

## Exercising Collection Options: Flexibility in Action

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After years of a depressed California housing market, some communities are starting to see a rebound. As these properties increase in value, associations are taking another look at their collection efforts. Boards are asking if the changing economy is renewing an opportunity to recover delinquencies. The answer may depend on what approach the association takes on its collections: non-judicial or judicial.

Up until the housing bust hit California in 2008, the collection process under both non-judicial and judicial foreclosure was equally effective. Owners had access to the equity in their residence, and usually the threat of a lien or foreclosure would be enough to lead to a sale, request for a line of credit, or re-finance to satisfy the delinquent balance. However, the decline in property values removed those options from consideration. Owners staring at lien or foreclosure notices from lenders and homeowner associations no longer had the means to bring their accounts current. Further complicating collection efforts was the enactment of legislation protecting homeowners from foreclosure.

Beginning in January of 2013, lenders were required to balance their interests against the Homeowner's Bill of Rights (HBR). The legislature approved safeguards in the HBR that essentially stalled lenders from pursuing foreclosure while simultaneously considering a homeowner's request for loan modification. The impact has been noticeable. Once the lenders began complying with the HBR, lender approved short sales and foreclosure sales dropped in California while lenders reviewed loan modifications. While homeowners facing fore-closure have seen the benefits of the legislation, the process has left many associations wondering when and if the lenders will step in and take action. With that uncertainty in mind, it makes sense for associations to take a closer look at the differences between non-judicial and judicial foreclosure.

In the non-judicial foreclosure process, foreclosure is the only option. However, there are two potential complications with foreclosure. First, buyers may value the property at less than the total outstanding debt at the time of sale. In that case it is possible that there will be no one willing to satisfy an association's claim at auction. Since the association's foreclosure is final, recovery is limited by the value of the property. An underwater property means that the association could end up taking title to a property without having recovered any of the balance owed. Though some associations are equipped to handle property management, taking title to a property poses its own challenges.

Second, the lender could step in and attempt to foreclose at any time during the non-judicial process. A lender foreclosure eliminates the association's claim against the property, and halts the non-judicial foreclosure process. In the end, the association could find itself having spent funds without anything to show for it.

In the judicial foreclosure process, the association has more flexibility. Judicial foreclosure involves filing a lawsuit to pursue both ownership of the property (judicial foreclosure) and an award of money damages against the individual. The benefit of a judicial foreclosure action is that an association can decide which result best meets the needs of the association at the time judgment enters. If a lending institution is attempting to foreclose on the property and wipe out an association's lien, the association still has a claim to pursue money damages. The ability to make that decision at the end of the process decreases the chance that associations are left high and dry.

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Whether in good times or bad, owners cannot escape responsibility for a judgment simply by letting a property foreclose. When associations can satisfy a money judgment against other assets, the likelihood of recovery increases. The existence of employment (wage garnishment), records of vehicle ownership, other real property ownership, or bank accounts all lead to new recovery opportunities. Owners are more likely to reach out and satisfy judgment when they realize that associations can pursue assets beyond the property.

While both non-judicial and judicial foreclosure provide effective tools to recover delinquencies, there are differences. Boards looking at their collection efforts should consider whether foreclosure is the desired result. If not, it may be time to take advantage of the flexibility that judicial foreclosure offers, and increase the odds of recovery.

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