Collections: The Policy, the Process, the Options, part 1

In today's world, everywhere you look or listen, someone is talking about deficits, shortfalls and budget cuts. We hear it from the federal government, our local governments and closest to us, our homeowners and condominium associations.

The non-payment of assessments begins a process that hopefully has been adopted by the board in the form of a Collections Policy. A few years ago, that policy would have been iron clad and was applied uniformly across the board ending with a single process: foreclosure of the unit or home by the association's legal counsel through the court system. Today, while each association still needs to have a policy that is applied equally as it relates to the timing for sending Late Letters, followed by the Notice of Intent to Lien and finally to file the Lien on the property, the final step by the Board should be more flexible as it relates to the details of the specific case. A few years ago, most of the owners probably had a good bit of equity in their homes and would not have walked away from it for the past due assessments, interest, late charges and some legal fees. Today, with so many owners not having any equity in their homes the likelihood of an owner walking away from their home for this reason has hit record highs.

Over the past few years, Sentry Management has seen a tremendous increase in the number of delinquencies and foreclosures. Our records from 2007 through 2009 reflect about 98 foreclosures per month in January 2007 to more than 700 per month in April of 2009.

With this in mind, the following will provide some different approaches that are being used by associations we are involved with. These options are being presented with both the Pros and the Cons. As the information available is lengthy, we may continue this subject into future E-News editions.

Listed below is a summarization of collection steps leading up to foreclosure of property.

--Standard Collection Procedure:

--Send late notice after assessment is delinquent 30 days

--Send an intent to file a lien notice giving prescribed notice by regular mail (and certified if required by statute) to both the onsite and offsite address (if applicable)

--Prepare and file claim of lien

--Forward instruction to the attorney to send 45 day foreclosure demand which includes a copy of the lien that has been recorded

--Send the attorney a cost deposit for the attorney to file a lien foreclosure suit

--Attorney prepares motion for Summary Final Judgment and attends a Summary Final Judgment hearing

--The Foreclosure sale date is set by the court and the owner is notified of the sale date

--Attorney represents the association at the foreclosure sale and in most cases the association becomes the successful bidder and takes title to the property subject to the mortgage.

--After foreclosure sale, there is a 10-day waiting period that allows the delinquent owner to pay back the debt to basically buy back their property. On the 11th day the Clerk of Court executes and records the Certificate of Title in the Public Records. The Association takes title when the Clerk of Court records this certificate of title in the county records

--After the 11 days and upon the recording of the certificate of title, the association will have the attorney obtain a Writ of Possession of the property.

--The association would minimally insure the property, change the locks and turn on utilities, perform maintenance, i.e. lawn, pool, irrigation.

--The Association would determine whether it was financially beneficial to try and rent the property on a short-term lease

The legal fees associated with the association foreclosing depends on whether or not the owner is able to be served by the process server, whether or not there is any legal negotiation taking place and how many hearings the attorney must attend. The minimum legal cost for the association to foreclose on a property is $2500

NOTE: The above is strictly for an Association foreclosure - not a bank foreclosure. It is contemplated with this scenario that while a bank foreclosure may be next, the association is proceeding with all due process to remove the owner from the property.

Most homeowners are unaware that the community association has the right to not only file a lien for unpaid assessments but actually foreclose on that lien taking possession of the property. Generally, homeowners are of the opinion that the association can file a lien which would prevent them from selling their property, but cannot proceed any further than that. Since they have no intention of selling their home they simply do not pay their assessments thinking the association is just going to have to wait it out.

There are four (4) ways to lose your home and investment: Internal Revenue Service, Property Tax Deed collection, Mortgage Foreclosure and Association Foreclosure for unpaid assessments. The only lien superior to that of the Association is a first mortgage. Second mortgages and lines of credit will be extinguished by a foreclosure of an association. After the foreclosure, the Association has no responsibility for the mortgage to the bank.

FIDUCIARY DUTY

The Board of Directors has the fiduciary responsibility to enforce the covenants and restrictions which include the collection of unpaid assessments. It is important that the Board of Directors adhere to a collection procedure to maintain uniform collection of past due assessments to prevent the claim of selective enforcement. We must follow the same procedure for everyone.

However, the same collection scenarios do not exist today due to the current economic climate. Therefore, the Board of Directors must change their collection strategy to adapt to these difficult times by analyzing the viability of collecting the debt under each scenario. It is important that the first 5 collection procedures outlined above should be followed for every delinquent owner to prevent being selective. If further legal action is required the Board should review the residency of the property to determine the next course of action. The purpose of this type of discussion is fact finding which leads to outlining the potential costs involved with the collection of the debt and resulting additional liability and financial responsibility.