

July 2019 Newsletter

Everything You Didn't Want To Know About Collections (And Really Didn't Want To Ask)

Part Three – Where HOA Collections in the State of Nevada Is Today

The passage of SB306 in October of 2015 changed everything in terms of how HOA collection agencies should be collecting for their clients (the HOA) as well as how the clients and their management companies should be approaching the recovery of delinquent assessments.

What SB306 effectively did for HOA collections is that it made it crystal clear what the lender had to do to protect their first deed of trust on properties that had an HOA with delinquent assessments. The lender has to pay the Super-Priority, which is up to 9 months past due assessments and up to \$1,365.00 in collection fees. If they fail to do this, they are left with redeeming the property after foreclosure or risk their position to be lost to a buyer at the foreclosure auction. Since the passage of SB306, the lenders have been tripping over themselves to pay the Super-Priority quickly as it is their “get of jail free card.”

Typically, after the lender makes the Super-Priority payment, the amount is added to the principle balance of the mortgage loan, so they actually make money off the transaction. The HOA benefits from the fact that the Super-Priority payment is made at the Default stage, not the foreclosure sale stage, as the property should only be delinquent about 7 months at the Default stage. In other words, the HOA will always be made whole and the need to foreclose on properties that involve a lender have gone the way of Fred Flintstone.

The virtual elimination of the need to foreclose by virtue of the Super-Priority being paid by the lender has eliminated the “wrongful foreclosure” lawsuits that we saw prior to the passage of SB306. Note: to my knowledge, there has not been a single wrongful foreclosure lawsuit filed in the state of Nevada for activity that happened after the passage of SB306. Think about it. Why would the lender sue if their first deed of trust has been protected by paying the Super-Priority? The investor buying a property at the auction on properties that went to foreclosure over and above the 9 months past due assessments cannot get clear title anymore and they know it. (It is understood that the lenders do not agree that the investors ever had clear title, hence the lawsuits.) The point is that everything is above board, black and white and everyone knows where they stand now.

It behooves the HOAs and their management companies to get delinquent properties to their collection agency as quickly as allowable by law in order to take full advantage of the current HOA collection environment. The collection agency then must get non-paying delinquent properties to the Default stage as quickly as possible to ensure that the HOA is made whole on all delinquencies. If the collection agency fails to do this, then they have failed.

What I have described above applies to delinquent properties that do not pre-date SB306. This old inventory must move to foreclosure in order to get the Super-Priority paid if not already paid or to recover any delinquency not covered by the Super-Priority payment through foreclosure. This does not mean that

an HOA will have to actually foreclose. In many cases, the lender will pay the balance in full prior to foreclosure. (I am not sure why the lender does this. I just know that in the past year this has become quite common.) Moreover, 93% of delinquent property owners who get to the foreclosure stage either pay in full prior to the auction or put 20% down on a last chance 9-month payment plan.

I reckon this was a lot to digest, so let me bullet point what needs to happen if an HOA wants to significantly reduce their assessment delinquency in today's HOA collection environment in the state of Nevada.

1. Get delinquent properties to the collection agency as quickly as possible.
2. Make your collection agency accountable for getting the properties through the collection process as quickly as possible within the law so as to take full advantage of SB306.
3. Sign the paperwork to proceed with foreclosure whenever it becomes necessary. Do not give away your leverage!

Again, I am not an attorney. My knowledge is based on firsthand, on-the-ground experience and reruns of "Matlock." Always consult with your attorney prior to making any changes to your collection policy.