

# CAI - LI Chapter News

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Published by the Long Island Chapter of CAI

Issue No. 26 – Autumn 2014

## FOR CONDO AND HOA BOARDS: A FORECLOSURE/COLLECTION PRIMER

By BRUCE J. BERGMAN, ESQ. OF BERKMAN, HENOCH, PETERSON,  
PEDDY & FENCHEL, P.C.

A condo or HOA board encounters a unit owner default in paying various common charges; perhaps there are quite a number of these defaults. Some action beyond obvious letters and revocation of privileges will often be needed to elicit payment. But what precisely are the powers available; what steps can be taken?

Tales abound of liens and foreclosures being difficult to understand. Banks and mortgages seem to be involved, law and procedure are obscure and the whole process is either a mystery or just confusing. While some details can be left to professionals, the board may not be appropriately armed to give direction and make decisions if the process is not fathomed. In any event, boards most effectively serve themselves and their constituents by understanding how everything works and how ultimately goals can be achieved. To be sure, there can be nuance and complication to all this, but understanding the basics – what a board can do and how everything works – can be efficiently outlined. It is worth knowing and can be readily grasped.

Some of the concepts relevant to this review were explored in a somewhat different context in two earlier articles in these pages: “Don’t Wait For the Bank’s Foreclosure”, Issue 21 Community Associations Institute – Long Island Chapter, 1 (Summer 2013); and “Don’t Wait For the Bank’s Foreclosure II”, Issue 24 Community Associations Institute – Long Island Chapter, 1 (Spring 2014). So, attention is also invited to those explorations as we approach the issues.

### ROLE OF THE DECLARATION AND BY-LAWS

Although there is plenty of statute and case law affecting collection and foreclosure, some of the actual powers are set forth in the declaration and the by-laws: recouping legal expense, late charges, accrual of interest on default, authority of the board, among others. Therefore, it may be necessary to consult those documents although generally they are similar. The board’s general counsel or special foreclosure counsel, if engaged, will know these provisions and should proceed accordingly.

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### FILING A LIEN

When a unit owner defaults, whatever the amount due, it is for the moment merely a bookkeeping entry, something in a sense just theoretical. In the face of continued non-payment, that debt, that obligation, needs to be memorialized of record, for the world to have notice. That is accomplished by the filing of a lien with the county clerk. So if the question is asked, "can we file a lien?", the answer is assuredly "yes". (For condos it is a matter of statute, for HOA's the authority is less precise, but such is a detail which need not be examined here.)

All the board needs to do is decide that it is time to file the lien. Supply counsel with the address, the unit number, the unit owner's name and a breakdown of the sums due. The attorney prepares the lien and submits it for filing. Shortly thereafter (the time can vary from county to county), the lien is of record and burdens the property. This is the first demonstration to the unit owner that the board is in earnest.

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### **LIEN IS A CONTINUING LIEN**

This is an important and comforting concept to appreciate. Suppose at the time the lien is prepared, the unit owner owes \$2,000. (It could be less or it could be much more depending upon the level, category and computation of charges and the duration of the delinquency until the decision was made to file the lien.) Whatever the amount at that moment, it appears to become stale the very next month when additional sums, late charges and interest come due – with a similar scenario monthly thereafter.

This is not a problem, though, because the lien is deemed at law to encompass all subsequent amounts, hence, the denomination a “continuing lien”. This benefit continues through the foreclosure process should that be necessary.

### **WHEN TO FILE THE LIEN**

This is mostly a business decision, but there are factors to consider. First, the by-laws might require a certain notice or waiting period before a lien can be filed so adherence to that is, of course, required. Once any possible constraints have expired is when it becomes a judgment call.

For the unit owner who didn't pay because of a lengthy hospital stay, which has or is about to conclude, compassion is typically in order. Likewise, the board may not take an aggressive stance for the owner who was out of work for a few months, has gotten a new job and is amenable to a payment plan.

But for those who simply cannot pay, or those who game the system and choose not to pay, experience suggests that waiting and hoping will fail. There cannot be a foreclosure by the board without a filed lien and so proceeding with dispatch is recommended. Because the board's legal expense is most often the responsibility of the defaulting owner, being repaid the modest fee to file the lien will be a part of any unit owner's remittance of arrears. Thus, the board suffers no monetary loss through diligence in filing the lien. It should strongly consider that.

### **SUING ON THE DEBT INSTEAD OF FORECLOSING**

If the question is asked, this can be done. The board could simply sue for the arrears. This would usually be faster than foreclosing, but its efficacy is questionable. Even when a judgment is obtained, the owner needs to have readily available assets to collect upon. And if he does not, finding those assets (if they exist) can be time-consuming and expensive and may not yield results.

The pros and cons of pursuing the monetary obligation instead of foreclosing is a more detailed examination than is merited here. Suffice it to say for our purposes, usually (but

not always) foreclosure is the more productive path.

### **FORECLOSURE – THE BOARD'S MAIN REMEDY**

Let's immediately answer this elemental question: Can there be a foreclosure of the lien by the board? Answer: Yes.


This promptly leads to wonderment about the bank and any mortgages it holds on the unit, in particular, the interplay between a condo or HOA foreclosure and a foreclosure by a bank holding a mortgage. This is a bit more nuanced and will be reviewed later, but the central point to understand is that unless and until a senior bank may have actually completed a foreclosure on the unit, the board is absolutely free to pursue its own foreclosure, unfettered by what the bank does or does not do. Whether it is a good strategy to foreclose is a different contemplation – to also be discussed. But the key aspect bears repetition: any condo or HOA foreclosure is independent of a bank foreclosure.

### **HOW A FORECLOSURE WORKS AND WHAT IT ACCOMPLISHES**

This is a legal proceeding with various distinct plateaus (most of the minutiae is best left to counsel), which consumes roughly between one and two years, somewhat less with exceptional diligence by counsel and luck, more when the courts are bogged down and when a unit owner chooses to contest. In the latter instance it becomes a litigated case and candidly, the system is made to be abused. Unit owners who want to lie (and it surely happens) can add detainment to the action. But these same people never would have paid anyway and the condo or HOA can expect to prevail in the end. The crazy cases are a minority, but it would be imprudent for a board member to dismiss the possibility of litigation.

The board is the plaintiff in an action to foreclose its lien. The unit owner and anyone having an inferior lien on the property is a defendant. (Judgment creditors, junior mortgage holders and other lien holders are in this category.)

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## FALL & WINTER ARE PERFECT TIMES TO REMODEL COMMERCIAL POOLS

By MIKE WRIGHT, PRESIDENT — AMERICAN POOL MANAGEMENT

Your outdoor pool has likely been closed for several weeks now. After winterizing outdoor sites, it may seem like pool management tasks and plans stop until summer arrives again. However, fall and winter are actually great times to consider a remodeling project of any size.

### Take Advantage of the Quiet Season

Most commercial pool owners plan to have remodeling projects done in the springtime. This means that contractors will be incredibly busy or completely booked. Instead, take advantage of the autumn and winter seasons to reach out to professional pool construction services. It's very likely that they'll have plenty of time to discuss your plans and options.

If you're planning a big project, contacting the company at this point in the season may be the optimal time. Projects can run anywhere from several days to a few months and you won't have to worry about the remodeling running into swimming season. Additionally, if any problems should arise, you'll be sure to notice them well before the arrival of summer, leaving contractors plenty of time to return and fix the issue.

### Have More Time to Prepare

A remodeling project may very well call for some redecorating. The sooner the project is completed, the more time you'll have to move the deck furniture around to figure out the configuration that best complements the new design. You'll also be able to gauge whether you'll need more staff for the pool and have the time to put out advertisements, conduct interviews and train new hires.

If your remodeling is a large project that you believe will require more staff to complete, consider reaching out to a full-service pool company that will be able to provide builders for your project and provide trained staff for the facility. This allows organizations to focus on methods to increase guest attendance and satisfaction.

There are many advantages in reaching out to pool construction services this winter. You'll give yourself and your staff more time to prepare for the busy season and you'll most likely be able to schedule several consultation appointments before contractors begin the work. This way, you can have your project completed well ahead of time and ready for swimmers. ■



### New Build

Installation of trim tile on entry steps which is mandatory for safety.

Code requires no separation between coping and deck, but 1/8 of an inch is allowed between deck and deck (ANSI Code).



### Refurbishment of Existing

Renovation work was performed which dressed up the existing pool with brick pavers and cement deck.

*Continued from Page 3*

During the course of the foreclosure, until the moment of the court decreed foreclosure sale, the unit owner has the absolute right to satisfy the lien – in full. The condo or HOA need not accept a penny less than everything due it and that includes all interest, late charges, legal fees and court costs. This is a powerful weapon. If the unit owner is chastened by the action and feels the pressure of imminent loss of title, he may offer a payment plan. If that is truly the best he can do (it may or may not be) and the board is amenable to it, that can be accepted. The foreclosure holds in place as a sword in the event of a default on the plan which is hardly uncommon.

If the obligation is not paid, the lien foreclosure action eventually elicits from the court a judgment of foreclosure and sale which, in turn, authorizes the final event: the foreclosure sale. At the courthouse or a town hall (depending upon the county where the property is located), a judicial sale is conducted under the direction of a court appointed Referee. The sale is an auction and anyone can bid. The end result is either that a third party buys the property and the condo or HOA will have been paid all the money due it, or some lesser sum it was willing to accept, or, the condo/HOA gets the property back, free to resell it to a new owner who will pay, or to rent it out (until some day that a bank may complete a foreclosure of its mortgage).

### LOOKING AT THE NUMBERS AT A FORECLOSURE SALE

When a foreclosure sale arrives, counsel will ask the board for bidding instructions. Both to better understand the end result of a foreclosure, and to arm the board to wisely give those bidding instructions, we look at some numeric examples to elucidate.

Suppose for example that the sum due on the lien by the time of the foreclosure sale is \$25,000. (We understand, of course, that there are many variables and that amount could be \$12,000 or \$80,000 or anything below, above or in between.) Also assume for the purpose of example that there is a bank with an unpaid \$100,000 mortgage (senior to

the sums due under the lien), and that the property – the unit – is worth \$200,000.

Mechanically, this means that anyone who bids at the foreclosure sale, and bids up to the \$25,000 due to the condo or HOA, will buy the property subject to the \$100,000 bank mortgage and the obligation to pay that mortgage. This aggregates, of course, an investment by the foreclosure sale bidder of \$125,000. Would a person prudently pay \$125,000 to own a property worth \$200,000? The answer should be “yes” and this would suggest that a foreclosure sale in this scenario would lead to a third party buyer and would give full payment to the condo/HOA of the sums due to it. Indeed, the bidding might go above the \$25,000, although the foreclosing party (here the condo/HOA) can never get more than the sum due to it – in our example, \$25,000. Given this set of facts, the bidding instructions will be to bid up to the full debt and the end result should be a happy one.

Now assume an alternate circumstance where the sum due is the same \$25,000, the senior bank mortgage is the same \$100,000, but the value of the unit is \$90,000. If the question is asked again, would someone pay \$25,000 at the foreclosure sale, thereby creating an investment of \$125,000 (the aggregate of what was paid at the sale and what must be paid on the senior bank mortgage)?, the answer would likely be “no”. Aside from not expecting to pay retail at a judicial sale, here the bidder would be, in essence, paying \$125,000 for a property worth only \$90,000; it typically does not make sense. Even if the condo/HOA was willing to accept \$5,000 at the sale for the benefit of getting a new owner who would pay in the future, the investment would still be \$105,000 for a property worth \$90,000 and so a bidder would still be unlikely. You can see, though, that as the numbers change, different scenarios eventuate. One point to understand is that the condo/HOA could elect to have the property sold at the foreclosure for something less than what it is actually due. That is a business decision.

In this second example, the likelihood that any third party would bid is slim and, therefore, the condo/HOA would be the successful bidder at the sale, would take the unit back, and would be well-advised to rent it and collect the income until some day when the senior bank might complete its own foreclosure.

### PAYING THE BANK?

A further concept here to emphasize is that should the condo/HOA become the owner of the property, it has no obligation whatsoever to pay the bank the \$100,000 due on the unit owner’s mortgage. The unit owner was bound to pay that (and is still liable) because he had signed a promissory note or a

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**PRESIDENT'S MESSAGE**

By FRANK X. RIGGIO, CAI-LI CHAPTER PRESIDENT FOR 2014

Greetings everyone. Now that the leaves are turning and the grapes have been harvested, let's take a moment to think about what we have accomplished over the last few months. Without a doubt, one of the biggest achievements we can point to is the tremendous success of our Trade Show. We simply outdid ourselves at every angle.

We had the most vendors exhibiting, the most visitors attending, attention-getting training sessions, outstanding classroom attendance, hosted a delicious breakfast and lunch, and we closed the day with an innovative idea utilizing a stand-up comedian just prior to our magnificent raffle to end. Many, many thanks to our vendors, sponsors and member attendees for a truly fantastic event.

All of this would not have been possible without the tremendous efforts of our Trade Show Committee, lead by our President Elect, J. David Eldridge and his team of dedicated assistants coupled with the full and untiring support of our truly resourceful and innovative Chapter Executive Director, Christine Majid. Thank you David, Christine, and every member of the Committee — Well-Done everyone!

Just over a week ago, we hosted the Basic Essentials Class for volunteer association members at the Belfor facility in Ronkonkoma. This is always an excellent chance to enhance your skills so please take advantage of this opportunity and the chapter offers the session annually.

To highlight the importance of the CAI Basic Essentials class, simply ponder this question, WHAT IS A BOARD SUPPOSED TO DO?

Legal sources, like your community's Offering Plan, typically assign a Board of Managers, or Board of Directors, the responsibility to maintain, protect, preserve, and enhance the common areas and the unit values of the total community with the primary role to uphold policies, standards, procedures, programs, and budgets for the community and to make the adjustments necessary to allow the community to flourish.

To accomplish this task, Board members must exercise sound business judgment and act in the best interest of the community as a whole. Boards should also establish short and

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long range plans so there is consistency when board members change. As you can see, Board members have a lot of responsibility, which usually works well when everything is going well and everyone in the community is doing what they should. Surely that doesn't happen everywhere, all the time. We all know of several situations where that has not been the case.

I don't have to tell you this has been a tough year for communities and the people serving on boards. Suddenly, boards are having problems collecting common charges and assessments at the same time expenses are increasing — snow removal last winter was a real killer. Receiving these funds becomes critical to provide basic services and to maintain and repair common property for the community.

At the same time, community members are asking their boards to change their basic way of operating to meet reduced interest lending criteria. To accomplish this means meeting different requirements for different agencies: increase reserve funds for one, increase insurance for another. Additionally, arrears have to be held to 15%, at the same time that many owners are struggling to just pay their bills. These same members then ask why their property is decreasing in value, but taxes continue to increase. It's

amazing, do more with less, where have we heard that before?

How are the board members and managers supposed to keep up with all the changing regulations, different needs of owners and different ways to collect money due? Be sure to take full advantage of all the Community Association Institute has to offer.

The Long Island Chapter provides wonderful educational and social events that benefit all. This year, our primary focus has been on issues directly related to how you can make your community a better place to live, work or play. We started this year off with a seminar on energy saving information presented by PSEG. In March, we presented a "Nuisance Violations" panel discussion offering tips and suggestions. Hopefully, you were able to join us for the lively discussion at the "Legal Roundtable" we held at Fairfield St. James this past May, or the "Fraudulent Activities" discussion panel we held in September at Capital One Bank.

At the beginning of the year, as I started "my watch" as the President of the CAI Long Island Chapter, I explained that the two main goals for my term would be to increase our chapter's growth and to STRONGLY encourage community volunteer involvement. As my time grows short, I am happy to report that we have been accomplishing these goals in a very positive fashion. It has been my great pleasure to lead

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this outstanding organization and to be clear. I would not be able to claim successes were it not for all of the tremendous efforts of our team of community volunteers, property managers and business partners.

As always, if anyone has a question related to how your community operates, don't hesitate to bring it forward. Our Property Managers and all of our Business Partners are experts in their field. They are more than willing to answer questions and help our members take care of their needs. Speak to them directly during our events, or give them a call. Visit the business directory on the CAI - Long Island website [www.cai-li.org](http://www.cai-li.org) for a complete listing of our business partners where you will find their contact information.

You are a member of a wonderful organization dedicated to making community associations become better. Please, be sure to take advantage of all CAI offers. If you know someone who should be introduced to the CAI, do your part in making us grow and bring them to a meeting, guests are welcome!

It has been my distinct pleasure to serve this great organization and I will do my best to support its goals and positions as we move forward. Best wishes David, I'm sure you will do us proud and keep the ball rolling much better than I. Until next time, God Bless. ■



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## UNDERSTAND AND KNOW BEFORE YOU PRUNE SHRUBS

By H. BRUCE HELLERICK, SENIOR HORTICULTURE SPECIALIST OF BRICKMAN GROUP

Next to planting, pruning is the most frequently used horticultural practice a landscape manager will use to maintain a property. Correct pruning will enhance the landscape design, maintain the plant's health and create a beautiful natural environment.

Many individuals approach pruning as a mystery with few solutions. But pruning is really quite easy once you understand and know the basic concepts, principles, and techniques. For some, herein may lie the mystery and also the solution to the mystery. Proper pruning involves knowing about four areas: Landscape Design Concepts, Horticultural Techniques, Botanical Principles, and Artistry. Lacking knowledge in any one of these areas greatly impairs the final landscape results. Let's take a closer look at each of these four areas to find a solution to increase our knowledge and understanding of proper pruning practices.

The first step to better pruning is knowing about **Landscape Design Concepts**. Step back and look at the "Big Landscape Picture" and ask yourself, why was this plant(s) selected to be included in the landscape design? What purpose does it serve in the landscape? Was it used as a screening, mass planting,

naturalized area, focal point, visual framing, or to create a vista for color, texture, shape, flowers, fruit, etc. If you don't know the reason, find out; contact the landscape architect or designer and learn about their vision for your property when it was originally presented to the owners.

The second step to better pruning is knowing about **Botanical Principles**. Botanical Principles involve knowing the anatomy of plants and understanding specific plant terms such as: node, internode, branch junction, terminal bud, and bud scar to name a few. You should be able to find several excellent resources at your local library in the horticulture, biology or botany sections.

The third step to better pruning is knowing about **Horticultural Techniques**. Within a plant there are many types of naturally occurring chemicals. Every time you make a cut there is a resulting wound. Plants respond to these wounds in various ways. It is critical to understand how the plant will respond before making the cut. The best way I've found to learn how plants respond to a cut is to sacrifice a shrub in an out-of-the way location and try different types of cuts. This is a good educational tool and great learning experience.

The fourth step to better pruning is **Artistry**. Artistry is an appreciation of the individual plant for its shape, form, texture, color, etc. Pruning with artistry will enhance the landscape and maximize the plants innate beauty.

When trying to conceptualize how these four (Landscape Design Concepts, Horticultural Techniques, Botanical Principles, and Artistry) fit together, think of four gears running in unison. When one moves, all the gears move; when one stops the others stop as well.

Having a more inclusive understanding of what is involved with pruning, we can discuss the actual act of pruning. **Pruning is the removal of a specific part of a plant for a specific purpose.** Let's repeat that pruning is the removal of a specific part of a plant for a specific purpose. You must know the purpose of making the cut, so you must have a reason in your mind! Some reasons to prune include:

- To preserve the integrity of the landscape design
- To maintain the plant's health
- When transplanting

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- To train the plant
- To restrict the size of the plant
- To improve the appearance of the foliage, fruit or flowers
- To rejuvenate the plant
- For special uses like bonsai, topiary, or espaliers

Once we understand the reason for pruning it is time to make our first cut. When I say prune, I am talking about INDIVIDUAL cutting of EACH branch or twig as opposed to shearing which is the INDISCRIMINATE cutting of ALL branches or twigs. Many individuals will say they are pruning when in fact they are shearing. Shearing should be reserved for formal hedges and topiary. Remember that each of these practices has their right and proper place use them when it is appropriate.

When pruning deciduous shrubs the first question usually asked is what time of year should they be pruned? There are two general rules to follow.

Rule 1: Plants produce flowers on last year's growth. Some of the plants in this category include: *Forsythia*; Lilac, *Syringa*; Mockorange, *Philadelphus*; Alternate Leaf Butterfly Bush, *Buddleia x alternifolia*; and Vanhoutte Spirea, *Spiraea vanhouttei*. Plants in this category should be pruned in the spring immediately after blooming. Because of time allocation, some individuals will prune these shrubs in early spring before bud break. This is something you must decide. On the positive side, you are pruning when it is easier to see the structure of the plant and less foliage to contend with. On the negative side, you are reducing the number of flowers that will bloom later.

Plants in the Rule 2 category produce flowers on the current season's growth. Some plants in this category include: Glossy Abelia, *Abelia x grandiflora*; St. Johnswort, *Hypericum*; Summer Sweet, *Clethera*; Summer Lilac Butterfly Bush, *Buddleia davidii*; and Bumald Spirea, *Spiraea x bumalda*. Rule 2: plants should be pruned in the spring immediately before new growth begins. If you prune at any other time of the year you will be removing a significant number of potential blooms.

When pruning deciduous shrubs, there are **four types of cuts you can make they are basal, thinning, heading and rejuvenation**. Generally, if a plant is of low quality or vigor, highly diseased, or severely disfigured, we recommend removing the entire plant with one cut at the base, **Basal Cutting**. Replace the plant if needed with a new more vigorous or appropriate plant.

**Thinning** cuts remove a branch or twig at its point of origin on the parent branch. Through a plant chemical process the terminal bud of the remaining branches assumes dominance and prevents the buds on other branches from breaking dormancy and growing. The result of a thinning cut is a plant with more open space and a stronger branching pattern.

Heading cuts remove the terminal bud. By doing this, apical dominance is lost and many vigorous new shoots develop from

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buds directly below the cut; buds lower on the branch remain inhibited.

**Heading** cuts reduce the overall height or size of a shrub. One caution, do not prune more than 30% of the branches in any one year. Pruning more than 30% will result in excessive vigorous growth and reduction of light and air movement within the plant.

The last technique, **Rejuvenation**, combines heading and thinning cuts and is used on older plants that have become too large or have too much unproductive (fruit, flowers) growth. After you have decided you have a shrub that is a candidate for rejuvenation, the first thing you must ask is; Are there many young shoots at the base of the plant? There are two answers: yes or no. If the answer is yes, cut the oldest shoots at or near the ground level leaving only the young shoots. If the answer is no, remove one-third of the oldest wood each year over a three-year time period.



Many times the other shoots that are left will need to be headed. Again, make heading cuts to no more than 30% of the remaining shoots. The results of a rejuvenated shrub are in essence a new, vigorous, well established plant. Note: If the shrub is a weak grower, invigorate the plant with an application of fertilizer. Remember a little usually goes a long way; over fertilization will result in excessive growth and ultimately additional work for you.

In conclusion, pruning will remain as one of the most frequently used horticultural practices for landscape managers. By more fully understanding, the various concepts and reasons to prune, and perhaps practicing these pruning techniques yourself, you will be better informed when making many of

the decisions to help maintain and enhance the health of your community's living assets — and thus help insure that your residents have a beautiful natural environment in which to live. ■

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mortgage note. It is a personal obligation. If the condo/HOA wanted to pay the bank, and it would still be profitable to rent for all the years to come, it could elect to do so. But the only penalty of not paying the bank is that someday (perhaps years from now) the bank will complete its own foreclosure because the unit owner never paid the mortgage. That will extinguish the condo/HOA title, but again, this is not an affirmative obligation on the part of the condo/HOA.

## TAXES?

Another closely related issue is who pays the real estate taxes on the unit? Typically, a bank needs to protect its mortgage because if taxes are not paid, the taxing authority will ultimately take title and that will extinguish the mortgage. Therefore, banks most often continue to pay those taxes and add them to the mortgage debt – not really the problem of the condo or HOA. Most often, therefore, worrying about the real estate taxes is not for the attention of the condo or HOA.

## INTERPLAY BETWEEN BANK MORTGAGE AND CONDO/HOA LIEN

Generally speaking, the condo/HOA lien is senior to all other

liens except a first mortgage. Many units, likely most, will have been purchased with a mortgage so that such mortgage is senior and superior to the condo or HOA lien. (Please note, though, that a second mortgage such as a home-equity loan, will be junior and inferior to a condo/HOA lien.) The paramount nature of a first mortgage (usually, but not always held by a bank) is that when the condo/HOA lien is foreclosed, anyone who gets the title at the foreclosure sale (the condo or a third party) takes the property subject to that paramount bank mortgage. They need not pay the bank mortgage but eventually, someday, the bank will foreclose its mortgage and that will extinguish the title purchased at the condo/HOA lien foreclosure sale.

Once that concept is understood, then the primary focus becomes an analysis of how quickly the bank is enforcing its rights. As it turns out, banks suffer heavy burdens in endeavoring to foreclose their mortgages; public relations compulsions, pressure to settle from regulators among others, a general desire not to foreclose, and heavy delays imposed by statutes designed to protect mortgage borrowers. Banks must go through a settlement process and need to send various notices, all of which leads to the actuality that banks

tend to move very slowly in enforcing their rights and often consume many years in the process. All this was discussed at further length in the prior articles we mentioned earlier in this piece (and attention is invited to those articles). Tersely stated, the condo or HOA which refrains from enforcing its own foreclosure rights, does so by abdicating its fate to banks that do not have the interests of the condo or HOA at heart. The mortgage lenders will lumber through the foreclosure process – or not – at a typically slow pace, during which common charges and/or HOA fees incessantly continue to accrue to the detriment of all the other unit owners. In short, the better strategy is usually for the condo or HOA to vigorously enforce its own rights. Either it will be paid by the unit owner facing loss of title, or some new owner will buy at the foreclosure sale and begin paying the common charges and/or HOA fees, or the condo/HOA will become the owner and can rent it out for all those years that the banks are delaying in prosecuting their own foreclosures.

## EVICTION AFTER FORECLOSURE

If it is the condo or HOA which has taken back the property at the foreclosure sale, the question is asked: What happens to the unit owner or other tenants who may still be there? In some instances,

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they actually do depart when notified that the foreclosure is over and that their rights have been extinguished. On other occasions though, they simply remain, knowing that they can live for free until legal process actually ousts them.

There are, of course, legal procedures to evict after foreclosure, although they are not nearly as neat and rapid as would be preferred. In the absence of vigorous opposition or unusual delay by the sheriff (or marshal), the procedure to evict consumes roughly three months although, as always, it could be a bit less or somewhat more.

Where the unit owner or tenant wishes to litigate the matter, many more months can be added to the process. While this may seem daunting, it is something which must be faced, knowing that the final result will be success and that it is something which must be pursued.

**CONCLUSION** - It is apparent that there is a fair amount to know when examining remedies to assure that condo and HOA charges are to be paid. But having an overall sense of what can be done will only serve to aid in making decisions and working with counsel to accomplish an ultimate goal. The thoughts expressed here can be an initial guide. ■

*Bruce J. Bergman is a member of the law firm of Berkman, Henoch, Peterson, Peddy & Fenchel, P.C.; b.bergman@bhpp.com.*

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