



Condominium Collections: Why Foreclosure is the Best Option

by Daniel J. Miske
& Lydia J. Chartre

Husch Blackwell
555 E. Wells Street, Suite 1900
Milwaukee, WI 53202
414.978.5311 (Dan)
414.978.5418 (Lydia)
414.223.5000 (fax)

33 East Main Street, Suite 300
Madison, WI 53703
608.255.4440
608.258.7138 (fax)

daniel.miske@huschblackwell.com
lydia.chartre@huschblackwell.com

I. Goals of the Association

- A. Collect the Dues, Fines and Interest (Solve the Headache for the Association)
(Problem: it's always the same people and they don't ever seem to go away on their own.)
- B. Get the Unit Owner/Tenant Out so you can get a paying unit owner in (see Exhibit 703.24; Page 7)
- C. Recover all of the Attorney Fees and Costs
 - Far more likely in Foreclosure than Small or Large Claims Court

II. Time to Achieve Goal

- A. Procedure in Small Claims Court
 - 1. Send Demand Letter (10 days)
 - 2. File Lien w/ Notice to Owner (10 days)
 - 3. File Suit and serve Summons and Complaint (20 30 days)
 - 4. Attend Small Claims Return Date (1 day)
 - 5. Begin Discovery
 - 6. Bring Summary Judgment Motion (hopefully)
 - 7. Return to Small Claims Court for Pretrial (30 days)
 - 8. Return to Small Claims Court for Hearing (60 90 days)
(Problem: Legal Fees are now at least \$2,250 and nothing is final.)
 - 9. Wait to see if an appeal by the Unit Owner (10 days)
 - 10. If appealed, which most are since there is no cost to appeal to the Circuit Court, then wait for the scheduling order from the Court (90 days)
 - 11. Have Pre-trial Scheduled (60 days)
 - 12. Attend the Trial (60 days)
(Problem: Legal Fees are now at least \$5,000, and you can't sell the unit.)
 - 13. Total time between receipt of file and end of Trial (1 year on the fast side)
 - 14. Collect Judgment:
 - a. Garnishment
 - b. Execution
 - c. Supplemental Exam

B. Procedure in Large Claims Court

1. Send Demand Letter (10 days)
2. File Lien w/ Notice to Owner (10 days)
3. File Suit and serve Summons and Complaint (10 20 days)
4. Wait for Answer (20 days)
5. Begin Discovery while waiting for Scheduling Conference to be set by the Court (90 days)
6. Bring Summary Judgment Motion (hopefully)
7. Complete Discovery, including naming witnesses (120 days)
8. Attend Pre-trial
9. Attend the Trial (60 days)
(Problem: Legal Fees are now at least \$3,500, and you can't sell the unit.)
10. Total time between receipt of file and end of Trial (1 year on the fast side)
11. Collect Judgment
 - a. Garnishment
 - b. Execution
 - c. Supplemental Exam

C. Foreclosure Procedure

1. Send Demand Letter (10 days)
2. File Lien w/ Notice to Unit Owner (10 days)
3. File Suit and serve Summons and Complaint (20 days)
4. Wait for Answer and attempt to obtain Stipulation (20 days)
 - a. If get a Stipulation (30% of the time), it shortens redemption time to 3 months;
 - b. If no Answer (50% of the time), take Default and wait for 12 month redemption time to pass.
You can use Collection Remedies during this time.
5. Begin Discovery while waiting for Scheduling Conference to be set by the Court (60 days)
6. Bring Summary Judgment Motion
7. Complete Discovery, including naming witnesses (120 days)
8. Attend Pre-trial
9. Attend the Trial (60 days)

III. Fees & Costs to Achieve Goal

- A. File Lien – \$5.00
- B. Small Claims & Large Claims
 - 1. Filing
 - a. Small Claims – \$94.50 (all counties except Milwaukee)
 - b. Small Claims - \$99.00 (Milwaukee)
 - c. Large Claims - \$265.50 (all counties except Milwaukee)
 - d. Large Claims – \$269.00 (Milwaukee)
 - 2. Service
 - a. \$35 per person
 - b. Publication
 - (1) Small Claims – \$70.00 (Milwaukee County)
 - (2) Large Claims – \$140.00 (Milwaukee County, usually less in other counties)
 - 3. Judgment – \$5.00
 - 4. Collection
 - a. Garnishment
 - (1) Small Claims – \$92.50 + Service (all counties except Milwaukee)
 - (2) Small Claims – \$96.00 + Service (Milwaukee)
 - (3) Large Claims – \$210.50 + Service (all counties except Milwaukee)
 - (4) Large Claims – \$214.00 + Service (Milwaukee)
 - b. Execution
 - (1) Fee to Obtain – \$5.00
 - (2) Sheriff's Fee – \$75.00
 - (3) Bond – \$150.00
 - c. Supplemental Exam
 - (1) Court Commissioner Fee – \$15.00
 - (2) Service – \$35 at least
 - 5. Satisfaction
 - a. Lien – \$5.00
 - b. Judgment – \$5.00

6. Total Approximate Costs if Paid at end by 1 Garnishment
 - a. Small Claims – \$300.00 + Atty Fees of \$5,000 = \$5,300.00
 - b. Large Claims – \$600.00 + Atty Fees of \$3,500 = \$4,100.00

C. Foreclosure

1. File Lien – \$5.00
2. Foreclosure Report – \$200.00
3. Lis Pendens – \$33.00
4. Court Filing Fee for Summons – \$265.50
5. Service
 - a. \$35 per person (usually at least \$100.00)
 - b. Publication – \$140.00
6. Judgment – \$5.00
7. Collection
 - a. Sheriff Fee – \$150.00
 - b. Publication – \$450.00
8. Satisfaction
 - a. Lien – \$5.00
 - b. Judgment – \$5.00
 - c. Lis Pendens – \$30.00
9. Total Approximate Costs if Paid at end
 - Costs of \$1,500.00 + Attorney Fees of \$3,500 = \$5,000.00

IV. Problems that Arise

- A. Court Commissioners tend to be sympathetic to sad stories;
- B. Unit Owners will file Bankruptcy to delay the process; but if you go the foreclosure route, the situation improves:
 - 1. If a foreclosure judgment is obtained prior to the Owner filing bankruptcy, the 12 month redemption period continues to run.
 - a. The Association can either wait the few months for the Owner to be discharged in bankruptcy (in the case of a Chapter 7 filing) and proceed to sell the unit after the redemption period has run; or
 - b. Lift the automatic stay in bankruptcy court (in the case of a Chapter 13 filing) and proceed to sell the unit after the redemption period has run.
 - c. Either way, you are getting the non-paying Owner OUT of the Unit.
 - 2. If there is simply a small claims judgment in place when the Owner files bankruptcy, you may be stuck with a non-paying Owner in the Unit for a longer period of time as there is no “redemption clock” ticking:
 - Case study: default small claims judgment obtained, then Owner filed Chapter 13. If it was a foreclosure judgment instead, the redemption period would be running and we could have the non-paying Owner out in a year despite the bankruptcy. The money spent by the Association to obtain a small claims judgment was basically wasted, as now they will have to lift the stay and file a foreclosure in order to get the Owner out of the Unit.
- C. Damages that Unit Owners might do to the Unit once they recognize they will lose the unit; and
- D. Unit Owners will attempt to:
 - 1. Divide the Board and the Property Manager by blaming one or the other;
 - 2. Divide the Property Manager and the Attorney by suggesting or stating that something was agreed to when it was not; and
 - 3. After Unit Owner is served with the Complaint, he/she pays the Association directly off of the Demand Letter, NOT the suit papers.

V. Common Misconceptions

- A. That if the Documents say that the Association is entitled to interest at “the highest rate allowed by law” or the “maximum rate allowed by law” then we can charge 18%. In fact, we can only charge 5% – see Sec. 138.04 Wis. Stat. If you want to charge 18%, which we recommend, the documents must say “plus interest at the compound rate of 1.5% per month;”
- B. Attorney Fees are greater in a foreclosure action, and that is why I recommend it;
- C. Foreclosure is too drastic of a starting point with our unit owners; and
- D. If Unit Owner files a Ch. 13 Bankruptcy, then we get payments under the plan even if we seek a lift of the stay.
(Solution: don't lift the stay until the 12 month redemption period is about to run, so that you can immediately sell.)

Exhibit 703.24

703.24. Remedies for Violation by Unit Owner or Tenant of a Unit Owner

- (1) Definition. In this section, “violation” means failure to comply with this chapter or the declaration, bylaws, or association rules.
- (2) Liability for unit owner violation. A unit owner who commits a violation is liable for any charges, fines, or assessment imposed by the association pursuant to the bylaws or association rules as a result of the violation and may be subject to a temporary or permanent injunction.
- (3) Liability for violation by tenant.
 - (a) If a tenant of a unit commits a violation that results in a charge, fine, or assessment imposed by the association pursuant to the bylaws or association rules, the tenant is liable for the charge, fine, or assessment.
 - (b) If the association complies with the notice requirement of sub. (4), the owner of the unit occupied by the tenant when the violation occurred is liable for any charges, fines, or assessments imposed by the association for which the tenant is liable under par. (a) that are not paid by the tenant within 30 days after receiving the notice under sub. (4). This paragraph does not affect the liability of the tenant to the unit owner...
- (4) Notice requirement for violation by tenant. If an association imposes a charge, fine, or assessment as a result of a violation by a tenant of a unit in the condominium, the association shall give notice to the tenant by any method under s. 704.21(1)(a) to (e) and to the owner of the unit occupied by the tenant by any method under s. 704.21(2)(a) to (d). The notice shall include all of the following:
 - (a) The amount of charges, fines, or assessments for which the tenant is liable.
 - (b) Notice that if the tenant fails to pay the association the amount for which the tenant is liable within 30 days after the tenant receives the notice, the owner is liable to the association for the amount unpaid by the tenant although the tenant may be liable to the unit owner for any amounts the unit owner pays.
- (5) Other liability not affected. This section does not otherwise affect the liability of a unit owner or tenant who commits a violation.