

Legal Speak

36 leading co-op and condo lawyers reveal daunting legal problems they have faced and the lessons they have learned.

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Common Charge Collection

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The board of managers of a condominium had a serious common charge collection problem caused by a defaulting unit-owner. There was no equity in the unit since it was purchased at the top of the market and the mortgage exceeded its current value. The condominium filed a notice of lien against the unit-owner in an effort to enforce its rights and remedies pursuant to the bylaws. The bank of the unit-owner had also begun a foreclosure proceeding to enforce its security interest against the unit based upon the mortgage. The foreclosing lender was intentionally delaying the case and failed to proceed in a timely manner by conducting the foreclosure sale. The conduct of the lender was both dilatory and deliberate since the delay was excessive and unreasonable and caused an undue financial hardship to the condominium. The lender has a superior lien to the condominium by statute, and the foreclosure sale extinguishes the lien and discharges the rights of the condominium to receive the outstanding arrears. Accordingly,

the foreclosing bank is not responsible for the payment of common charges to the condo until after the completion of the foreclosure sale. Therefore, the failure and/or refusal of the lender to proceed with the foreclosure sale in a timely manner and be obligated to remit payment of common charges to the condominium was causing a deficiency with the operating budget, which had to be funded by the other unit-owners.

We started litigation on behalf of the condominium against the foreclosing lender, alleging that the dilatory tactics and delaying strategy constituted improper and unreasonable conduct. The court determined that since "a foreclosure proceeding is one in equity," the condominium is entitled to have the matter concluded within a reasonable time. Therefore, the continued delays and failure to comply with the court order directing the lender to complete the foreclosure sale in a timely manner, resulted in the lender being forced to take responsibility to remit common charges to the condominium prior to the completion of the



foreclosure sale. The lender has been remitting payments to the condo for an extensive time period despite the fact that the lender has been unable to hold the sale due to its apparent inability to comply with requirements of the office of court administration relative to foreclosures.

Legal Lesson

The condominium has certain rights and remedies available that must be asserted and enforced to protect its financial integrity, including commencement of litigation against the lender engaged in dilatory trial tactics. Also, the condominium has the ability to aggressively pursue unit-owners in arrears by obtaining a money judgment against the unit-owner and expeditiously proceeding with a sheriff's sale to get a deed to the unit, thereby enabling it to rent the unit and offset common charge arrears. ■