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Issue: #13

September/2011

Dear Janet,

This month we have another article from Association Financial Services. They provide some great information about managing your delinquent accounts. If you want to take a further look at their services, feel free to click on their logo within the article to be re-directed to their web site.

We also hope you will take a look at our Hurricane Preparedness section. We hope you will find the information helpful.

If you want to take a look at our previous articles, feel free to click on the link to the left to be redirected to the "Previous Tips" section of our web site.

As always, please feel free to contact us if you ever have a topic you would like discussed.

TIP OF THE MONTH

Not Vengeance...Just Good Business

By Ken Arnold and Jeffrey M. Oshinsky, Esq.

Recently, some have questioned boards of directors that take action to foreclose



on delinquent unit owners, maintaining that they are acting out of vengeance. Since when does a corporate board deserve criticism for properly exercising its fiduciary responsibility to its members?

Community associations suffering from the consequences of owners not paying their maintenance fees are now being faced with a new dilemma:

- Deciding whether to foreclose on units with delinquent balances, or
- Waiting patiently for financial institutions holding mortgages on delinquent units to foreclose.

Community associations-condominium and homeowner associations-have been given the legal right to foreclose a lien for unpaid assessments and the costs of their collection in substantially the same manner in which a mortgage of real property is foreclosed. Everyone who purchases a property that is subject to a Common Interest Realty Association (CIRA) is informed of the association's rights. In fact in Florida, a seller is required to deliver those documents and the real estate brokers involved should be insuring compliance with the laws.

A CIRA cannot properly function without the cooperation of its owner members. Maintenance fees are essential to the health and well being of associations as they pay for vital utilities, insurance, services, and amenities. If owners don't pay those fees, the burden for the ensuing delinquency falls squarely on the shoulders of "good paying owners." Therefore, it is imperative for associations and their boards to proactively do everything within their power to mitigate delinquencies and collect these fees. It's not only the right of a responsible board of directors, it's their duty to their constituent owners. The decision to foreclose is an important business decision, not an emotional one as some have alleged.

This issue has only come to the forefront of CIRA dialog as a result of the deliberate failure of financial institutions to actively pursue foreclosure remedies when the value of their collateral is worth less than the outstanding loan. In the past, especially in the recent past when real property values were steadily climbing, if a unit owner was not paying his mortgage or maintenance fees, banks would aggressively pursue foreclosure remedies. If Mr. Smith did not pay, he would be replaced by Mr. Jones, because banks could easily sell the property. Now, however, given the significant reduction in real property values, these financial institutions are sitting on their hands and allowing the associations to suffer, while the owners who pay their fair share are asked to carry the burden for those who don't.

In many cases the best course of action is for the association to take control of its financial well being by consistently enforcing its rights to lien and foreclose on delinquent units. The economic landscape and bank behavior are not going to substantially change in the next two to four years. In fact, the Associated Press recently reported that nearly 12 percent of FDIC-insured banks were at risk of failing, the highest level seen in 18 years.

There are several good reasons why an association should move forward and take title to delinquent units.

- If a delinquent unit owner continues to remain on the mortgage and title, he can more easily mount a protracted foreclosure defense further delaying the association's collection of maintenance fees. Additionally, this exposes the association to increased write-off/bad-debt as it delays when a bank takes title. Association foreclosures are generally easier to move through the legal system as the only defense is payment. Once the association has the title, there are multiple strategies available to speed the way for a bank taking title.

- Once an association has acquired title to a unit, it is now in a strong position to rent the unit and recoup previously unpaid assessments and generate much needed cash flow.

- New strategies that have been developed, including forcing the first mortgagee to finalize their foreclosure and take title, are only available if the association has completed its own foreclosure and taken title to the unit.

Myths about Association Foreclosures

Certain myths need to be debunked regarding actions taken by associations to foreclose on delinquent units. Does an association have an obligation to pay the mortgage on the unit? The answer is "no." While the association does take the delinquent unit subject to the mortgage, the association does not assume the mortgage as part of its foreclosure and is under no obligation to pay the underlying mortgage note. On the other hand, an association should insure a unit to which it has taken title to protect the association, especially if it plans to put a renter in the unit.

The reluctance to foreclose on delinquent units on the part of some association boards of directors is often due to the belief that a foreclosure is too expensive and therefore not a good business decision. While it's true that the business decision should be influenced by a cost-benefit analysis, there are collection solutions available to associations that can make this a win-win proposition.

Other boards, afraid of being perceived as vengeful and mean-spirited, are loathe to take legal action against their neighbors. However, their concern is misplaced. Absent the cooperation of all unit owners, the association, community and paying owners suffer. Why protect the delinquent owners at the direct expense of caring, paying owners?

There is no reason to wait for a financial institution to take action when while effective legal remedies will permit the association to improve recovery of assessments owed to it. Kenneth M. Arnold is the President and Chief Executive Officer of Association Financial Services, a specialty finance, business process outsourcing, and accredited collection agency specializing in community associations. Jeffrey M. Oshinsky, Esq. serves as in-house general counsel for Association Financial Services. Based in the company's Miami office, Mr. Oshinsky supervises the firm's nationwide network of collection attorney partners and directs internal compliance

programs.

HURRICANE PREPAREDNESS

Association Web Sites

Web sites can be a valuable communications tool. They are especially helpful during a disaster.

Web sites can be used to send mass notices to homeowners and residents about hurricane warnings, mandatory evacuations, damage to buildings and amenities, and much more.



Imagine a severe storm hits and the residents are required to evacuate. The web site system we use allows us to send anyone in our database with an e-mail address a notice. Owners can be notified in advance of the storm what to do to prepare and, if evacuations are mandatory, when they must leave. Following the storm we can let them know what damage has occurred and when they can return to the community.

Having a regularly updated web site helps to eliminate the need for phone trees and other time consuming, slower methods of communication. Many owners can check in on the web site without power too- they can use their i-pads or smart phones.

If you already have a web site for your association, be sure to let your homeowners and resident know they can check it for updates before and after the storm. If you don't have a web site, think about starting one. They can be very inexpensive if you shop around.

Directors Choice, LLC is a Naples, Florida based Community Association Management Firm working with Condominium and Homeowners' Associations. We provide a full range of financial, consulting, and management services to our clients.

If you feel we can be of service to your association in any way, please contact us. We would love to speak with you.

Sincerely,

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