.

There is little doubt that the fees that these buildings will incur going forward will be greater than the amounts they are currently owed. There is no guarantee that the courts will award the building a full recovery of all expenses incurred and to be incurred. Boards need to weigh the cost and risk of continuing litigation at every stage of the process (not just when they decide to begin a lawsuit) and determine under what circumstances, and at what cost, litigation should continue.