



By Frank Silcox

As the condominium crisis continues to spiral to new depths, associations are being forced to make difficult decisions regarding their financial solvency. These associations, as has been reported for the last several years, are faced with increasing delinquencies on assessments, foreclosures and the number of residents who are simply walking away from “upside-down” units.

It’s not a pretty picture; last decade’s fast-growth states like Florida, Nevada, Arizona and

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California are not seeing an improvement, nor should they expect to in the near future. These boomed as a result of growing populations and the high demand for homes, and we saw dramatic increases in values. But as the economy began to tank, so did the value of these homes, along with owners’ abilities to make mortgage payments and association assessments.

The lifestyles at these communities changed for the worse. Security was compromised. Maintenance of the grounds suffered. Pools were not cleaned. And at the end of the day, the financially sound residents ended up paying for those who couldn’t or wouldn’t continue to invest in the lifestyle that was in place when the units were purchased.

These struggling condominium associations were left with one advantage – the ability to lien a property, which would prevent a sale, loan modification or short sale. In addition, these associations are provided with other tools, allowing them to recover significant portions of delinquent assessments if they are patient.

Ultimately, the decision among associations is “to foreclose or not to foreclose.” It has been our feeling that in most cases it is best to allow the banks to foreclose, rather than the associations, for a variety of reasons. Most relevant is that there are costs to the associations should they choose to foreclose. In addition, a bank is a much more reliable debtor to the association as opposed to the unit owner, who is quite possibly going through a personal bankruptcy scenario.

While there are many fine law firms specializing in collections and foreclosures for condominium associations, there are also some who are taking advantage of the situations by charging high fees and expenses for these legal processes. These opportunistic law firms are actually hurting the clients they have been hired to help.

In many instances, a collection attorney’s fees to implement foreclosure proceedings can eat up the pay-off to an association. Many firms or collection agencies will encourage an association to settle for much less than they can ultimately get. Associations should also be aware of the expenses related to collections and foreclosure. In addition to hourly billings, associations are charged for thirty- and sixty-day letters, lien notices, title searches, draft complaints, photo copies, postage and lien letters.

Associations should also be aware of cases such as Bay Holdings, which held that, in certain circumstances, a bank taking title through a subsidiary did not qualify for Florida’s Safe Harbor statute, which requires financial institutions to pay associations just 12 months or 1 percent of delinquent assessments – whichever is less – following a foreclosure. By making banks prove their qualification for safe harbor, associations can recover significantly more if there are improprieties in the loan processing by the banks, which take them out of the safe harbor.

However, this is a complex investigative process that can be implemented only by an experienced law firm. It has been our experience that well over 90 percent of delinquent assessments can be recovered for these financially strapped condominium associations by holding firm on short sales and owner payoffs, and challenging the foreclosing banks to prove they are entitled to safe harbor.

The key for associations is to remain patient and follow guidelines provided by professionals in the industry. Board members should

The actual net rental income that an association collects is less than the association’s cost of foreclosing and lien write-offs.



determine the cause, correct any condition that may have led to the paint failure. If you're stumped, call in a professional painter to do some sleuthing.

Then, when you repaint, do proper surface preparation (including the application of a primer when necessary), and use only top-quality coatings. Top-quality 100 percent acrylic latex paints have excellent adhesion and tremendous flexibility, so they help prevent blistering, peeling and other failures. They even offer an extra measure of protection against mildew.

As you can see, with a little detective work, you can get to the bottom of any paint problem. You can help prevent mysterious paint failures from ever haunting you again!

Debbie Zimmer is a spokesperson for the Paint Quality Institute.

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continually ask questions regarding fees, expenses and the costs associated with foreclosing on a unit as opposed to waiting for the bank to foreclose. Remember, the lien is the association's most powerful tool, as it allows the association to seek full payment in a short sale or other transaction that does not fall within the strict rules of the Safe Harbor.

The following are additional considerations as condominium boards make tough decisions:

- » If an account goes delinquent for more than seven months, on average, the owner brings the account current only 20 percent of the time. When an account goes delinquent beyond 10 months, it is very unlikely the owner will bring the account current, and the eventual payoff will be the result of a bank foreclosure, a short sale or a bank mortgage modification.
- » When the bank takes action – foreclosure, short sale, loan modification – the association stands to benefit. In these cases, the bank will pay the fees following a foreclosure, or a new owner will assume payments following a short sale. Through a loan modification, the current owner may be able to afford the assessments and new mortgage payment. These are all tactics dictated by the banks and, ultimately are in the best interests of the association.

Foreclosure often is not a viable economic option for associations:

- » When an association forecloses and takes title, it ends up owning the unit for less than six months before the bank forecloses on it. The fees continue to mount for assessments, taxes, insurance and maintenance, resulting in the association being in the same situation it faced prior to the foreclosure.
- » When an association actually forecloses and takes title, it averages approximately \$3,200 in legal fees, and it writes off an average of \$5,600 in lien receivables in order to obtain ownership.
- » Associations often believe they will recoup foreclosure expenses with rental income. The actual net rental income that an association collects is less than the association's cost of foreclosing and lien write-offs.

These are tough times for condominium associations; board decisions should not be made hastily. Rather, these boards should take their time and map out a strategy for maximum recovery with qualified professionals who are acting in their best interests.

Frank Silcox is principal and CEO of LM Funding, LLC, a Tampa-based specialty financial services company.



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