

## **MORTGAGE FORECLOSURE: PROTECTING YOUR ASSOCIATION**

In the midst of a foreclosure crisis negatively impacting all Associations, there are some steps Associations may take to protect themselves both physically and financially.

In Minnesota, for the purposes of this article, we will focus on foreclosure by advertisement where a Notice of Mortgage Foreclosure Sale is personally served upon the occupants at least four weeks prior to the scheduled sale, and a copy is published in the legal newspaper for six weeks prior to the scheduled sale.

Prior to the actual sale, the owner has a right to "reinstate" the mortgage by paying the lender the amount in default (as opposed the accelerated loan balance) plus all costs and a statutory amount of attorney fees. Reinstatement stops the foreclosure process.

If the owner does not reinstate prior to the sale, then, the Sheriff of the county in which the property is located holds a sheriff's sale. The lender will make a cashless bid either of the amount owed, or often times for an amount less than what is owed. Third parties are free to appear and over-bid the mortgage company with cash.

If the sale is held, then a redemption period follows which normally is six months from the date of the sale. However, if the mortgagor/borrower has paid more than two-thirds of the original principal balance of the mortgage, a 12 month redemption period will follow.

If the property is "abandoned" within the meaning of Minn. Stat. § 582.032, the lender may shorten the statutory redemption period to five weeks. This five week period may run from the date of sale if the was brought before the sale, or five weeks from when the order granting such relief is entered and filed against the property, if brought after the sale.

During the redemption period, the owner/borrower continues to own all right, title, and interest in and to the property. He can continue to live there, continue to lease it or enter into a new lease and collect the rents. He also may redeem the property by paying to the holder of the sheriff's certificate of sale the amount bid in at the sale, plus additional interest at the underlying note rate, and attorneys fees and costs, as determined by the statute. Redemption usually is accomplished through new financing or the sale of the property.

Before property goes into foreclosure, i.e., before a Notice of Pendency & Power of Attorney to Foreclose has been rerecorded, one of the best things an Association can do for itself is to file a Request for Notice of Mortgage Foreclosure and Redemption Reduction with the county per Minn. Stat. Sec. 580.032. If filed before the Notice of Pendency and Power of Attorney, the lender's attorneys are required to provide you

notice of the mortgage foreclosure sale and, if the redemption period is being shortened, notice of this action too.

Most mortgage-foreclosure law firms provide notice weeks if not months before the sale is to occur. This often saves the Association a good deal of time and often attorneys' fees if a known mortgage foreclosure sale is on the horizon. Most importantly, it allows you to take the steps discussed below! Our firm normally files the Request for Notice for all delinquent accounts we are asked to collect.

Another good step is to review legal newspapers for the names/addresses/legal descriptions of your Association's property.

Routine inspections of the property should be made, looking for vacant/abandoned property. Also, members should be encouraged to pass along such information if they believe a neighbor has moved out and property is sitting empty.

Since being "in foreclosure" often means different things to different people, if an owner indicates to you that his unit is "in foreclosure", of even if property is abandoned, ascertain how far the foreclosure process has progressed. Contact the county recorder/Registrar of Titles to see if a Notice of Pendency and Power of Attorney has been recorded. Then, contact the attorneys who filed it to see if a sale has been set, or if one has occurred, the bid, etc.

Once the Association knows about a sale being scheduled to occur, it is vitally important for the Association to follow up with the mortgagee's attorneys as to whether the sale occurred. Having such information would allow you to take steps to inspect the property to see if the property is occupied, or, if not, to see if the lender already has secured and/or winterized the same. If property is vacant and abandoned and has not been winterized (usually you would see a sticker of some sort on the door), contact the lender's attorneys, in writing, and let them know the property is vacant and abandoned. The Association wants the lender to winterize and secure the property. It also wants the lender to shorten the redemption period, discussed above. Make sure to use the word "abandoned" when having this discussion with the lender's attorneys.

If you get no response and the temperature is plummeting, do not wait for the mortgage company to act. Most governing documents and the statute allow the Association to take steps in order to protect units and common elements from damage.

Moreover, if the Association incurs cost benefiting few than all the units (here, the cost to winterize, rekey, etc. a unit), under MCIOA, said cost may be assessed back to the unit and, depending on the stage of the foreclosure process, the mortgage company may, in fact, be responsible for these costs. If your Association is governed by the MCIOA, the holder of the sheriff's certificate of sale will take subject to a lien in favor of the Association for dues, special assessments, and insurance assessments that are

assessed during the six month period preceding expiration of the owner's redemption period. If the redemption period is six months, this usually runs from the date of sale forward. If the redemption period is 12 months, we still go back only six months. If the redemption period is shortened to five weeks, we still go back six months.

However, if the process just has started and the sale is not set to occur for several months, the Board then must weigh its options carefully. It may secure and winterize a unit (a few hundred dollars) itself or risk payment of the insurance deductible and the increased premiums from making yet another claim. Remember, the lender/holder of the sheriff's certificate of sale only will be liable for special assessments if assessed during the six month period preceding expiration of the owner's redemption period. So, if the pipes burst and are repaired/assessed in January, the sale happens in February and the redemption period expires in August, the Association, not the lender, is liable for the bill (as is the prior owner). Therefore, do not be penny wise but pound foolish.

In addition to asking the lender to secure abandoned property, effective August 1, 2009, *cities* now may require the holder of the sheriff's certificate of sale to secure property. If the lender fails to do so, the city may do so, with the costs incurred to do so being assessed by the city against the property (similar to the way a special assessment or taxes are assessed).

Application of the law is unclear and, most cities have not yet set up exact offices through which to request such notice. Some cities are more responsive than others. Our office has received notice of such actions through the filing of a Request for Notice of Mortgage Foreclosure which is recorded with the county recorder/registrar of titles office. Such Request for Notice also have been the basis for receipt of tax forfeiture notices.

If the sale has occurred, prepare for redemption as a junior lien creditor, if the bid makes doing so economically feasible, or, if not, calendar out to after the redemption period is to expire to contact the new owner about the dues.

Once the redemption period has run and, the lender/holder of the sheriff's certificate of sale is the new owner of the property, make sure to start sending this entity copies of your complete ledger. Some of you reading this article have experienced first hand how receipt of a letter prompts full payment from the lender even though only six months worth of dues were out. Others, especially when dealing with federal agencies such as HUD, or semi-federal agencies like Fannie Mae & Freddy Mac, know the wait for payment can be very long, often until re-sale.

Hopefully, the discussion above can assist Associations to help themselves. The key is to keep informed of the process and to follow up once you know foreclosure is likely to occur. If you do need assistance, however, our firm stands ready to help.