



Question of the Month: What are the benefits of utilizing the enforcement of court orders for condo board receivers?

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Last month I wrote about recent court decisions that provide a path for condominium boards to stop the bleeding caused when a unit owner continues to withhold the payment of common charges during a condominium board's lien foreclosure proceeding.

One of those paths is to have the court appoint a receiver who can take control of the unit. Upon receiving the keys from the unit owner, the receiver can collect use and occupancy from a unit owner who remains in possession or rent from a unit owner's tenant. If the unit is vacant, the receiver can rent out the unit under the provisions of the appointing order, usually for a term not to exceed two years.

What happens, however, if the delinquent unit owner refuses to cooperate with the receiver? While NYS law provides a mechanism to enforce court orders through a contempt of court procedure upon a finding of contempt of court, the usual relief is a civil fine. Where the unit owner has an army of other creditors already in pursuit, one more financial obligation will not be much of an incentive to comply.

However there is another, more persuasive weapon in the board's arsenal. Pursuant to CPLR Â§5104 and Judiciary Law Â§770, the court can enforce a finding of contempt by civil commitment of the person previously found guilty of the contempt. To achieve such a result, the law requires the party seeking the contempt finding to adhere to strict procedural and due process requirements. If all of the steps are correctly followed, a recalcitrant unit owner may find himself in handcuffs, standing before an unsympathetic New York supreme court justice.

After we successfully moved to have a receiver appointed in a condominium lien foreclosure proceeding, the unit owner refused to turn over the keys to the receiver. Over the next several months, the court held a series of hearings which resulted in the court issuing an order finding the unit owner in contempt of court. More court appearances followed in which the court sought to fashion an appropriate punishment, while giving the unit owner the opportunity to purge the contempt.

When the unit owner still refused to relinquish the keys to the unit, we sought and obtained a further order entitled "Order Based Upon Failure To Purge." That order provided in part:

"ORDERED, that the sheriff of any county, to whom a copy of this order, certified by the clerk of the court, shall be delivered, shall forthwith on receipt thereof, and during such hours as this court may be in session, take the bodies of the Defendants xxxxx, and produce them forthwith before the Justice presiding at IAS Part 12, New York County, or if unavailable, before the Justice presiding in the Ex Parte Motion Part, Room 315, for a hearing pursuant to Sec. 772 et seq. of the Judiciary Law, to determine whether they shall be committed to custody for contempt of court."

When the sheriff's department executed the order, the unit owner was placed in handcuffs and

brought to the supreme court for an appearance before the judge presiding over the case. After allowing both sides to present their arguments, the judge turned to the unit owner and said: "Either turn over the keys or you're going in." With those magic words, the unit owner handed me the keys, and the receiver obtained possession of the unit.

To get to this result requires a number of steps. First, the unit owner has to violate a court's order appointing the receiver. Such an order should include language similar to the following:

Defendants, their partners, agents, servants and employees, or any party in possession thereof, shall, within fourteen days of service of this order, deliver to the receiver any and all papers and other things affecting the rental or other operation of the property or any part or parts thereof which they may have in their possession which are in possession of their agents...

Next, a certified copy of the appointing order must be served on the unit owner. Depending on the circumstances and the judge, service may be directed to be made personally. The requirement of personal service should not be taken lightly as affecting such service can result in substantial delays.

Third, an order to show cause (OSC) must be filed seeking contempt of court. The OSC has to contain required language in the required font as follows:

PLEASE TAKE NOTICE THAT THE PURPOSE OF THIS MOTION IS TO PUNISH XXXX FOR CONTEMPT OF COURT, AND SUCH PUNISHMENT MAY CONSIST OF FINE OR IMPRISONMENT OR BOTH ACCORDING TO LAW

WARNING:

YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT

Once the OSC is signed and served in accordance with its terms, one or more hearings will be scheduled at which the court will determine whether the unit owner is in contempt of the court's order and, if so, fashion a proper remedy. The usual remedies may include a fine, damages and an award of attorney's fees to the attorneys who brought the contempt proceeding.

Armed with such an order, service again has to be made on the unit owner. If there still is no compliance, then based on the failure to purge the contempt, an ex parte application can be made seeking commitment. Once that order is delivered to the sheriff's department and served on the defendant, the stage is set for the ultimate court appearance with the unit owner brought in wearing handcuffs.

While the process is neither quick nor inexpensive, the end result can return a productive unit to the condominium board, with market rent coming in from the receiver often exceeding the current common charges, which can then be applied to reduce the arrears and other costs of pursuing the foreclosure.

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