

This article originally appeared in the October, 1993 issue of Community Trends, the monthly magazine of the New Jersey Chapter of the Community Associations Institute. In January 1994, CAI awarded Mr. Frizzell its "Author of the Year" Award for the article. It has been updated to reflect changes in the law.

CONDOMINIUM COLLECTION LITIGATION: AN OVERVIEW

By Eric F. Frizzell, Buckalew Frizzell & Crevina, Glen Rock, New Jersey

Many condominium associations are compelled to institute collection lawsuits against unit owners who are delinquent in the payment of monthly common expenses. A unit owner in arrears probably is in debt to other creditors also, and may lack adequate funds to pay them all. Accordingly, it is important for the condominium association to diligently pursue its collection efforts. To assist Association board members in better understanding collection litigation, this article outlines the amounts of time ordinarily needed to accomplish each of the major procedural steps in a collection lawsuit in the Superior Court, Law Division.¹

1. Filing the Complaint. The first step in a collection action is to file a Complaint against the delinquent unit owner with the Clerk of the Superior Court. The Clerk stamps the Complaint with the date received and mails a "filed" copy back to the association's attorney, who should receive it *within one week of filing*. This time period can be eliminated by simply *hand-delivering* the Complaint to the Clerk and *immediately* receiving the filed copy.

The attorney also should indicate on the Case Information Statement (that must be filed with the Complaint) that the case should be placed on the "expedited" case management track.

2. Service of the Complaint. After the Complaint has been filed, it must be served on the unit owner. Until the unit owner is properly served, the Association's lawsuit cannot move forward. Sometimes "service" can be the longest step in the collection process, especially if the unit owner's whereabouts are not known or he is evading it. The attorney usually will request the Sheriff of the county in which the defendant resides² to "serve" the Complaint together with a Summons.³

¹ These time frames are based on the experience of the author's law firm in the courts throughout northern New Jersey. Time frames and procedures involved in lawsuits brought in the Special Civil Part (for claims not exceeding \$15,000) differ in some respects.

² Rule 4:4-3(a) of the New Jersey Court Rules also permits service to be made "by a person specially appointed by the Court for that purpose or by a person otherwise authorized by these rules." Normally, however, the attorney will request the Sheriff to attempt service first.

³ Although the Court Rules also permit service by mail, R.4:4-4(a)(2), mailed service will be effective at this stage only if the unit owner actually answers the Complaint or otherwise responds to it within 60 days. Note also that different service rules may apply to special

The Sheriff's office routinely will make a number of attempts to serve the unit owner and will notify the attorney of the results on a "return of service" form. If the Sheriff notifies him that the attempts have been unsuccessful, or if the attorney does not receive any "return of service" from the Sheriff *within 40 days*, service can be attempted by other methods.⁴ One method allows the attorney, a private process server, or any other competent adult not directly interested in the litigation, to personally serve the unit owner. Or, service can be made by simultaneous certified and regular mail. It usually takes from *7 to 21 days* to receive back proof that the certified mail has been accepted, and slightly longer if it has been refused.⁵

If the unit owner has moved, his forwarding address may be obtained by written request to the Postmaster of the municipality where he last resided or the New Jersey Division of Motor Vehicles. A response commonly will be received from the Postmaster in *3 to 10 days*, and from DMV in *10 to 20 days*.

If the unit owner still cannot be found and served, the attorney can request a court order permitting service by publishing a legal notice in a newspaper. This request must be by motion, and the attorney normally will receive an order, granting or denying it, *within 14 to 21 days* of filing.

3. After the defendant unit owner has been served. Once the unit owner is served with the Complaint, he has *35 days* in which to file an Answer to it, regardless of whether served personally or by mail or publication.⁶

4. Summary Judgment/Default Judgment. If the unit owner files an Answer to the Complaint, the association attorney should file a "summary judgment" motion, requesting that a judgment be entered against the unit owner for the amount owed,

categories of defendants, such as an incompetent person, corporation, partnership or association.

⁴ R.4:4-3(b).

⁵ If the certified mail is refused but the simultaneous ordinary mail is not returned, there is effective service, and the case can proceed.

⁶ If the unit owner retains an attorney to defend him, it is quite possible that the attorney will request an extension from the association's attorney of *20 to 30 more days* to file the answer. It is customary for attorneys to grant each other this courtesy. Of course, the Association can instruct its attorney to refuse any extension (which will set the tone for the litigation) and thereby compel the unit owner's attorney to either file the answer on time or obtain permission from the Court, by motion, to file a late answer. These motions ordinarily are granted.

without a trial.⁷ The motion must be filed *at least 28 days* before the hearing date requested by the attorney, and, if granted, will avoid the delay, expense and aggravation of a trial. The court ordinarily will announce its decision at the hearing itself.

If the unit owner fails to file an Answer within the permitted time period, the association attorney should file requests to enter "default" and "default judgment". The attorney will require a certification from the association's property manager of the amount owed. He also must file an affidavit that the unit owner is not in the military service of the United States -- if the attorney, a Board member, or an employee of the association's property management company do not personally possess this knowledge, the attorney will need to obtain certifications from the various branches of the U.S. Armed Forces, which can take *30 to 60 days*. Therefore, if it appears at the start of the case that these certifications might be necessary, the attorney should request them then to prevent unnecessary delay.

Some attorneys wait for the default to be entered and returned to them before filing for the judgment. Both documents, however, can be filed together, again saving needless delay. Normally, the attorney will receive the default and default judgment back from the court *within 10 to 20 days*. If it is necessary to obtain the judgment more expeditiously, the attorney can file the default in person and should be able to receive the default judgment *that same day*.

5. Trial. Trials are rare in condominium collection actions, because there usually is no defense to the association's summary judgment motion. If a trial is necessary, however, it may take a year from the institution of the lawsuit until the trial occurs.

6. Docketing the Judgment. Once the association obtains a judgment, it is entered in the Civil Judgment and Order Docket. Although in the past the Court Clerk automatically arranged to "docket" the judgment, a rule change now requires the attorney to specifically request that the judgment be docketed, which also requires payment of a \$25.00 fee. The attorney should receive the docketed judgment back *within 3 to 5 weeks*.

Docketing the judgment is important for a number of reasons, the most important being that the association cannot take any steps to enforce the judgment until it is docketed. In addition, if the unit owner contracts to sell his unit or any other real estate in New Jersey, the judgment will appear in the standard title search performed by the buyer. Except in unusual circumstances, the buyer will demand that the unit owner pay the association its judgment at or prior to the closing, so that the buyer obtains clear title to the property.

⁷ To prevail on a summary judgment motion, the attorney must establish that (1) there are no genuine issues of material fact that require decision by a jury (or by the judge), and (2) under the undisputed facts the association is entitled to judgment as a matter of law.

7. Deposing the Unit owner about his Assets. Once the association attorney receives the docketed judgment, he can file a petition for an order commanding the unit owner to be deposed at the lawyer's office, and to produce bank account records, tax returns and similar documents relating to the unit owner's finances.⁸

The date requested by the attorney for the deposition should be *about six weeks* from the date he files the petition, because it ordinarily takes *two to three weeks* to receive the executed order from the court, and the unit owner must be served with it (either personally or simultaneously by certified and regular mail) *at least ten days* before the deposition.

At the deposition (called a "Supplementary Proceeding"), the unit owner is placed under oath by a court reporter who transcribes the entire proceeding. The attorney questions the owner about the location, nature, and value of his assets, in the hope of identifying assets which the Sheriff can attach. If the unit owner fails to attend, the attorney can seek an order commanding him to appear in court to explain why the court should not hold him in contempt and impose sanctions. This procedure can take *3 to 5 weeks*. On the first such motion, the court commonly only will order the unit owner to appear for the deposition on a specific date. If the unit owner ignores this order, it can take *30 to 60 days* (after another motion) to obtain a Warrant to Arrest him. Upon his arrest, the unit owner will be taken to the courthouse, where the association probably will be permitted to depose him. However, in recent years it is taking much longer for Sheriffs' Departments, due to limited resources and competing demands, to arrest such unit owners.

8. Attaching the Unit Owner's Assets. Once the attorney receives the docketed judgment, he also can request a "Writ of Execution," a court order authorizing the Sheriff to "levy" on the unit owner's assets. It typically takes *10 to 30 days* to receive the writ from the court. But in the most urgent circumstances, if the attorney hand-delivers the writ to the Clerk's office and is willing to wait 1 or 2 hours, he might be able to get it *the same day*.

The attorney then forwards the writ to the Sheriff and requests him to levy on specifically identified assets. Some types of assets that can be attached include bank accounts, brokerage house accounts, wages, rent being paid to the unit owner by tenants, automobiles, and real estate property tax refunds owed to the unit owner by a municipality. It customarily takes the Sheriff from *3 to 28 days* to serve the levy, and notify the attorney. Depending on the type of asset levied, the attorney may need to file a motion (with at least *16 days* notice to the unit owner) for a court order mandating the turnover of funds.

⁸ Although the attorney can also serve the unit owner with written questions pursuant to an "information subpoena," to be answered by mail, R.4:59-1(e), this procedure, though less expensive than a deposition, is less effective.

To garnish a unit owner's wages, however, requires a separate application to the court, on notice to the unit owner. If the unit owner files an objection to the garnishment within 10 days of that notice, the court will schedule a hearing. Generally, it can take from **30 to 45 days** from the initial filing of the application until the hearing is held. If the application is granted, a writ of execution on wages must be obtained from the court, authorizing the Sheriff to levy a portion of the unit owner's wages from the employer. The time frames for obtaining this writ and having it served are the same as for other writs discussed above.

9. At last, the Condominium Association is paid... unless...
If the Condominium Association's attorney diligently accomplishes these procedural steps, and the unit owner does not engage in obstructionist tactics, the association should be paid between **12 and 18 months** of starting the lawsuit -- unless no assets of the unit owner can be found or the unit owner files bankruptcy.