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LAW GROUP'S TIPS & ADVICE

Homeowners Associations must be proactive in this economy, part two



By **GLEN VAN DYKE**
REAL ESTATE FEATURE

Last week, we discussed a homeowners association which won a lawsuit and was able to pay for facility repairs to common areas that had deteriorated. This was a better alternative for the homeowners association, rather than trying to collect from members who were current in their dues, and dinging them for added assessments or increased club fees.

Keeping revenue within an association is also especially challenging. A homeowners association Board of Directors has an obligation to assure it is receiving payment from all of its members. While times are hard for everyone, the Board must make payment of dues by its members a priority. Otherwise, the Board members violate their obligation to the association by failing to meet financial commitments because they have neglected to collect payment from nonpaying members. Sometimes, the developers who own parcels within the community are the worst offenders, as they refuse to pay dues and they blame their inability to pay dues on the poor housing market which has caused them great difficulty in selling properties.

Recently my firm represented several homeowners who were members of a homeowners association. The developer of the project, who of course owned the

majority of lots, became delinquent in its assessment obligations. At the association's annual meeting, the developer promised to become current on its outstanding obligation by a date certain. When the date came and went, the developer remained delinquent by approximately \$150,000. Since the CC&Rs provide a "private right of action" for homeowner members of the association to pursue violations of the CC&Rs, and the developer who controlled the board would not require payment, the homeowners filed an action to collect the unpaid assessments. After a few months of haranguing, the developer paid its outstanding obligation, plus the attorneys fees and costs the homeowners incurred in prosecuting the lawsuit.

Members who currently own lots or homes or those who have recently sold their property without paying their homeowners association assessments can be forced to pay what they owe through legal action. Another avenue for homeowners associations to consider in order to recoup unpaid members' dues is to pursue foreclosure action against the delinquent property. The association can choose whether to pursue payment, foreclosure or both depending on a homeowners' particular circumstances. Association

members who do not pay will end up owing a judgment which will include attorneys' fees, costs, penalties and interest. It should be noted that attorneys' fees and costs of such a lawsuit are generally minimal.

In summary, members of homeowners associations should realize that they cannot ignore their obligation to the neighborhood where they chose to purchase property. It's the member's responsibility to make his or her dues payments in order to fulfill an obligation to contribute to the upkeep of their community. ■

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This article was written by attorney Glen Van Dyke of the Van Dyke Law Group, which has offices in Truckee, Eldorado Hills,

San Francisco and Las Vegas. Van Dyke has represented thousands of residential and commercial property owners and homeowners' associations in the resolution of disputes. Property owners or homeowner association club directors who have questions about possible legal issues in both California and Nevada can call 877-868-7013 or visit www.vandykelawgroup.com for more information.