

## COLLECTION ISSUES: HOW THE BOARD CAN MAKE A BETTER DECISION!

Associations who are faced with delinquent assessment issues are faced with generally three choices: judicial, non-judicial and small claims. The best approach to take depends on information that up until now, has not been readily available early enough in the process to make an informed decision.

- 1) The non-judicial path has been selected by many associations as it provides a comparatively quick and cost effective method to get to a result. Sometimes the result is the owner paying in full, but in many cases, there is no equity in the unit, and the result is a foreclosure of the unit in which the association becomes the owner. While the legal costs up to this point have been added to the amount due, the association will then be billed and become the owner of the unit, with the only possible recourse being to rent the unit and collect money until the bank forecloses, which is an unknown period of time. The association may also be required to spend additional money to evict the resident (former owner or tenant), repair the unit so it can be re-rented, and then rent it to a new tenant. The association would need to disclose the nature of how they acquired title and that the rental period may be very short. Some associations have collected at least some of the money due them by this means.
- 2) The judicial route takes a longer period of time (i.e. minimum 12 months) and appears to be more costly (i.e. \$2000 est), however the outcome may be more beneficial. There is greater latitude in the options available to the association, depending on the equity in the unit. The association could get a money judgment which is valid for up to 20 years, or pursue a foreclosure action against the unit, providing there is sufficient equity. While this option is more lengthy and costly, the ultimate benefit for the association (pay off) may take years to realize.
- 3) Small Claims: This is a choice made by some associations however the maximum amount that can be claimed is \$5000.00 and an association board member or an appointed representative (not an attorney) must appear to present the case to the Court. After obtaining a judgment, the effort will be on how to collect it.

Unfortunately, the law firms that handle Association collection work either offer the non-judicial or the judicial path, but not both. So a choice needs to be made prior to engaging the services of a law firm.

It is readily apparent that if the Association Board knew in advance what the equity is in a unit that it may make an importance difference in the path that is selected. In other words, if the loans are less than 90% of the current value, then proceeding with a non-judicial foreclosure would make more sense than pursuing a judicial foreclosure. However, if there is less than 10% equity, (including situations where the loans are more than the unit is worth, it would make better sense to pursue a judicial action, or small claims.

There is now a way that Boards can have better information earlier in the process so that a better decision can be made:

The following information can be obtained by our office: 1) Number of loans on the property, 2) Original loan balances; 3) Amount of current delinquency and 4) the existence of a Notice of Default or Notice of Trustee Sale by a lender, and the date of that notice. This can be obtained at a cost to the Association of \$85.00. This amount can be added to the account of the owner and collected later if the owner does finally pay. It will need to be paid up front by the association.

In addition, if the Board would like an understanding of the current market value of the unit, this can be provided at a cost of \$65.00. This would include recent comparable sales in the same association, or within a mile radius and within the past six months.

For further information or to request a Mortgage History or Current valuations, contact David Brock at 626 243 4142, or [dave@bevenandbrock.com](mailto:dave@bevenandbrock.com).