2011 Financial Forecast—Associations Will Suffer from Lender Foreclosure Delays

By Thomas C. Schild, Esq.

There is no end in sight to the continuing rise in delinquent assessments which most community associations will face in 2011. Owners who are not paying the mortgage typically are also not paying the association assessments.

Delay in Lender Foreclosures

The pace of lender foreclosures in Maryland slowed after a new Maryland foreclosure mediation law went into effect in July 2010. Before a lender can sell a home at a foreclosure sale, the owner must now be allowed an opportunity for mediation to discuss alternatives to foreclosure such as loan modification or short sale.

The foreclosure mediation process can delay foreclosures by 60 to 90 days. This is in addition to the several month delay due to foreclosure notices required by the 2008 changes in the Maryland foreclosure laws.

Foreclosures are also being delayed by lenders who are re-examining the accuracy of loan and foreclosure documents in response to legal challenges and government criticism of lender foreclosure procedures.

In some instances, lenders favor "short sales" over foreclosures to allow the owner to sell the property directly with the lender accepting less than the amount owed on the mortgage. In a short sale, the owner may also ask the association to accept less than the full amount owed for assessments and related charges. If a short sale is unsuccessful, the lender then proceeds with a foreclosure sale.

Plan for More Delinquent Assessments

Faced with delays in lender foreclosures and owner requests to "short" the amount paid to the association, boards of directors should plan for continued assessment delinquencies. Every community association board should promptly take the following actions:

- Maintain clear and complete owner account records showing all charges and payments.
- Review the association governing documents and applicable statutes to determine the remedies for collection of assessments, such as liens or court suit.
- Implement the available remedies by adopting a collection policy which clearly states the procedures to be followed to collect delinquent assessments.
- Notify owners of the association collection policy, including applicable late fees, interest and collection costs which delinquent owners will incur.
- Take prompt collection action against delinquent owners, such as filing liens against their property or suit against them personally.

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- Review notices regarding lender foreclosures and homeowner bankruptcies and take appropriate action.
- Designate a person to consult with the association attorney and act on owner short sale and payment plan proposals.
- Amend the association governing documents, where needed, to provide for late fees, interest, collection costs and attorney fees to be assessed against delinquent owners and to permit acceleration of payment of assessments.
- Amend the governing documents to deny use of recreation facilities and other common areas by owners who are delinquent in payment of assessments.

FHA Cap on Condo Delinquencies

For condominiums, a high delinquency rate will make it more difficult for condo owners and purchasers to obtain loans insured by the Federal Housing Administration (FHA).

New FHA standards require that no more than 15 percent of units can be in arrears in payment of condominium assessments for more than 30 days.

Over 50 percent of first-time homebuyers now use FHA loans. FHA loans offer borrowers lower down payments, lower closing costs, and easier credit qualifications than conventional loans. The FHA loan limit is $560,000.00 in the Baltimore metro area and $729,750.00 in the Washington metro area.

Although association boards cannot prevent delinquent association assessments, planning ahead now to address the expected increase in the number of delinquent owners can cushion the financial impact on the association in 2011.

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