

COMMUNITY LIVING

Skipping assessments can lead to eviction

By Pamela Dittmer McKuen
Special to the Tribune

Evictions. Condo rage. These topics are fresh on the minds of many Chicago-area association owners after learning about an evicted Franklin Park condo resident who allegedly shot and killed the secretary of his condo board and wounded her roommate earlier this month. The man reportedly owed about \$4,200 on his monthly assessments and maintenance fees.

Actually, evictions by community associations are extremely rare. Steven Heuberger, president of Villa Management in Libertyville and an attorney, said he can count on one hand the number of evictions he has seen during his 25 years of working in the industry.

Attorney Patrick Costello of Keay & Costello in Wheaton estimates that 15 percent of the possession orders he receives are sent to the sheriff. Only a small percentage of those end up in eviction.

"Some how, some way, most people tend to come up with the money," said Costello.

Forcible entry and detainer, as the eviction statute is known under Article IX of the Illinois Civil Code of Procedure, permits associations to take temporary possession of a unit, rent it out and apply the proceeds to the amount owed. When the account has been brought up to date, possession returns to the owner.

"It's a great mechanism to collect assessments that is not designed to take people's houses or condos away," said Costello.

"Associations can't function without money," said Heuberger. "If one homeowner can get away without paying, why should anybody pay?"

A typical eviction begins after an owner has missed two or three monthly payments. That's when an association usually turns delinquent accounts over to its attorney. The attorney sends the owner a letter that demands payment

within 30 days or the association will sue. If payment isn't made, the attorney files a complaint with the county clerk's office, and a court date is scheduled. The county sheriff or a process server serves the owner with a summons to appear. In court, the judge grants the association a judgment amount, which includes late fees, attorney's fees and court costs and an order of possession. The judge also delays execution for at least 60 days. At the end of that period, the attorney gives the order to the sheriff, the owner is notified, and the eviction takes place.

The time lapse between the first missed payment and eviction could be several months to a year. During that time, the owner receives multiple notices.

The process is less severe in Illinois than in other states, where associations have the power to foreclose, said attorney David Sugar of Michael Best & Friedrich in Chicago.

Forcible entry and detainer

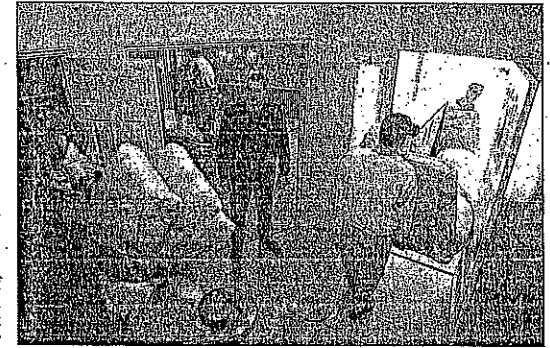
is "usually a quick process and relatively inexpensive when compared to foreclosure," he said. "That's good for condos. From the owner's perspective, even if you lose in eviction court, you still own the unit. You can get back your right to use the unit if you pay up."

The eviction isn't the end of the process. The association must locate a renter, and it might have to clean or repair the unit before a tenant will move in, although those costs are added to the debt.

"It's not easy finding a renter that's the problem," said Heuberger.

In addition, many owners who are behind on their assessments also are behind on their mortgage payments. Foreclosure could be looming. If it is, the lender's debt takes precedence over the association's. Should the unit go up for sale, often the only bidder is the lender, who bids the amount that it is owed. Nothing is left for the association.

"The association, if it wants



Tribune file photo

Condo owners who fail to pay assessments can be evicted and their unit rented out, but the process usually takes months.

possession, has to weigh a couple of things," said Costello. "How much will it cost to get the unit into shape so we can actually rent this? Are we going to throw away more money to try to get it rented and then lose to the bank?"

Many associations will work out payment plans with residents, particularly if the owner is a first-time debtor or is eager to bring the account current.

"Associations don't want the unit," said Costello. "They are

not in the business of owning property. They just want to be paid."

Associations have a fiduciary duty to collect the assessments they are owed. Heuberger said.

"If the board is negligent, the members have the right to vote them out," he said. "Boards can't make exceptions. They can negotiate payment plans, legal fees or interest, but the law says you cannot forgive assessments."