

# Developer should have collected assessments

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Q. My wife and I were one of the first owners to close in a new condominium building two years ago. Many of the common areas and most of the units had not been completed when we moved in. The developer published a budget in the property report, but we did not receive an invoice for assessments until four months after we moved in.

After I questioned the use of these assessments, because we were not getting any of the services in the developer budget, I was told by the developer that he would not charge assessments until 75 percent of the building had been closed.

When the owners took control of the board of directors, we then received an assessment bill dating to the month after our closing.

When I questioned this billing, I received a letter from an attorney retained by the board demanding payment of the assessments and threatening an eviction suit.

I am confused. Shouldn't the board of the association be an advocate for the homeowners against the developer? Does the association have any right to collect the money that they now charge me and other owners? I relied upon the promise of the developer not to charge assessments until a majority of the units had been sold.

A. Your situation illustrates the confusion that arises when a developer, in the guise of being generous, fails to follow the law.

All unit owners, including the developer, must pay assessments after the closing. The obligation of the developer to pay assessments on unsold units starts with the first closing. The developer controls the board until the turnover of control to the unit owners. During this developer control period, the developer board must follow the duties of directors under the Illinois Condominium Property Act, including the collection of assessments.

The developer board is responsible for the amount of unbilled assessments. Until the developer pays this deficiency, the current owner board has to collect funds required by past and current association budgets.

Rather than sending certified demands, the proper approach for the current board is to explain the shortfall, advise the owners of the need to raise funds to maintain the property and establish a reserve fund for current and future expenses.

This scenario is not a question of the association being an advocate for the unit owners. The board has the duty to follow the law and collect funds from the appropriate parties. The board should focus any legal action on the party responsible for the deficiency.

Q. My association hired a property manager because owners felt we were all too busy to run the building. Then a man bought a unit and, within a few months, took it upon himself to become the acting president. He fired the property manager and has run the association himself. In the past two years, he has not shown us any records and fired our janitor, who lived in the building. He has also neglected to address certain maintenance problems in the building.

Are there any options you might recommend?

A. Your condominium association is supposed to operate as an elected organization, not as a dictatorship. Apathetic owners should not sit back and allow one person to run their most valuable investment. Twenty percent of the owners should call a meeting of the association to remove this individual as a board member, elect a new board of directors and rehire the property manager.

Like a shareholder in a corporation, owners elect a board to make decisions. The association president carries out the decisions of the board.

Q. Our condominium roof has been repaired in the past and we are now experiencing additional leaking. One of the units on the fourth floor has had a bubble in his ceiling due to this water infiltration. Initially, I thought this was the association's responsibility, but now I wonder because the problem appears to be located within the unit.

Who is responsible for damages to this unit?

A. The roof of the building is a common element and the board is responsible to stop the source of water coming into a unit from the common elements. The ceiling bubble in your neighbor's unit directly relates to the roof leak from above. The association must make the repairs and assume the cost.

Q. I am a member of a 12-unit, self-managed condominium association. What do we do when no one wants to take on any of the three board positions of president, secretary and treasurer?

A. If owners are not willing to serve on the board, you cannot operate a condominium association. Owners should then vote to sell the property to a third party and deconvert the condominium to an apartment building.