

## Association Owned Properties

In today's economy it is becoming more and more common for homeowners associations to elect to foreclose upon its assessment liens irrespective of the equity in the property. Associations are electing to utilize this collection remedy for a number of reasons: (1) to encourage the first mortgage holder to commence foreclosure of its mortgage, thereby eliminating a mortgage in an amount that exceeds the current market value of the property, and then selling the property to a paying owner; and/or (2) to force the homeowner to make the choice to pay the assessments due the association or to leave the community, thereby eliminating the homeowner's ability to continue to receive services from the association without paying for such services.

### **The redemption period for the association's foreclosure sale has expired, now what?**

Once the association takes title to a property following the completion of the foreclosure of its lien, the association now owns the property subject to (1) the first mortgage (if applicable); and (2) the real estate taxes. The association now must decide what it would like to do with the property going forward. The following options are available to the association (a) market and sell the property; (b) seek to lease the property until such time as the property is sold by the association or the mortgage is foreclosed (subject, of course, to any applicable leasing restrictions contained in the associations governing documents), or (c) simply await the foreclosure of the first mortgage.

Upon expiration of the applicable redemption period, the association should either have its property manager or a member(s) of the board of directors go to the property to see if anyone is still residing in the property.

**If the Unit is Vacant.** If the property manager or a member(s) of the board of directors can tell that the unit is vacant, the property manager or a member(s) of the board of directors should enter the unit and secure it (e.g. change the locks, garage door code). Since the association is now the owner of the unit, the association should contact the utilities and have the respective utility bills transferred to the association. The association can rent or attempt to sell the unit if it desires.

**If the Unit is Still Occupied.** If the unit appears to still have someone residing in it, please contact legal counsel because it will be necessary to formally evict the occupant(s) of the property. The association should contact the utilities and have the respective utility bills transferred to the association. After the formal eviction process, the property manager or a member(s) of the board of directors will want

to enter the unit and secure it. The association can then rent or attempt to sell the unit if it desires.

**If it is Unknown if the Unit is Still Occupied.** Occasionally, even after going to the property and looking in the windows it is unknown whether the unit is still occupied. In this situation, *before* the property manager or a member of the board of directors enters the unit, place a notification on the logical entry points into the unit (e.g. front door, garage, sliding glass door) of the association's intent to enter the unit on a specific date and time to secure the unit. On the notification, please include either the name of the association's property manager or a member of the board of directors so that the occupant has someone to contact. The association should contact the utilities and have the respective utility bills transferred to the association. If the property manager or a member of the board of directors shows up on the allotted date and time and finds someone occupying the unit, it will then be necessary to formally evict the occupant(s).

**Holdover Tenants.** A holdover tenant is someone that was a tenant from the original owner. If a holdover tenant has a bona fide lease with the prior owner, the tenant *may* stay in the unit up to 90 days assuming they remit rent pursuant to the lease to the association. If the tenant does not remit rent, the association can formally evict the tenant.

**Personal Property that was Left Behind.** After the property manager or a member(s) of the board of directors has been able to enter the property, any items of personal property that were left behind should be photographed or videotaped to avoid possible later disputes of what was or what was not actually left behind. Personal property is items like furniture, clothing, toys, bikes, etc. Pursuant to Minnesota Statute 504B.271, any items of personal property that were left behind must be stored for up to 28 days. The association would have a claim against the former occupant for reasonable costs and expenses incurred in removing the property and in storing and caring for the property. If the association would like to sell the property that was left behind, please consult with your legal counsel regarding this because there are specific notifications that must be given.

**Sale of Unit.** Once the unit is vacant, the association is free to contact a realtor to begin to market the property for sale. Please note, if there is a first mortgage it will need to be satisfied as part of any sale transaction. The association should not expend its resources readying the property for sale.

**Leasing the Unit.** Once the association takes ownership of the property, the association is free to rent the property to prospective tenant(s) assuming there are no rental restrictions contained within the association's governing documents. If the governing documents contain rental

restrictions, the association needs to abide by the association's rental restrictions just like any other owner in the association. It is important that the association disclose to prospective tenants that the association currently owns the property as a result of the association foreclosing upon its interest in the property and that there is still a first mortgage against the property which at some point in the future will elect to commence a foreclosure proceeding of its own. The association will also want to make sure the lease references that the tenant(s) agree to abide by the terms of the association's governing documents. The Association has no control over when the first mortgage may elect to commence foreclosure of its interest in the property. However, as with any foreclosure in Minnesota, from the date of the Sheriff's sale there will be a six month redemption period. So, there will be adequate notice, so that a tenant can find a new place to live when needed. However, it is extremely important that the association be very candid about its ownership interest in the property.

### **Other Leasing Items to Consider**

- **Section 8.** Section 8 is a federal rent assistance program that provides rent subsidy payments for low-income families renting privately owned housing. Typically, under Section 8 a monthly rent subsidy payment is paid directly to the owner of the property and the tenant pays the owner approximately 30% of the tenant's income toward rent. The initial qualification process for a property to become Section 8 approved is quite cumbersome. However, if the former owner of the property obtained Section 8 approval it is relatively easy for the association as the new owner of the property to step into the shoes of the former owner.
- **Rental Licenses.** Each municipality has different requirements regarding rental licenses. Please consult with your municipality prior to renting out any properties. The cost of a rental license varies immensely depending on the municipality.

### **Key Items to Remember**

- Once the association forecloses its lien and takes ownership of the property, it can no longer pursue the debtor(s) personally for any amounts owed in the matter. This would be considered to be double recovery which is not allowed.
- When a property is owned by the association no assessments accrue.
- The association should inquire with its insurance carrier regarding obtaining insurance for properties owned by the association.
- When the association collects rental income for a property, the money collected is not applied to a specific unit owners account, rather it should be treated as general income. This income can be used to offset bad debt. Please check with your accountant regarding more specific details.