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November 13, 2008

Homeowner Associations  
Attn: Board of Directors

RE: Collection - To proceed or not in difficult economic times.

Dear Board of Directors:

This letter comes to discuss the strategies and options your association faces in these difficult economic times. As you are aware, as a board member, you have a fiduciary duty to act in the best interests of the association. It is in the best interests of the association to proceed diligently and aggressively with collections as the association depends on each unit owner to pay their share of the budget through assessments.

However, in these difficult times, we are finding more and more lender foreclosures being filed, resulting in increased deficits for the association. While our federal government has passed legislation to assist with the current credit and mortgage crisis, to date they have not addressed community associations. While we can hope for assistance with our new presidential administration, boards of directors must make decisions now to continue to run their communities. Your association is governed by Florida Statutes 720.

If a first lender names the association in its foreclosure action, then the lender's liability for assessments is limited to the lesser of 1% of the original mortgage indebtedness or 12 months of assessments (but does not include attorney's fees and costs).

A first lender who fails to name the association in its foreclosure action or any third party that obtains the property at foreclosure sale is obligated to pay "...all unpaid assessments that came due up to the time of transfer of title." [Florida Statute 720.3085 (effective July 1, 2007)].

With that said, it is this firm's opinion that homeowner associations cannot simply take the approach not to proceed on collections, but we have some strategies to help you maximize the return on your "dollars" spent for legal services.

These are our recommendations:

Step 1 - Demand Letter - Send demand letters to all delinquent accounts.

Step 2 - Claim of Lien -

- (i) The association should determine if the unit is occupied prior to authorizing the filing of the Claim of Lien.
- (ii) The association should request this firm run a search to determine if a lender foreclosure has been filed. There will be a small cost for each search, but by searching at this stage you will limit the overall amount spent.
  - (a) If no lender foreclosure has been filed and the unit is occupied, then the association should file a Claim of Lien.
  - (b) If no lender foreclosure has been filed, but the unit is not occupied, then the association needs to make a decision whether or not to proceed with filing the lien based on your knowledge of the owner's circumstances.
  - (c) If the unit is in lender foreclosure, then the association should wait until the lender foreclosure is complete (either at voluntary dismissal or foreclosure sale).

Step 3 - If you have filed a lien and are considering Foreclosure -

- (i) The association should re-verify whether or not the unit is occupied.
- (ii) If the unit is occupied, then the association should authorize the foreclosure to be filed. We will update the search and if no lender foreclosure exists, the association should authorize filing for foreclosure. (If it is tenant occupied, the association should speak with the tenant to assure them that if the association obtains the unit at foreclosure sale, they would be happy for the tenant to remain as long as they pay rent to the association.)
- (iii) If the unit is not occupied and/or if a lender foreclosure has been filed, then we recommend that the association not proceed unless the lender foreclosure is dismissed or the lender otherwise is stalling the process, at which time we would need to review the matter and make a recommendation on how to proceed on a case by case basis.

Lender Foreclosures - It is our recommendation for this firm to file and answer on behalf of the association and authorize this firm to track and monitor lender foreclosures.

Finally, we would like to offer to come to a board meeting, at no charge. In that regard, please have your property manager contact us to schedule same.

Regards,

  
V. Claire Wyant-Cortez