

YOU FORECLOSED. NOW WHAT?

The property tax consequences to the Association after the successful foreclosure of its lien for delinquent assessments.

You, the Association, exhausted all other attempts to collect on a homeowner who remains delinquent with their assessments. The Association spent countless hours, energy, and possibly attorney's fees to get the delinquent homeowner to pay their debt. Either by judicial or non-judicial foreclosure, the Association successfully forecloses on a previously recorded lien against the home.

OK. Now what happens?

Many Associations worry about property taxes after foreclosure. Since the Association now owns the property, it must pay property taxes. But wait; California tax law does not consider the Association an owner immediately after foreclosure.

Under CA Revenue and Tax Code § 60 (R&T), to be subject to property tax, the transfer of title must result in a "change in ownership." Under CA R&T § 62.11, a foreclosure does result in a "change in ownership" – but "change in ownership" only occurs once the CA Code of Civil Procedure § 729.040, 90-day redemption period expires.

So, once the Association forecloses on the property, the debtor has 90 days to satisfy the debt to the Association. If the debtor pays within the 90 days, no "change in ownership" occurs, and the Association is free from any property tax liability.

INTERESTING ASSOCIATION TAX NOTE

Homeowner assessments are not taxable to the Association. You probably already knew that, but why is that so? Under the U.S. Internal Revenue Code § 528, homeowner assessments are classified as "function income," which is expressly exempt from taxation. Any expenses towards "function

ESCROW – "THE WHITE KNIGHT"

One of the many benefits to having a lien recorded against a property subject to delinquent assessments.

One of the worst things I have to tell clients is: "Since the senior lien holder foreclosed, your lien has been extinguished." Once that lien is extinguished, the Association loses its security interest in the debt, and the Association must seek remedy through Small Claims Court, or Superior Court if the debt exceeds the small claims jurisdictional amount. Thus, collection through judicial foreclosure is no longer available.

Often times clients become frustrated with the news. Fees paid to collection agencies or attorneys to pursue foreclosure now seem wasted.

Not so fast. A lien recorded against a property effectively clouds title. Many times prospective buyers are unwilling to purchase a property with a lien recorded against it. To get a property sold, escrow agents will request a payoff demand from the Association in order to remove the lien. Even though these escrow agents scream of time constraints to receive a payoff demand, under CA Civil Code § 2942, the Association has 21 days from escrow's request to provide the payoff demand.

Often times the buyers are paying off the liens to complete the property sale. Certain occasions the real estate brokers take commission cuts to close escrow. In any case, the result is a complete satisfaction of the debt, and the satisfaction of the Association not having to pursue a

income” are not deductible, however.

runaway debtor.

ALL IS NOT LOST IN BANKRUPTCY

Not all delinquent homeowner accounts are lost when a debtor files bankruptcy.

Yikes, here we go again. The lien is recorded; the Association is looking to pounce; and then the debtor files

JUDICIAL FORECLOSURE: YOU HAVE OPTIONS

Money awards and judicial foreclosure are included in court judgments.

Judicial foreclosure should be an option, not mandatory. Once an Association decides to

bankruptcy. Time to write all the debt off as uncollectible.

Well, do not give up just yet. First, the debtor must receive a discharge under 11 U.S.C. §§ 727, 1141, 1228(a), or 1228(b), for any debt to be considered uncollectible. Even so, Associations catch a break with certain debt - post bankruptcy petition debt.

Several years ago 11 U.S.C. § 523 was amended to include homeowner assessments as an exception to discharge if the debt accrued after the bankruptcy petition (when the bankruptcy was first filed). In addition to the debt being post-petition, the debtor must maintain a legal, equitable or possessory interest in the Association property for the discharge exception to hold. 11 U.S.C. § 523(a)(16).

So, does the bankrupt debtor maintain residence at the property, or does he or she still own the property? Does the bankrupt debtor continue to not pay dues? If yes, those delinquent dues accruing after the bankruptcy petition are still collectible and actionable by the Association.

Remember under 11 U.S.C. §§ 301, 302, and 303, an automatic stay is imposed once a bankruptcy petition is filed; meaning, you cannot commence action against the debtor unless discharge or dismissal of the case.

take the debtor to court, the goal is to get an award from the court for both judicial foreclosure and a money judgment.

Money judgments are key. In these times where foreclosures are still rampant, a money judgment gives the Association the ability to collect the debt through other avenues; such as wage garnishments, bank levies, or keepers stationed at the debtor's business. Pursuing non-judicial foreclosure *may* get you the property, but property ownership comes with headaches. More importantly, in most times the Association's lien is junior to the debtor's mortgage. Thus, even if the Association foreclosed on its lien, the bank can still foreclose, leaving the Association without remedy.

So, it is a good practice to have multiple options to collect upon assessment debt, as foreclosure will not always be available. It is great to have options.



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