

Condo foreclosures hurt others, too

By Marcie Geffner

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When too many condominium owners lose their units to foreclosure, condo associations feel the financial pain. That's bad news for homeowners and real estate investors who depend on these associations to take care of building maintenance, property insurance, utilities, landscaping and other amenities that are shared in common.

While most owners pay their association dues as they are obligated to do, a rising number have fallen behind for various reasons. The problem isn't insignificant: Approximately 24 million housing units are governed by some 300,800 homeowner associations in the United States, according to the Community Associations Institute, or CAI, a nonprofit organization of homeowner association managers in Alexandria, Va.

"If you've been foreclosed on and you have a lien against your home or (if you're in financial trouble due to) general economic conditions and you aren't able to pay your assessments, that creates some major problems for the association," says CAI spokesman Frank Rathbun.

Shortfalls may be more common among newer associations that haven't had much time to build up reserves and may be more exposed to owners who have burdensome mortgages. But older associations aren't immune, especially if they haven't set aside reserves, budgeted for bad debts or kept up with common-area maintenance, according to David Swedelson, a partner at Swedelson & Gottlieb, a law firm that represents community associations in Southern California.

"Some associations are assessing **\$10,000, \$20,000 or \$30,000** per unit. (The buildings) are 30 or 40 years old and they need renovations. Some owners are defaulting, and then that's another \$10,000, \$20,000 or \$30,000 that the rest of the homeowners need to make up," he says.

What condo owners can do

Owners should "get involved and participate in the process," Rathbun says. "Awareness is always better than uncertainty. Don't just stand on the sidelines and condemn and criticize."

Owners can attend association meetings, ask questions, educate themselves about the options, and ensure that the association, as personified by the board, takes decisive action to remedy financial problems.

Associations do have options, though none of them may be all that palatable to the owners, Rathbun adds. Depending on the severity of the problem, size of the association, and bounds of state laws and regulations, an association may be able to consider several options.

Associations can't abandon their obligations just because the funds aren't adequate. Rather, they have a responsibility, as determined by state law and the association's governing documents, to maintain common areas and provide promised services and amenities to the owners.

"The best option is to be as frugal as possible, and if there is still a shortfall, (they should) do the one thing that associations can do, which is to assess the owners as necessary," says David G. Muller, an attorney at Becker & Poliakoff, a Sarasota, Fla.-based law firm that represents community associations.

If the situation becomes dire, the association needs to make major changes in the way it operates.

"If a minority of the homeowners can't afford the assessments, maybe those owners need to find another place to live. If most of the owners can't afford the assessments, the association needs to redo its budget and figure out ways to keep the expenses down. The board can't fashion the budget for those who can't pay," says Swedelson.

Owners can perform some of the work themselves to save money, but that's not without risks of shoddy workmanship or liability if someone is injured, Muller and Swedelson say.

Liability waivers are a good idea, but "aren't always foolproof," says Muller.

Help from a collection agency

Nor can associations ignore their obligation to try to collect delinquent dues and assessments. Some associations are "a little bit lax in their assessment collection," Swedelson says. If that's the case, owners again should take an active interest. Contact the board, ask for information about the collections process and press for prompt action.

"If someone isn't paying their assessments, you need to follow proper and established procedures to go after those assessments. It's important to send out those letters immediately and communicate with the residents about the nature of the problem," Rathbun says.

Quick action may be necessary to protect the association's interests. In California, for example, it can take 30 days to record a lien after the appropriate demand letter has been sent to the owner. Any delay is likely to result in more unpaid assessments.

Condo associations also can offer payment plans or loans, or waive late fees or penalties to help owners to catch up on delinquent dues.

"Boards do have options in working out arrangements so that they can meet the individual owner's financial issues," Swedelson says.

Collection procedures differ from state to state, but usually include the right to put a lien on the property and judicially or nonjudicially foreclose on an individual unit for nonpayment of dues. Again, owners should get involved and be aware of the process.

One common misconception is that an association owns an individual unit free and clear after a foreclosure; however, that's not the case. In fact, the association takes title to the property subject to the first mortgage, Muller explains.

Associations may be reluctant to foreclose on a unit that's worth less than the owner's mortgage, but a foreclosure may be a necessary step toward resolution of the problem, Muller says. Once the association forecloses, the

owner typically will stop paying the mortgage and the lender may be willing to accept a deed to the property from the association in lieu of a bank foreclosure. That could result in a faster sale of the unit to a new owner.

The "No. 1 thing that you want is to get someone in there who has the money to pay the assessments," Muller says.

Foreclosure isn't a do-it-yourself project. Associations that need to pursue this option should consult an attorney.

What condo buyers can do

Buyers also should be concerned if they want to purchase a property that's governed by a homeowners association.

Buyers who purchase a property at a foreclosure sale or auction should be aware that in some states they can be held responsible for the prior owner's unpaid assessments, which could amount to many months or even years of accumulated dues, interest and penalties.

In any case, buyers should ask the seller about the association's financial condition.

"Go to the clerk of the court's Web site and search for the name of the condominium association because the association is named as a defendant in bank foreclosure lawsuits," Muller suggests. "If you see that a 100-unit condominium has had 21 bank foreclosure lawsuits filed against various units in the last three months, you know that they have a foreclosure problem and you might want to be wary about that."

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