A Case for Why Community Associations Should Foreclose on Delinquent Units

- **Prevent Mortgage Foreclosure Defense:** Mortgage foreclosure defense firms are signing up new home owners every day to defend and delay the eventual bank foreclosure. A mortgage defense can add years to the process. When the association forecloses first, generally a much easier process, it paves the way for the bank to foreclose, allowing for a good paying unit owner to move into that unit more quickly, which is the ultimate goal.
- **Remove the financial burden on owners who pay maintenance fees:** Owners who pay their maintenance fees on time are unfairly shouldering the financial burden for those who fail to pay. By using the tools provided in the association's governing documents and applicable state statutes, and by following through with a consistent collection policy by foreclosing on delinquent units, the association is taking positive action to remove non-paying owners and replacing them with good-paying owners or the ability to collect rent.
- **Prevent Usage of Amenities and Resources:** Foreclosure can save the association money by preventing delinquent unit owners from using community amenities and resources (including water, electricity, etc.), and not paying for them.
- **Allow for Association-Initiated Legal Options:** Some of the new strategies that have been developed, including forcing the bank to finalize their foreclosure or take title, are only available if the association has foreclosed and taken title.
- **Allow for Rental Income:** Once the association has title, it has the option to rent the unit and recoup lost maintenance fees. We have association clients that are recovering 100% of their lost maintenance fees through successful collection of rental income. Rentals are as easy as calling a realtor and letting them do their job.
- **Consistent Collection Policy and Consequences to Non-Payment:** The association should apply a consistent collection policy, gradually escalating collection cases, and making it clear to unit owners that there are consequences to non-payment in order to better safeguard the community from future delinquencies. Those actions will reduce defenses, allow for a more efficient and fair process, and improve compliance with collection polices in the future, without personal and political influences getting involved.
- **Apply Pressure to Banks:** Many of the collection and legal strategies that we use work to apply pressure on the banks. Our experience shows that associations that take an active approach to collections, including foreclosures, are in a much better financial position than those who don't.
- **No Additional Financial Risk:** At AFS, we seek to collect all collection and attorney costs and fees from the delinquent unit, not the association. When the association forecloses, the association does not have to pay any costs or fees to AFS if the unit is still subject to the first mortgage. Once the bank forecloses, AFS seeks to collect all costs and fees from the bank, and if we can't collect them, we pay for them ourselves.
- **Complements New Rental Receiver Statute:** The new statute is limited to receiving rents on units that are already rented. This is a great tool to use on some units, but not all units. For the units with no renter, or if the renter leaves, when the association has title, it can then rent the unit. Also, once the association has title, the renter can sign a rental agreement and stay in the unit without fear of being evicted at any time.

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Association Foreclosure Myths:

Myth: The association must pay maintenance fees on units to which they hold title.

Reality: The association does not have to pay maintenance fees, and should allow these units to continue to accrue maintenance fees, special assessments, late fees, interest, fines, collection costs and attorney fees. AFS will seek to recover these amounts from the bank or new unit owner, not the association.

Myth: The association must assume and pay the mortgage on units to which they hold title.

Reality: When the association takes title, it does so subject to the first mortgage, however the association is not a party to the mortgage note, and therefore, the association does not become responsible for payment of amounts due hereunder.

Myth: The association will spend a fortune on insuring the unit.

Reality: The cost to purchase liability insurance on a unit to which the association has taken title is usually negligible. In addition, if the association decides to rent the unit, this cost can then be recovered from the rental income. Speak with your insurance agent and get the facts.

Myth: Title to the unit will be lost upon the occurrence of a tax deed sale.

Reality: A tax deed sale is rare, however, as the title holder, the association is in a much better position to protect its interests and recover the amounts due in the event a tax deed auction should arise.

Myth: The association will have to invest money repairing the unit for rental.

Reality: Not all units need to be repaired. If the association decides to rent a unit, and it needs to be repaired, the association can wait until a lease is signed before moving ahead. The association should be able to recover expenses through rental revenue. If the unit requires too much repair, the association can simply choose not to rent it. Also, the association can allow a local realtor to manage the entire process. Some realtors may even invest their own money to fix up a unit.

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