HUSCH BLACKWELL

What to do With Bank and Other Third-Party Foreclosures

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A. When a foreclosure is first initiated by a bank or some other third party, the association has three choices:

1. Do nothing and hope that the foreclosure is actually completed and that the entity foreclosing actually has a lien superior to the Association;
2. Monitor the foreclosure internally; or
3. Send the file to an attorney to protect the Association's interests

B. If the lien is not superior to the lien of the association under Sec. 703.165(5), the association should:

1. File an answer, notice of retainer and obtain a title report;
2. Make sure that the plaintiff understands that the association's claim is superior to its claim.

C. If the plaintiff's lien is superior, then the association has to decide how it wants to proceed:

1. Do nothing and assume everything will be OK and completed timely;
2. Monitor the case internally; or
3. Hire an attorney to:
    a. Monitor the case to make sure that the foreclosure is actually completed timely;
    b. Make sure that the association is advised of the date of the confirmation of sheriff sale so that the association can start assessing the new owner; and
    c. Make sure that any transfer fees are properly charged and collected.

D. Costs & fees associated with monitoring a foreclosure:

1. Costs (if you can't get a title report in some other way) $100 or less for a letter report; and
2. Fees of approximately $500.

E. Process that each association should follow:

1. Develop a collection policy and follow it consistently, recognizing that some files will be winners and some losers;
2. Don't judge the success of your collection policy on the outcome of any one or two matters, as those can always be skewed one way or the other, but rather on the overall amount collected less the costs of the collections as compared to doing nothing or something more or less aggressive; and
3. Finally, a collection policy of doing nothing could be a potential breach of a board member's fiduciary duty, especially if the result of the policy would be to allow third parties to foreclose out an Association's superior interests.