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HOA FORECLOSURES



The mission of Nevada Legal Services is to strengthen the community by ensuring fairness and providing equal access to justice for low-income Nevadans.

www.nlslaw.net

HOA FORECLOSURES IN NEVADA:

If you default in paying your monthly assessments, your HOA can foreclose. A common misconception is that the association cannot foreclose if you are current with your mortgage payments. However, the association's right to foreclose has nothing to do with whether you are current on your mortgage payments.

In Nevada, the HOA may hold a foreclosure sale after sending the homeowner a notice of delinquent assessment lien, recording a notice of default and election to sell, and providing notice of the foreclosure sale to the owner.

NOTICE OF DELINQUENT ASSESSMENTS:

Before starting the foreclosure, the HOA must mail a notice of delinquent assessment to the homeowner, which states:

- The amount of the assessments and other sums that are due
- A description of the unit against which the lien is imposed, and
- The name of the record owner of the unit

NOTICE OF DEFAULT:

Not less than 30 days after mailing the notice of delinquent assessment, the association may then record a notice

of default and election to sell (NOD) with the county recorder. (The NOD must contain the same information as the notice of delinquent assessment lien, along with a warning that if you do not pay the delinquent amount you could lose your home.) The HOA must also mail a copy of the NOD to the homeowner.

FORECLOSURE SALE:

If the owner does not pay the amount of the lien, including costs, fees, and expenses within 90 days following the recording of the NOD, the home can be sold at a foreclosure sale. The HOA must provide notice of the date and time of the sale to the owner.

HOW TO CATCH UP ON YOUR HOA DUES IF YOU'RE BEHIND

If you are behind on your HOA dues, there are several options for you to get caught up before the HOA initiates a foreclosure.

PAY OFF THE DELIQUENCY OUTRIGHT:

The quickest way to get caught up and prevent the HOA from pursuing a foreclosure is to pay all of the past-due amounts in one lump sum, including any late fees or other fees.

NEGOTIATION ON A REDUCED PAYOFF OF THE DELIQUENCY:

If you cannot come up with enough cash to cure the missed HOA dues all at once, you may be able to convince the HOA to accept a reduced amount to satisfy the debt. However, most HOAs simply will not accept a reduced payoff.

ENTER INTO A PAYMENT PLAN:

Your HOA may will consider allowing you to enter into a repayment plan to get caught up on your HOA dues. The typical length of repayment is 6 months to 2 years.

FILE FOR BANKRUPTCY:

If you are behind in HOA dues and are thinking about filing for bankruptcy, there are some special considerations you should keep in mind.

You can temporarily stop an HOA from foreclosing by filing a Chapter 7 bankruptcy. You can halt a foreclosure by filing for bankruptcy due to the automatic stay, which immediately goes into effect when you file. The stay functions as an injunction prohibiting the HOA from foreclosing on your home during the bankruptcy process. However, this will likely only provide a temporary reprieve because the HOA can seek permission from the bankruptcy court to continue with the foreclosure.

HOA dues: Chapter 7 bankruptcy.

If you file for Chapter 7 bankruptcy, you may be able to discharge (eliminate) your personal liability of any HOA dues that you owe. Unfortunately, the HOA lien remains against the property and the bank can still foreclose. This is beneficial if you intend to surrender your home, but if you plan on staying in the home, you'll have to pay the dues to avoid a foreclosure.

HOA dues: Chapter 13 bankruptcy.

In a Chapter 13 bankruptcy, HOA dues that accrued before you file are treated as secured claims. This means that if there is equity in your property at the time you file your bankruptcy, your Chapter 13 plan must provide for payment to the HOA. If your house is underwater (where you owe more on the mortgage than the house is worth), then the HOA lien can be stripped, but you'll still have to pay future dues if you plan to continue living in the home.

ALTERNATIVE DISPUTE RESOLUTION (ADR):

The ADR process is required under NRS 38.300 to 38.360, before parties may file a civil action in court. The ADR process is available to all unit owners even if they have no intention of filing civil action in court. Beginning October 1, 2013 parties with a dispute about the governing documents of their common

interest community must either participate in the Division's referee program or mediation prior to going to court. The referee program is voluntary and both parties must agree to participate.

If the referee program is not selected by both parties, the dispute will be mediated. If the dispute is not resolved by mediation, parties that initially participated in mediation may agree to have the issue arbitrated. Arbitration may be binding or non-binding.

HOW DOES FORECLOSURE MEDIATION WORK?

A mediator is a neutral third party who helps you and your lender try to reach a voluntary negotiated agreement. The lender may not foreclose until mediation has been completed. Mediation is fast (less than four hours), inexpensive (\$500, shared equally by the parties), and more flexible than more formal processes. The goal of the program is to make foreclosure a remedy of last resort.

To elect mediation, you must complete the Election/Waiver of Mediation Form and mail the original, by certified mail, to OMBUDSMAN's Office along with your \$250 payment. You must also mail, by certified mail, a copy of the election form to the HOA.

Three parties will be present at the mediation: You, a representative for the HOA, and the mediator. Both you and the HOA must negotiate in good faith.

WHAT IS THE OMBUDSMAN INFORMAL CONFERENCE PROGRAM?

An ombudsman is a person who helps resolve complaints, acting as a trusted intermediary between an organization and the public. The Ombudsman for Owners in Common-Interest Communities and Condominium Hotels assists homeowners' association owners, residents and board members in understanding their rights and responsibilities under the law.

If both parties agree to meet, a conference will be held in an attempt to resolve the issues between the parties. The primary goal of the conference is to try to address the issues and find a resolution. Ombudsman conferences are not hearings. They are voluntary, informal meetings that both sides agree to attend in order to discuss the disputes and find mutually agreeable resolutions.

PLEASE NOTE: Laws are subject to change. Information contained in this pamphlet is based on laws in effect at date of publication: March 20, 2014.