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Skyrocketing Foreclosures and How It Affects Assessment Collection in Your Community

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Due to the current real estate market, community associations are experiencing an increasing amount of foreclosures and bankruptcies. As a result, Boards of Directors are faced with difficult decisions such as whether to continue to pursue debts after a foreclosure, or write-off large delinquencies. The aim of this memo is to discuss some of these concerns and briefly explain a few of the options available to Boards facing these dilemmas.

WHAT YOU CAN DO TO HELP

While our position is that each association is unique and each case should be managed on its own merits, there are some general procedures that may help your association protect its claims and secure payment. The following are a few steps that can be implemented in order to improve your association's chances of recovering delinquent assessments:

1. Prompt Turnover of Delinquencies.

Assessment accounts that become delinquent should be turned over to legal

counsel as soon as possible in accordance with the association's governing documents. Such promptness may hopefully cause the debtor to bring his or her account current before the debt becomes enormous. More importantly, a large balance may be an indication of a bad mailing address, change of ownership, or pending foreclosure or bankruptcy. The sooner the association takes steps to collect the delinquency, the more likely it is that the Association will collect payment in full.

Similarly, when you discover that a property in your community has been foreclosed, the association should immediately begin billing the new owner from the date of foreclosure forward. Recently, the new owner has most often been the foreclosing lender. If the new owner does not respond, the account should be referred for collection just like any other delinquent account.

2. Use the Resources Available.

Foreclosure advertisements and notices, resident information forms, requests for

resale packages, returned mail, payoff requests, vacant lots/units, and moving trucks are all examples of the abundance of information available to the association that may help determine the most appropriate and cost-efficient course of collection action.

For example, a “For Sale” sign in front of the property should prompt you to check whether the owner’s account is current and if it needs to be referred for collection. If it isn’t, do not rely upon the sale of the property to recover the assessments. The owners may be trying to sell the property in order to avoid foreclosure, and the association may not be able to recover at all.

3. Communicate.

Sometimes we discover that associations already have information that legal counsel otherwise has to pay to obtain. For instance, if the debtor has in the past made a payment by personal check or has provided his social security number, please pass this information on to counsel because we need it before we file a garnishment to execute on a judgment. Another example where communicating information can be extremely valuable is when a debtor’s alternate contact information is discovered. In addition, your on-site office and off-site managers should make sure that they are keeping each other informed of any developments that may arise. On-site managers often have a wealth of information that may sometimes not be communicated to the representative handling the financial management of the association.

WHAT WE ARE DOING DIFFERENTLY

As some of you have probably noticed, we have altered our own procedures due to the challenges presented by the real estate market.

1. Lien and Lawsuit.

One of the ways in which we have adjusted our procedures is to pursue lawsuits more aggressively. For example, we are often filing suit immediately after the demand period has expired. Previously, we were filing suit after the lien had been recorded and the debt had been reported to the credit bureaus. Due to the limited security offered by liens in light of so many foreclosures, a lawsuit secures the debt with a personal judgment which will survive a foreclosure and is enforceable for up to 20 years. Furthermore, trying to pursue a lawsuit after a foreclosure sale can often be difficult because we cannot locate the prior owner. By filing a lawsuit earlier, we hope to either prompt the debtor to make payment under threat of a judgment or at least make certain that we will obtain good service to ensure a fully enforceable judgment.

2. Post-judgment Collection.

Because we cannot rely upon sales, refinances or foreclosures in order to pay the association’s claims, we have also been trying to collect judgments more aggressively by means of garnishments or by filing Summons to Answer Interrogatories. Again, legal counsel often relies upon any bank or employment information you may have to pursue this course of action. Of particular note, please provide counsel with any information you may have if the property is rented; a copy of

the lease would be ideal. Garnishments and Interrogatories often encourage debtors to bring their accounts current in order to avoid having their bank accounts frozen, their rental income attached, or having to answer questions under oath regarding their ability to pay the judgment.

3. Foreclosure Recommendations.

For our Virginia community associations, non-judicial foreclosure of the assessment liens is an option for the boards to consider. While non-judicial foreclosures are expensive, they can at times be the most effective way to collect a high assessment debt. Because most of the mortgage foreclosures are taking place against new condominiums with little to no equity, we are not recommending them as often regardless of a high balance. In other words, the association's claim would remain unpaid even if we auctioned the property. In addition, it is likely that we would have no bidders at the sale and the association would be faced with taking title to the property subject to the first trust holder.

4. Writing-off Bad Debt.

Unfortunately, and with increased frequency, we have been recommending to our clients that they reclassify accounts as bad debt when the property has been foreclosed and we have either exhausted all other remedies or further action is no longer cost effective. Foreclosure often signals that an owner does not have the financial ability to pay their debts, and therefore is probably not able to payoff a judgment if we filed suit. On the other hand, when the balance is high enough, we have also been recommending that we obtain a judgment before reclassifying the account as bad debt. Again, a judgment will appear on the owner's credit report and he or she will have to satisfy it before obtaining a financing in the future.

Please review your collection policy resolution, as well as your association's current state of delinquent assessments accounts. If you have any questions or concerns regarding either, please contact us so that we can schedule a meeting to discuss your Association's particular needs and goals.