Some owners won’t pay their service charge

The service charge is a legal debt, however, it is expensive to get a charge registered against a property for the amount due and sometimes the only effective power to enforce the debt is to refuse to allow the title be transferred without the outstanding fees being discharged. However, a debt that might not be discharged for 30 years will be effectively worth nothing when inflation is taken into account. Writing off debts as bad debts does not send the correct message to other owners, but there is a solution:

Call an AGM/EGM and propose the following motion (or something similar):

In respect of the service charge the members are invited to agree the following:

The service charge will be set for the year at €XXXXX payable on XX/XX/2018 plus interest and charges for late payment in accordance with the following:

1. Outstanding service charge 3 months overdue: a reminder letter issue to the owner, no interest to be charged when the debt is paid within 3 months of the due date.
2. Outstanding service charge 3-6 months overdue: reminders sent, offer of deferred payment on a monthly basis by standing order. Interest to be added at an APR rate equal to overdraft interest rate charged by the companies bank.
3. Outstanding service charge 12 months overdue or payment plan reneged on: Interest to be added at an APR rate equal to overdraft interest rate charged by the companies bank compounded from the date that the amount became due until the amount is paid plus the standard service for that unit be increased by €500 for the year to cover the additional collection charge.
4. Outstanding service charge 24 months overdue: Interest to be added at an APR rate equal to overdraft interest rate charged by the companies bank compounded from the date that the amount became due until the amount is paid plus the standard service for that unit for the year in question be increased by the amount actually incurred by the company in the obtaining, maintenance, enforcement of the legal charge over the property or any other costs incurred in collection of the debt.  .
5. The directors of the company are hereby instructed to not facilitate in any way the transfer or sale of any property in the development while there is an outstanding service charge on that property.

Where there is a build up of old services charges unpaid, the directors might do a separate minute in respect of old service charge and offer a period of grace after which the amount will attract interest and the penalties as detailed above.

The service charge needs to be passed at the AGM or an EGM for it to be a legally enforceable debt and any charge has to be equitable – but it is inequitable for others to meet the cost of enforcement relating to one property in arrears.  It might be seen as unequitable if any of the charges were see as a “punishment” so it would be best to only pass on the actual costs of enforcement.

Finally the service charge is due by the owner – if a tenant does not pay, it is payable by the owner.

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