

Collections – The Policy, the Process, the Options
Second of a three part series

MORTGAGE FORECLOSURE

When a mortgage foreclosure complaint is received by the Registered Agent the Association sends the complaint to the association's attorney to prepare the association's response and request for admissions to the mortgage foreclosure stating the association is entitled to the assessments due either by document or statute. The complaint must be answered within 20 days. Management then posts a notice on the owners account that they account is at the association attorney and they are monitoring the progress of the mortgage foreclosure. Once an account is turned over to the attorney all communication with the owner must be through the attorney to prevent miscommunication of facts. What used to take months for the mortgage company is now taking a year or longer, sometimes much longer to foreclose. When the mortgage company forecloses and takes title to the property they become responsible for the payment of assessments from the date the certificate of title is issued. They also have the ownership responsibility for maintenance and upkeep the same as any homeowner. Obviously the objective of the mortgage company is to sell the property as quickly as possible. Unfortunately, this is the problem today as there isn't as much demand and the banks and mortgage companies are taking much longer to foreclose, taking a gamble that once the foreclosure is in process, the Association will not pursue its own action due to added expense. This stand-off is the stall that is creating such a burden for associations in being unable to collect their assessments.

When the Association realizes the bank is "stalling", a decision needs to be made to either sit back and wait it out or try and give the process a bit of a jolt to get it moving again. The Board is urged to meet with their legal counsel to discuss the benefits or detriments each approach might have to a specific case.

CURRENT STATUS OF COLLECTIONS

To analyze how to proceed in determining the best collection procedure, the Board will need to review each and every collection account and ask the following questions:

- Is the home in mortgage foreclosure? Is this home owner occupied?
- Is the home in mortgage foreclosure tenant occupied?
- Is the home in mortgage foreclosure vacant ?
- Are there any other issues such as bankruptcy or other pending litigation that will affect the foreclosure outcome?
- Are there any homes on which the bank has received the Summary Final Judgment that have pending sale dates?
- Are there any homes with sale dates that still have no title update yet?

COLLECTION STRATEGY OPTIONS

Option A: *Wait it out*

Pros:

*Would be minimal legal expense with exception of the attorney answering the mortgage foreclosure complaint and monitoring the progress. Approx. \$120 for the 45 day demand letter

Cons:

*Delinquent owner continues to use amenities
*Loss of income for an unspecified amount of time impacting the association

- *The mortgage company may take years before they foreclose
- *Paying owners may feel the Board is not performing their fiduciary duty
- *Other owners begin to choose not to pay their assessments
- *There is virtually no way the association will collect any unpaid assessments except for the statutory requirement (if any) upon foreclosure by the lender

Option B: *Association Files their own Foreclosure complaint*

Pros:

- *The association foreclosure complaint may cause the delinquent owner to pay fees or enter into a payment plan because they feel the association will follow through with their action and pay the unpaid assessments and legal fees
- *The membership feels the Board is doing everything possible to enforce collection of assessments

Cons:

- *The cost to proceed with foreclosure action and cost deposit is \$120 for the 45 day demand notice. \$575 for the cost deposit, \$125 for title work and \$550 for filing the suit. Approx \$1400.

Option C: *Association proceeds with Foreclosure and take title to the Property*

Pros:

- *The Association has access to the property therefore insuring the property is maintained and is not an eyesore to the community.
- *Association demonstrates to all members that they will pursue the necessary action to collect delinquent assessments hopefully dissuading others from choosing not to pay their assessments.
- *The Association rents the property on a month to month basis generating income on the property to help offset the delinquency and legal fees based upon a Realtor review of rental in the area.

Cons:

- *Financial legal cost to foreclose will cost at least another \$1000. Maintenance Responsibility (cost to maintain the yard and pool, minimal electric and irrigation Approx. \$400 per month)
- *Association may have to bind minimal insurance coverage for property –liability as the Association is the owner, may become a commercial policy and cost more
- *Unknown costs to make home rental ready
- *Association may have to pay unpaid utilities in order to turn on electric and water
- *If leased the tenant would have to be informed specifically of the month to month terms and may not attract the most desirable tenants
- *Potential difficulties to rent property on a short lease due to inconvenience of possibly vacating premises on short notice
- *Lender petitions court for tenant to vacate and/or for rental income to go to court registry – not the association.

To be continued 3/25/10