

Effective Assessment Collection Is Essential In Difficult Economic Times

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As we have learned, the combination of adjustable rate mortgages with attractive "teaser" interest rates, the absence of effective mortgage industry regulations, lagging home sales, and decreasing home prices put mortgage foreclosures at record levels. California has one of the highest foreclosure rates in the nation. Steeper declines in home sales and mortgage foreclosures mean a rise in assessment delinquencies and shortfalls in your association budgets.

In this economic climate many associations cannot meet their annual operating budgets without a special assessment or a cut back in services or amenities. Boards must be proactive and reexamine budget projections and planned expenditures for 2009 and beyond, in light of anticipated increases in assessment delinquencies.

Certainly those who fail to pay their homeowners assessments create an increased burden on those who do. Indeed, many associations are budgeting for uncollectible debt to compensate for the budgetary impact of anticipated assessment delinquencies. So, now more than ever, Associations cannot allow a rise in mortgage delinquencies or a declining housing market to cause it to relax its assessment collection procedures. Notwithstanding projections for continued economic decline, Association Boards must adhere to consistent, fair and effective assessment collection practices, ever mindful of the financial strain many owners are under.

While timely and consistent assessment collection is no guarantee of recovery from those who have fallen on hard times, it can

increase the chances of recovery. Prompt initiation of the collection process is essential to an association's ability to record assessment liens and secure its place among those with claims against the delinquent owner. The assessment lien places the association in a secured position in an escrow or a bankruptcy. And, in light of the large number of mortgage foreclosures, the lien places the Association in a position to recover surplus funds from the sale, in the event there is equity in the property. Of course, with or without a lien in place, the Association may have the option of pursuing a personal action against the debtor to recover the funds (assuming the debtor is financially viable), and the lien places the Association in the best position to collect from an escrow, sale, or even a bankruptcy. So it is important to act and to act quickly.

Many boards may be reluctant to incur fees and costs pursuing assessment collection against an owner who may be facing foreclosure of his mortgage. Understandably the idea of an association committing limited association resources chasing after funds it may never collect could deter a board from committing to a collection program. But, your assessment collection program must be structured so as to serve your association in any environment, and there's no better time than now, to put your plan in action and stay the course.

- **Follow A Clear, Well Defined Collection Policy.**

Let your association's collection policy be your guide. Before you refer any delinquent owner to a collection company or law firm for collection, you must comply with the association's internal collection

procedures. Matters such as payment delinquency date, and permissible interest and late charges and the number of warning letters an owner will receive before being referred to collections should be contained in your association's collection policy and followed consistently. Moreover, your collection policy should be simple and straightforward so that every owner knows the consequences of not paying their assessments.

- **Insist On A Responsive, Attorney-Driven Collection Program.**

Whether you pursue assessment collection through judicial or non-judicial foreclosure, your assessment collection company should offer a no frills collection program; one where you always know the status of your delinquent accounts and your association never has to pay any collection fees and costs in advance. Insist on a collection agent that provides you at least monthly with 1) the status of each collection matter; 2) the amount of money collected and the anticipated payoff date; and 3) any facts that may impact on collectibility of the account, such as bankruptcy, mortgage foreclosure, or payment plan default. Your assessment collection company should allow the board to let go of the day-to-day details of your delinquent assessment collection while reducing the risk associated with advancing fees and costs where recovery is as uncertain as a real estate market in a climate of ever increasing foreclosures.

As you prepare for 2009 and beyond and the financial turbulence your association may encounter, seek a collections program that provides the following:

- Effective, timely and respectful communication with the delinquent owner.
- A prompt, efficient collections program that does not require payment of fees or costs in advance, prior to recovery. Fees and costs of collection should be paid by the owner not by

the association, and at the end of the collections matter.

- Clear and unambiguous monthly status reports on all active files, and responsive customer service on demand.
- Strict and proficient compliance with statutory pre-lien assessment procedures, assessment lien recordation and foreclosure, payment plan processing and, post-judgment enforcement, if necessary.

Particularly in times like these, the assessment collection process should be attorney-driven, adding respect and credibility to the entire process, while maintaining the dignity of the delinquent owner.

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