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Community Associations Newsletter

Maryland Sheriff Sales: An Efficient Approach to Collecting on Difficult Accounts

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After a judgment is awarded to an association, there are various options available in order to collect on the judgment and various considerations involved. In some cases, post-judgment collection can present difficulty when there is no asset information for the debtor and all other efforts have been unsuccessful. If your association was awarded a judgment against a delinquent owner and has a run out of options on how to collect on the judgment, boards should consider pursuing a sheriff's sale, one of the foreclosure options available in Maryland, to deal with these difficult accounts.

Maryland has two foreclosure actions - assessment lien foreclosures and sheriff sales. A sheriff sale is an action by which a judgment creditor seeks to enforce its judgment by attaching and selling real property that is owned by the debtor.

Sheriff sales are very similar to a lien foreclosure (often referred to as a "judicial foreclosure") with the difference being that a lien foreclosure sale requires a lien to be recorded on the property and a Petition to

Foreclose must be filed in the Circuit Court. A sheriff sale is a procedure in District Court where the property is sold at an auction to satisfy the judgment. In other words, the sheriff sale is the enforcement of a judgment for a debt owed by the property owner. It is named a "sheriff sale" because the sale is conducted by the sheriff's office as opposed to a private auctioneer. A sheriff sale is similar to a lien foreclosure in that it may place enough pressure on the owner to satisfy the outstanding balance due so that the owner does not lose his or her home. A sheriff sale is generally preferred over a lien foreclosure because the lien foreclosure process is heavily regulated by statute and tends to be more time consuming and expensive.

The sheriff sale process begins with docketing the judgment obtained against the owner as a lien in the Circuit Court where the property is located. Then we file a Writ of Execution. Once the Writ of Execution is issued by the District Court, it is executed by the sheriff by posting to the property. When the sheriff posts the Writ to the property, it is considered "levied" for the

purposes of sale and gives notice to the owner that the property is now subject to sale to satisfy the judgment. After thirty days, the association can then request a sale date from the sheriff. The association is then required to submit the fees associated with the sale to the sheriff's office, which then coordinates the notice, advertising, the hiring of the auctioneer and the public auction. Notably, this amount varies greatly based on the County where the property is located. At the sale, the sheriff sets the starting bid, usually the amount of the judgment, and the property is sold to the highest bidder, subject to the mortgage on the property.

The choice to conduct a sheriff sale does have a few potential downsides that should be considered when deciding on whether to proceed with a sheriff sale. When dealing with a delinquent owner who has not paid assessments in years and where the outstanding balance has gotten to a point where the Board decides that it is worth proceeding with a sheriff sale, there is usually the looming possibility that the owner files for bankruptcy at some point during the process. By filing the bankruptcy, the owner can stop the sheriff's sale at any time prior to the sale. In addition, owners can file shortly after the auction and the sale will be set aside by the Bankruptcy Court.

Another issue to consider in the sheriff sale decision is the possibility that a third party does not bid at the sale. If there is equity in the property, the property is usually more attractive to potential purchasers. If the

property does not attract third party bidders at the auction, the Board would need to decide if it wishes to bid on the property. If the association chooses to purchase the property at the sale, the association will take title to the property subject to all senior liens (the mortgage) on the property. In other words, the association takes possession of the property until the mortgage company forecloses. The Board will then take on the maintenance responsibility and pay property taxes while it holds the unit. The Board also has the option to lease the property during its ownership to recover some of its expenses. However, if the Board does not want this responsibility, they could simply go to the sale and see what happens. If no one bids, the sale would be cancelled and the property would stay in the name of the debtor.

The decision for an association to pursue a sheriff sale on a property varies from case to case. As noted earlier, post-judgment collection requires careful consideration as to what action should be taken and when. If your board is considering or would like more information on sheriff sales, please do not hesitate to contact any one of our Community Association attorneys.