

A Bird in the Hand is Worth Two in the Bush a.k.a Less Money Today is Better Than More Tomorrow

by Loura K. Sanchez, Esq.

As a board member, you have a fiduciary duty to make informed and prudent financial decisions based upon the best interests of your association. One of the toughest decisions you may be faced with these days is whether to take a settlement offer for unpaid assessments.

Consider this typical scenario:

An owner is \$1,200 delinquent (\$880 in assessments, \$250 in late fees, and \$70 in interest). The account has been turned over to legal counsel and additional legal fees of \$130 have been charged to the owner. The owner lost his job with a high-tech manufacturing company but is working at McDonald's to stay afloat. He is two months behind on his mortgage and he says he is borrowing money from his parents to pay the mortgage. The owner calls and offers to pay \$1,000 as full settlement within 10 days - **should you take the offer?**

Take It	Don't Take It
<ul style="list-style-type: none">• All assessments are paid as well as all legal fees.• If you sue, you will have to wait longer to get money from garnishment of a minimum wage job.• Owner may file bankruptcy soon.	<ul style="list-style-type: none">• We don't deal with owners after they have been they have been turned over to an attorney.• If we waive fees, we have to do it for everyone.• We have to send a message we are serious.

In evaluating an offer, you should always consider:

- What will your chances of recovery be if you don't accept the offer?
- What assets are known that you can seize to pay a judgment? Do you know the debtor's employer, bank account, cars, location of other assets?
- What is the time value of money? \$1000 paid today, earning interest, is likely worth more than the full amount paid in periodic payments over time; even without considering the risk of future default and lost opportunity costs (that is, what could you do with the money if you had it today)?
- What is owner's overall financial position? Is bankruptcy likely? Is foreclosure likely? Is the owner employed?
- What has the owner's past payment history been?

Usually owners are faced with the choice of either paying more over time or paying less but paying now. Associations should be open to similar choices, especially in today's economy. It may even be advantageous to authorize your attorney to waive late fees, interest, etc. whenever necessary to facilitate payment immediately.