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## LIEN AND MORTGAGE FORECLOSURES

### *Strategies for Community Associations in a Troubled Credit Environment and Economic Downturn*

#### 1. Mortgage Foreclosures - Attorney Eryn M. McConnell

##### A. Process Overview and Considerations

1. Receiving the Complaint
2. Why it matters if you file an Answer
3. What to do when the Association is not named as a defendant in the mortgage foreclosure
4. Monitoring the Action
  - a. How long will this Case last?
  - b. What if it stalls?
  - c. What are the important dates to note in every case?
  - d. What other documents will be filed with the court?
5. Dismissals
6. Certificate of Sale vs. Certificate of Title
7. Who is the new owner?
8. What can the Association collect?
  - a. Determining assessments due

- b. Attorney fees for the defense of the Association's interests in the Mortgage Foreclosure are NOT collectible from the new owner.

B. Strategies

1. Affirmative Defenses
2. Possibility for Cross Claim
3. Beginning immediate collection against the new owner
4. Failure of foreclosing lender to make payment.

2. **Lien Foreclosures - Attorney Helena G. Malchow**

A. Pre-collections

1. Familiarize yourself with the Assessment Article in your Declaration and Bylaws –
  - a. What interest rate that can be charged?
  - b. What grace period is provided?
  - c. Are late fees permitted?
2. Prepare and approve a formal collection policy consistent with document provisions and distribute to members. The collection policy should include:
  - a. When and number of late notices to be sent.
  - b. When interest and late charges will be imposed.
  - c. Statute requires 30 day notice of intent to be sent to owners.
  - d. When account will be turned over to attorney.
  - e. Consideration of payment plans and forgiveness.
3. Monitor accounts to track receivables and send late notices consistent with the adopted collection policy.
4. Include receivable information in community newsletter without including names or unit address.

5. If documents provide, conduct diligent screening of potential buyers based on past financial record.

B. Collections

1. Turn over delinquent accounts to association attorney at a time and manner consistent with the adopted collection policy.
2. Advise association attorney of the units that are being rented by owners with past due balances and any information relevant to locating owner.
3. Statute requires that a second thirty day notice - of intent to foreclose - be sent to owners.
4. Authorize filing of lien foreclosure action.
5. Where applicable demand for rents will be sent along with filing of lien foreclosure action.
6. Notify association attorney of any information helpful to case.

**3. Non-judicial Strategies to Minimize Collections and Care for Abandoned Property  
- Attorney Paul L. Wean**

A. Internal operational strategies

1. Budgeting and Assessment adoption considerations.
2. Reserves
  - a. Reserve study to sequence payments needed
  - b. Re-classify assets to avoid funding unnecessary reserves
  - c. Waiver or reduction
3. Unrestricted contingencies as a rainy day fund
4. Acceleration considerations
5. Screening of new owners and tenants
6. Borrowing
7. Creating other sources of income

- a. Considerations for rental of amenities
  - b. Organized programs
  - c. Pre-payment of assessments
8. Helpful documents amendments
- a. Approval of Rentals
  - b. Automatic termination of Rentals
  - c. Use fees - are they a way out?
- B. External help
1. Legislative initiatives - now is the time.
    - a. Proposals to make lenders liable for all back assessments
    - b. Proposals to make lenders liable for a higher amount with a time limit to pay - or else.
    - c. Requesting help and getting allies in government - state and local.
    - d. What should you do?
- C. Strategies for dealing with abandoned property.
1. Use of emergency contact resources.
  2. Code issues.
  3. Legislative initiatives.

#### **4. Summary and Questions**