

FORECLOSURES

& the Economy:



The Impact on New Jersey Community Associations

By Brian Kelley
CAI-NJ Public Affairs Coordinator

Pivate community associations throughout the country are facing the challenges that have been brought on by the current economy and, specifically, the mortgage crisis that has seen many homeowners fall behind on their association payments and, worse, lose their units to foreclosure.

So how have these economic factors been affecting community associations here in New Jersey? "Collections are definitely more on the minds of association board members these days," says Caroline Record, Esq., a partner at the law firm of Berman, Sauter, Record & Jardim, P.C., and 2008 president of the New Jersey chapter of Community Associations Institute (CAI-NJ). "I see an

increased level of frustration because delinquent amounts and the number of delinquent owners are rising.

"We are hearing more and more that owners are not paying association fees because they are struggling to pay their mortgage, which is in danger of going into foreclosure," she added.

Steven Block of Capital One Bank says he has also noticed an increased measure of delinquencies in association maintenance fees and special assessments. "It is not greater than what I would have expected," Block said. "However, I doubt we have seen the worst yet.

"The other effect of the increase in foreclosures is on home prices," added Block. "In a community with a few foreclosures,

it can impact other sales in the community harder than the normal decline."

Of course, as Record points out, all of these factors affect an association's cash flow and its ability to pay its bills. Associations generally create their yearly budget based on 100 percent payment of dues and assessments by the owners, although Record said some may include a bad debt expense to account for those owners who pay late or not at all.

Block said boards should try to be more prepared for situations like the current economic environment. "I think the establishment of some across-the-board reserves, as well as specific reserves for more severe financial situations would be prudent," said

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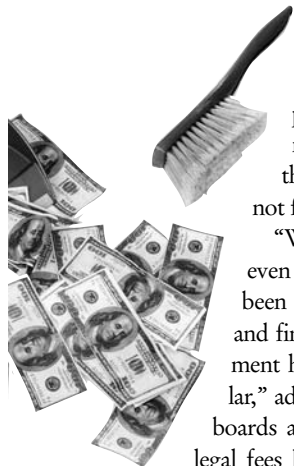
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Block. "There should be a sense of what will be actual losses versus cash-flow timing issues to support the association through the sale of properties."

Because of the severity of today's financial times, association boards are becoming more creative in working out payment arrangements with debtors, according to Record. "Clearly, boards are willing to enter into payment plans, especially with debtors who have not been in and out of collections repeatedly," she said.

"Boards are permitting longer repayment periods with a judgment to be obtained if the payment agreement is not followed.

"Waiver of late fees – and even fines, if the violation has been remedied – upon full and final satisfaction of repayment has become more popular," added Record. "However, boards are less willing to waive legal fees because they have been paid by the association."



Block provides some tips for boards to help deal with the rise in delinquent owners. "It is good protocol for associations to have a firm process for collection of past due amounts," he said. "In the type of financial environment we have now, I think that homeowners who are in arrears would benefit by keeping an open and frank dialogue with their association boards.

"If a payment plan can be worked out, it may save homeowners and associations some legal costs in collection," added Block. "That being said, a set protocol for handling collections, including attorney involvement, is generally a good practice."

Record agrees with homeowners approaching their boards about their financial issues. "Although it is unpleasant for someone to articulate personal or financial difficulties to others, owners should be encouraged to contact the board early in the process and request some type of hardship consideration," said Record. "Owners should pay as much as they can as a sign of good faith while requesting relief. It is helpful to the board to know the basis for the request for relief.

"Also, it is important that the board consider all requests and put personality differences aside when making decisions," she added. "If

"If a payment plan can be worked out, it may save homeowners and associations some legal costs in collection..."

owners encounter further difficulty after a payment arrangement is agreed upon, they should keep the board informed."

Unfortunately, there will likely be owners unable to pay their association fees and special assessments. And many of those owners may lose their homes to foreclosure. However, it is clear that communication between owners and association boards can be critical to both parties.

"In difficult financial times with loss of incomes to homeowners being exacerbated by rising budgets, energy costs and normal declining home prices, an honest dialogue between homeowner and board will lead to the best overall outcome in the majority of cases," said Block. ■

Wilkin & Guttenplan, P.C.
 Certified Public Accountants & Consultants
 1200 Tices Lane, East Brunswick, NJ 08816
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