



Client Alert

HOA foreclosures for delinquent assessments are full of traps for the unwary Association that attempts to go it alone.

HOA Delinquent Assessment Liens Best Handled by Experts

The recent case of *Multani v. Witkin & Neal*, (2013) 215 CA4th 1428, points out the difficulties when a residential Home Owner's Association (HOA) attempts to foreclose an HOA assessment lien against a delinquent condominium Owner. In this case, the HOA placed a lien on the Owner's unit for delinquent HOA assessments. When the assessments were not brought current, the HOA conducted a non-judicial foreclosure sale.

A non-judicial foreclosure is a sale of the property by the holder of the lien that is authorized by law only if permitted by the documents related to the right to place a lien on the property, and only so long as the sale is undertaken in accordance with notice and timing requirements and procedures set forth in the law. A non-judicial foreclosure sale is accomplished by a foreclosure trustee by means of an auction without court oversight.

The Owner sued the HOA and its management company, foreclosure trustee and lawyers alleging they failed to give the proper notices and to follow the statutory procedures as part of the foreclosure. The trial court dismissed the Owner's action, but on appeal the case was reversed and remanded. The Appellate Court found that the HOA and its agents failed to prove that they had notified the Owner of his right to redeem his condominium unit following the sale as required by California Code of Civil Procedure (CCP) Section 729.050.

An HOA's non-judicial foreclosure for delinquent assessments, unlike non-judicial foreclosures of deeds of trust, is subject to an Owner's right of redemption for a period of 90 days following the sale under CCP Section 729.035; and, under CCP Section 729.050, the sale trustee must serve notice of the right of redemption, setting forth the applicable redemption period.

In the case of a delinquent assessment lien, two notices of the right of redemption are required; one before the sale and one after the sale. California law (California Civil Code Section 1367.4) requires, on the pre-sale end, that the Notice of Sale contain an additional statement that the sale will be made subject to a right of redemption by the Owner. In addition, on the post-sale side, California law (CCP Sections 729.040 and 729.050) requires that a special Certificate of Sale (rather than a trustee's deed) be delivered to the purchaser at the foreclosure sale, and



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that a separate Notice of Redemption be delivered to both the purchaser at the foreclosure sale and to the former Owner. This Notice of Redemption is to be delivered to the former Owner in addition to the notice that was included in the earlier Notice of Sale.

In light of the multiple notices and special Certificate involved in a sale by an HOA, it is easy to make a mistake, making HOA foreclosure sales more complicated than non-judicial sales under a traditional note and deed of trust.

This case holds that the HOA sale that only gave the Owner one of the two required Notices of Redemption (a) may have made the foreclosure sale illegal, fraudulent or willfully oppressive; (b) may be *ipso facto* harmful or prejudicial; and (c) eliminated the need for the Owner to tender either the amount of the lien or the amount of the bid by the purchaser at the sale as essential to the attack on the foreclosure sale. The obligation itself (the HOA assessment) appeared not to be contested.

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