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ALEXANDER, ZELMANSKI, DANNER & FIORITTO, PLLC

presents

**Co-owners Cannot Withhold Assessments in a Dispute with the
Condominium Association**

By: Shane Diehl, Attorney at Law

Quite often, when a co-owner becomes dissatisfied with the maintenance or services provided by the Condominium Association, he or she may decide to withhold condominium assessment payments until the issue is resolved. Not only is the co-owner's withholding of assessments frustrating to the Condominium Association, but it is also in direct violation of the Michigan Condominium Act and Michigan case law.

The Michigan Condominium Act at MCL 559.239 states that a co-owner may not assert the fact that the Condominium Association or its agents have not provided services or management in an answer to a lawsuit for non-payment of condominium assessments, nor can the co-owner try to offset a lawsuit complaint brought by the Association for non-payment of assessments.

This issue was addressed most notably by the Michigan Court of Appeals in Newport West Condominium Association v. Veniar. The Court in Veniar held that the Condominium Act does not provide a co-owner with the self-help remedy of withholding all or a portion of his assessed fees. In the Veniar case, the defendant/co-owner Veniar had refused to pay a portion of his monthly assessment obligation until issues regarding the Association's reserved funds were resolved. The Court of Appeals said that the primary problem with the Veniar's position was

that they had cast the legal issues posed by the case on a purely contractual framework. The Veniars had suggested that because they felt the Association had breached certain conditions governing their contractual relationship with them (i.e., they breached the terms of the condominium documents), that they were excused from paying their assessments. The Court held that the Veniars' position ignored the plain fact that the payment of assessments is, and has been, an independent obligation. The Court therefore agreed with the Association, and affirmed the judgment against the co-owner for the overdue assessments.

Essentially, the Court recognized that permitting a co-owner to assert the Condominium Association's conduct and actions or inactions as a defense to collection action would clearly diminish the rules and procedures that the legislators have established for the collection of assessments.

The Court's ruling does not mean that a co-owner is without a remedy for violations by the Association of the Condominium's Master Deed and/or Bylaws, or the Condominium Act. The co-owner can still file a lawsuit against the Association. Section 107 of the Michigan Condominium Act states that any co-owner dissatisfied with the Association's conduct and actions or inactions may file a lawsuit against the Association and its officers and directors to compel them to properly enforce the terms of the Master Deed, Bylaws, and the Act. The co-owner may seek an order (injunction) to compel the Association to act, or to prohibit it from violating the condominium documents, or he may also seek damages for non-compliance with the documents or the Act.

While a Condominium Association may pursue collection of assessments from its co-owners, it would do well for the Association to try to find out why the co-owner is not paying those assessments. There may be an underlying reason having to do with something the

Association did (or did not do) that has compelled the co-owner to withhold payment. While the Condominium Act prohibits a co-owner from withholding his assessments in protest, it manifestly grants an Association's membership the right to file a lawsuit to rectify the co-owner's concerns.