PUBLIC POLICY POSITION PAPER



05/02/2013

TITLE

COLLECTION OF DELINQUENT HOMEOWNERS ASSOCIATION (HOA)
ASSESSMENTS

THE QUESTION

Should CAR sponsor legislation in 2014 to empower Home Owners
Associations (HOAs) to collect delinquent assessments of unit owners by
creating a new "super" lien for delinquencies that is senior to the mortgage?

ACTION

If legislation is to be sponsored by C.A.R. in 2014, action is required.

POSITION OPTIONS

- 1. Sponsor legislation to create a new HOA lien that:
 - a) Makes up to one year's delinquent assessments senior to the foreclosing mortgagee; and
 - b) Gives the HOA a lien on any rents paid by a tenant to the owner of the Common Interest Development (CID) unit.
- 2. Reject the recommendation of the Working Group.
- 3. Other

DISCUSSION

THE PROBLEM

Delinquent HOA assessments are rampant throughout CIDs in California specifically, and the country generally. HOAs are facing a daunting fiscal burden of providing required services in the face of diminishing operating revenues. Home owners in CIDs are creating significant budgetary deficiencies for their HOAs when they refuse to, or are incapable of, maintaining current HOA assessment obligations. HOA Members are increasingly unwilling to increase their own assessments to cover the revenue shortfall created by the non-payment of assessments by other unit owners, yet also often appear

reluctant to aggressively pursue the delinquent homeowners for the overdue assessments. If the delinquent homeowner/unit owner is foreclosed upon, the senior claim of the mortgagee typically "wipes out" the HOA claim for unpaid assessments.

THE WORKING GROUP RECOMMENDATION

The 2013 Home Ownership Housing Committee Chair created a new working group to examine options and make recommendations to the full Home Ownership Housing Committee. The Committee's "Delinquent HOA Assessments Working Group" recommends:

That CAR sponsor legislation in 2014 that will empower HOAs to impose a lien on an HOA Unit for delinquent assessments that will:

- a) Create a lien for up to one year's delinquent assessments that is superior to the claim of the foreclosing mortgagee; and
- b) Empower the HOA to attach rent payments by a tenant in the unit in order to satisfy the unit owner's delinquency.

PLEASE NOTE: IF THIS RECOMMENDATION IS ADOPTED, IT WILL REPRESENT A REVERSE OF EXISTING C.A.R. POLICY.

PREVIOUS C.A.R. POLICY POSITIONS ON SIMILAR LEGISLATION

In previous sessions of the Legislature, legislation on this issue did not get out of the first committee hearing. In both instances, C.A.R. opposed the bills because of the potential negative impact on financing the purchase of units in CIDs. One occurred in 2007, when the CID industry sponsored a bill to make financial institution liens junior to 6 months of delinquent HOA assessments. Again in 2008, representatives of the CID Industry sponsored legislation creating a required escrow deposit of 6 months' assessments upon the sale of a unit in a CID.

OPTIONS CONSIDERED BY THE 2012 WORKING GROUP AND "END RESULT"

- -- Garnishment of Rents (Voted down by 2012 CAR Housing Committee)
- -- CAR Q & A on obligations of CID Unit Owners re HOA Assessments (Done)

- -- CAR Survey of the extent of "Delinquent HOA Assessments" problem (Done).
- --Support legislation requiring recordation of transfer of a unit in a CID pursuant to a sale within 30 days of the transfer. (Done- AB 2273, Chapter 255, 2012 Statutes)

SUMMARY OF ACTIONS IN CALIFORNIA AND OTHER STATES PROVIDED TO WORKING GROUP

At least one local jurisdiction in California (San Diego) has created a process through adoption of a local ordinance that, in instances of failure of a CID unit owner to pay required HOA assessments, a tenant of a unit in a CID can be required to pay the landlord's (unit owner's) late assessments and deduct that payment from the rent being paid to the unit owner. The ordinance requires this language to be expressly provided in the lease/rental agreement executed by the unit owner and the unit tenant.

* * *

Colorado's Common Interest Ownership Act creates a statutory lien in a CID for any HOA assessment levied against a unit owner in the CID. It allows HOAs to collect delinquent assessments before the foreclosure process is initiated and ownership of the unit reverts to the lender. Application of the resolution process under this statute is limited to those situations in which the owner has rented the unit or if the unit is vacant. The lien created by this statute is junior to any liens recorded prior to the recording of the assessment lien.

* * *

The State of Florida enacted legislation in 2012 that requires lenders acquiring a CID property in foreclosure to be responsible for any unpaid homeowner association expenses that accrued during the 12 months prior to financial institution acquisition of the property, or 1% of the original mortgage debt, whichever amount is less. Under the law, banks are not responsible for late fees or attorney fees. The lien created by this statute is declared to be superior to the rights of the unit owner and the holder of any lien on the unit created after enactment of the statute.

ARE THE REMEDIES UNDER CURRENT LAW SUFFICIENT?

HOAs are authorized by current law to record a lien against the delinquent property if the owner is delinquent in assessment obligations by 15 days or more, unless the governing documents provide for a longer period. Thirty days after a lien is properly recorded, the HOA may pursue either a judicial or non-judicial foreclosure IF the delinquent assessment amount exceeds \$1800 OR is more than 12 months delinquent. Pursuit of collection for lesser amounts owed can be pursued through small claims courts. The owner of a unit in a CID can demand the HOA to authorize a payment plan for the delinquent assessments, if so authorized by the governing documents.

POTENTIAL SUPPORT OF, AND OPPOSITION TO, THIS PROPOSED LEGISLATION

It is anticipated that organizations representing various segments of the CID Industry will SUPPORT this legislation. This includes the Community Associations Institute (CAI), California Association of Community Managers (CACM), and the Executive Council of Homeowners (ECHO).

It is also likely that such legislation will be OPPOSED by the banking industry as long as it has the creation of a lien superior to the mortgage lien contained in the legislation. This would include the California Bankers Association (CBA) and the California Mortgage Bankers Association (CMBA).