



NOWACKHOWARD
COMMUNITY ASSOCIATION ATTORNEYS

Advanced Collections

(Bankruptcy, Foreclosure, &
Tax Liens)

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04.17.2019



Bankruptcy

What does this mean for the
Association?



Bankruptcy Basics

- Governed by Federal Laws
- The Purpose of Bankruptcy
- The Automatic Bankruptcy Stay
 - Definition under the Bankruptcy Code 11 U.S.C. § 362
 - What this means for a debtor
 - What this means for a creditor
 - Consequences of violating the automatic stay



QUESTION

Bankruptcy:

What
Chapter?

ANSWER

1. Chapter 7*
2. Chapter 11
3. Chapter 12
4. Chapter 13*



Chapter 7 Bankruptcy

- What is it and how does it affect the Association?
 - “Liquidation” bankruptcy

- Pre-Petition amounts owed

- Post-Petition amounts owed

- Action in the bankruptcy case



Chapter 13 Bankruptcy

- What is it and how does it affect the Association?
 - “Reorganization” bankruptcy

- Pre-Petition Debt
 - Proof of Claim

- Post-Petition Debt
 - Post-Petition Delinquency Letter
 - Motion for Relief from the Automatic Stay



Chapter 11 Bankruptcy

- Most commonly a reorganization for businesses

- Also available to individuals who do not qualify for Chapter 13

- Key differences between Chapter 11 vs. Chapter 13 bankruptcies
 - Complexity (assets, properties, creditors, income sources)
 - Duration
 - Plan of Reorganization



Discharge vs. Dismissal

- **Dismissal**
 - Unsuccessful bankruptcy
 - Reasons for dismissal
 - What this means for the Association: may proceed with collection activity as if the bankruptcy never happened

- **Discharge**
 - Successful bankruptcy
 - What this means for the Association: the debtor has discharged his or her personal liability on all pre-petition debt



Bankruptcy: Final Thoughts

- Role of the Bankruptcy Trustee
- Bankruptcy Courts are Courts of Equity
- Abusive filers
- Patience is a virtue!



Sales that Strip Title from Owner:

- Tax Sales
 - Owner gets a one year “redemption” period to pay purchase price plus penalty of 20%
 - Tax sale purchaser subject to association assessments even though the purchaser cannot use the property during the redemption period
 - If redeemed, owner takes title subject to all liens that existed at time of tax sale
 - If not redeemed, tax sale extinguishes Association lien in almost all cases
- Non-Judicial Foreclosure – Most Georgia “Mortgages”
 - Sale of property under the power of sale clause in a deed to secure debt
- Judicial Foreclosure of Mortgage or Lien
 - Sale of property pursuant to court order to satisfy a lien



Association Options after Bank Foreclosure:

- If association lien extinguished at foreclosure, association usually writes off the bad debt. However, there are three possible ways association can get the past due assessments back:
 - Suing the delinquent owner individually
 - Imposing a special assessment against all owners for the unpaid assessments
 - Collecting the overage, if any, from the foreclosure sale
- Typically, when superior lien holder forecloses association's lien is extinguished EXCEPT when foreclosing in a Condo or POAA community and mortgage lien holder is the previous owner/seller of the property (owner financed purchase)



Levy on Real Property- Association Foreclosure

- Law since July 1, 2004 - Judicial foreclosure for GCA and POA only
- Eliminates need to be first in line
- GCA and POA associations can now foreclose subject to superior liens – don't have to pay off “mortgage”
- Foreclosure remedy no longer as cost prohibitive as it once was – estimated cost of \$3,000 depending on sheriff's fees/commission



Association Judicial Foreclosure

- Requirements
 - GCA/POA lien greater than \$2000
 - Lawsuit
 - Money judgment
 - Court order permitting foreclosure
 - Sheriff's sale



Foreclosure Procedure

- Provide owner with 30 days notice
 - Law requires this notice prior to filing of foreclosure action
 - Runs concurrent with notice required under FDCPA prior to filing suit to collect a debt
- Complete Title Search
 - Identifies superior encumbrances
 - Impacts marketability
 - May find out association's lien is first in line



Foreclosure Procedure

- File Lawsuit (same as regular collection lawsuit, but also ask court to permit foreclosure)
- Conduct Sale
 - Present court order and advertisement to sheriff along with 50 year title search and large packet of information
 - Ad runs four weeks in the legal organ of the county in which property is located
 - Sheriff auctions property on the courthouse steps, first Tuesday of month scheduled
 - Work with attorney to determine maximum and opening bid, discuss credit bid if permitted
- Collect Proceeds:
 - Fulton County Sheriff's Commission: The commission will be ten percent (10%) on the first \$100.00 and two percent (2%) on any amount over \$100.00.
 - Our judgment is reduced by the sale price at auction



Potential Buyers and Buyers' Issues

- Buyers
 - Third party (investor)
 - Association (take property back)
 - No one – sale cancelled (DON'T DO THIS!)
- Issues
 - Pay off superior liens (i.e., mortgage)
 - Negotiate short sale
 - Wait for lender to foreclose on superior lien
 - Flip unit if no mortgage



Association Foreclosure Possible Outcomes

- Remove owner from property – stop the bleed, remove bad neighbor
 - Requires eviction proceedings which are a separate legal action
- Payment or payment plan to cancel sale
- Sale of property by owner prior to foreclosure auction
- Foreclosure by superior lien holder
- Bankruptcy



Thank You

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