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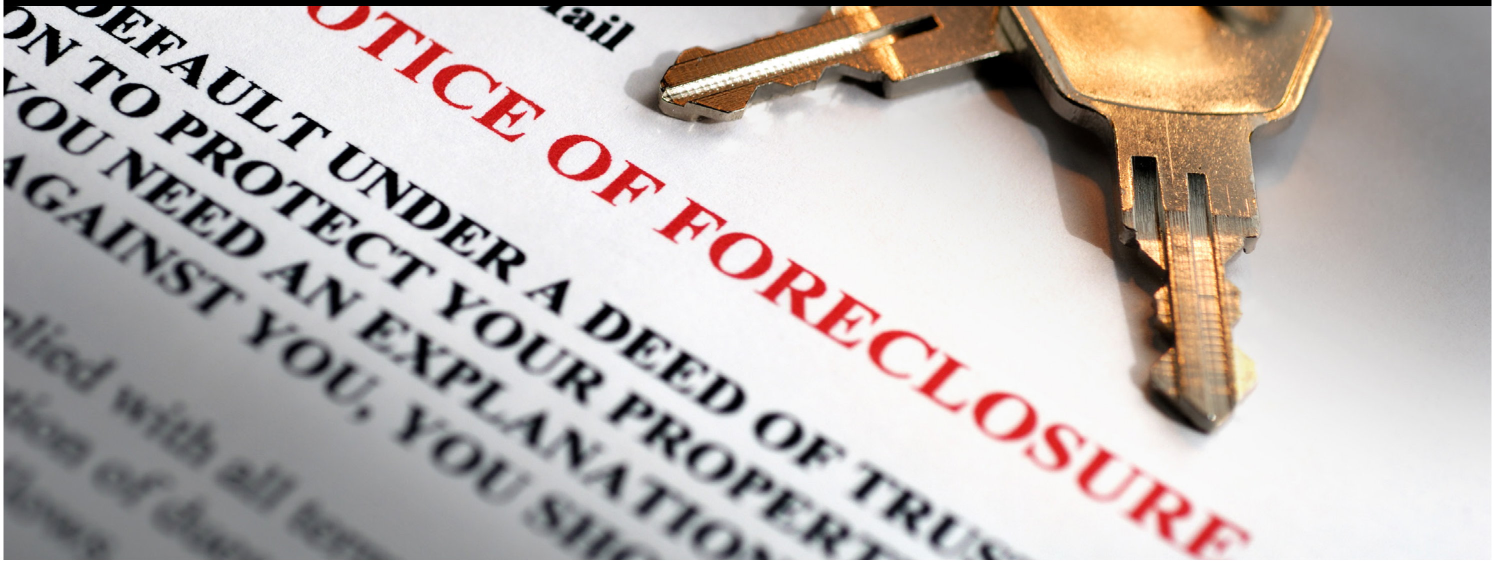

Post-Foreclosure Considerations: When the Association Owns a Unit

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The Association has completed its lien foreclosure action and is now the owner of a unit. Now what?

I. Immediate Concerns—things to do the day of confirmation of sheriff's sale

A. Where the unit is vacant:

1. Change the locks
2. Insure the unit
3. Make sure the utilities are put into the Association's name—ensure the heat is on
4. Assess the condition of the unit—take pictures to share with your attorney!

B. If the foreclosed owner (or his tenant) is still living in the unit:

1. Insure the unit
2. Post a letter on the unit's door stating that the Association now owns this unit and the resident has "x" days to vacate or the sheriff will evict them

   **however, if there is a good tenant living in the unit, the Association may want to retain this tenant—see section III.A(3) below
3. If the stated number of days pass and the resident is still in the unit, the Writ of Assistance should be sent to the sheriff to commence the eviction process
4. If possiible, Assess the condition of the unit and take photographs. Remember it is now your unit.

II. A Common Misconception with Post-foreclosure Unit Ownership

Q: There is a first mortgage still out there (that we did not foreclose)—does the Association have to start making payments on the mortgage now that it owns the unit?

A: NO! The Association never has an obligation to pay the mortgage on the unit. The mortgage (and underlying note) was a contract between the former unit owner and the bank. The Association has no part in that contractual obligation and owes nothing to the bank. However, the first mortgage holder still has a lien on the Unit.

III. Decisions to be made by the Association

A. Rent the unit

1. Is rental allowed by your documents? Even if rentals are restricted, it is a good idea to carve out an exception for the Association in the event it owns a unit through foreclosure.
2. Rental can be a great way to recover some money and make up the Association's losses
3. If the foreclosed owner had a good tenant living in the unit, the Association can consider extending the tenant's lease—and simply collect the rents to make up for the former owner's arrears.

B. Sell the unit

1. This option depends entirely on the first mortgage and property tax balances, and the unit's current market value
2. If there is equity in the property, the Association can certainly consider listing the property for sale

IV. Other Considerations

A. Is a mortgage foreclosure in process, and at what stage

1. If we predict it will be a while before the bank takes ownership, it may be in the Association's best interest to rent the unit and recover some of its losses during the bank's foreclosure.
2. The Association can consider offering a deed in lieu to the mortgage company—this will ensure a dues-paying owner has the unit as soon as possible.

B. Is there a tax foreclosure in process or soon to be started?

1. Generally, municipalities start a tax foreclosure process once property taxes are 3 years overdue.
2. If a tax foreclosure is in process, the Association must immediately consider paying the municipality the tax balance on which it is foreclosing to stop the foreclosure process.
3. Even if the taxes are not 3 years delinquent, if the Association believes it will own this unit for a while, it may want to bring the taxes current to avoid further interest and penalties.

C. Condition of the Unit

1. How much will it cost to make the unit rentable or saleable?
   a. Get bids from contractors
   b. Involve a realtor
2. For rentals: consider length of time the Association plans to own and rent the unit, and whether the cost to fix will be recovered
3. For selling: as long as the repairs to make it saleable do not put the Association in the red, the repairs make sense.

V. The Worst-Case Scenario, and How to Turn it into a Positive

A. The unit is completely trashed, and it would cost the Association far too much to make it rentable/saleable, AND the mortgage foreclosure is stalled out or non-existent

B. This unit has no equity, and a large mortgage on its title…no chance of the Association recovering money on the sale

C. The Association cannot rent the unit in this condition, and the uncertainty that the bank may finally start and complete its foreclosure makes the repairs a risky investment

D. Possible solution: a Quiet Title action

1. This is a lawsuit the Association can bring against the first mortgage holder
2. The remedy the Association seeks from the Court is:
    a. Either the bank agrees to take a deed-in-lieu from the Association and own the unit (paying dues going forward); or
    b. If the bank fails to agree, the Court orders the mortgage SATISFIED and we record the Order, giving the Association **clear title** on the unit.
3. Result: either the Association now has a new owner responsible for assessments; or it owns a unit that it can now afford to fix up and sell, as there will be no mortgage to pay.

VI. For each of the items and thoughts set forth above there are a number of variables that you should be certain to discuss with your attorneys.