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HANDLING AND PROTECTING THE ASSOCIATION, WITH RESPECT TO THE MORTGAGE COMPANY FORECLOSURE

Undoubtedly, your community and/or building has seen its share of mortgage company foreclosures. While mortgage foreclosures generally accompany unpaid assessments, and thus may not be welcome, they are in actuality, opportunities for associations. Knowing what to do, and how to do it, in the face of a mortgage foreclosure is crucial to a community's overall collection policy, and its financial security.

First, a successful and finished mortgage foreclosure results in exactly what an association needs - a paying owner in the unit. The mortgage company must pay the assessments attributable to that unit from the date of the judicial sale forward. Thus, depending on the circumstances, a quick and successful mortgage foreclosure and judicial sale is a welcome development. When an association becomes aware of a mortgage foreclosure in its community, and/or building, it must file a responsive pleading, or a notice of appearance. Because the judicial sale is such a crucial date, it is imperative that an association be aware of that sale, when it is scheduled. By filing papers in the mortgage foreclosure, the association will be given notice of the judicial sale, by the mortgage company. That association can thus calendar the date and demand assessment payments begin immediately thereafter.

Second, in a situation where a unit has kept its value, or enjoyed increased value, or where the underlying mortgage has been reduced - resulting in "equity" - there may be "surplus funds" as a result of the judicial sale. Surplus funds consist of amounts paid by a judicial sale's successful bidder above the amount due on the foreclosed mortgage. Third parties will often bid on units at judicial sales, where they can resell the unit for an amount above what they paid for it, satisfying the underlying mortgage via their successful bid. Creditors of the unit foreclosed upon, or of the owner of that unit, may petition the court for release of those "surplus funds" to that creditor, which will then be used to satisfy the owner's debt. So, a unit successfully foreclosed upon could very well yield funds to the association, to satisfy that unit's debt. The association's claim to these funds is superior to the unit owner's himself.

Third, an association under certain circumstances should consider bidding and even purchasing a unit in foreclosure. If there's equity in the unit, and the association is owed a sum significant enough to justify additional legal efforts, the association can bid on the unit at the judicial sale. The association would either be the successful bidder and thus be able to easily install a tenant, from which it can generate revenue, or sell the unit. By bidding at the sale the association, when there is equity, at the very least, the association may help to increase the eventual purchase price, generating surplus funds that can be sought by the association. It is only by participating in and/or monitoring that foreclosure that the association will be aware of the judicial sale, and its circumstances, and put into play any or all of these strategies.

If you would like to discuss this client alert in more detail or how it may affect your community association, please contact David J. Byrne at 609-895-7365 or by email at dbyrne@stark-stark.com.