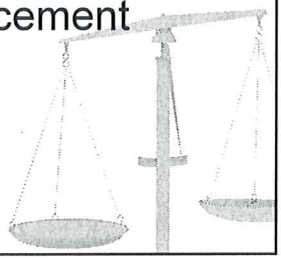
Rental Regulations, Restrictions and Enforcement



Introduction – How did we get here?

- Past Experiences
- Current Experiences
- Future Projections

Regulation of Rentals

- Via Rule
- Does not require amendment of Declaration
- Must be consistent with Declaration
- Considerations
  - Non-discriminatory enforcement
  - Cannot expect rental units to "Carry the Association"

Regulation of Rentals – Hoops to jump through

- Underlying purpose is not to *prevent* leasing
- Considerations
- Regulation by rule or by amendment of the Declaration?
- Typical provisions implemented through regulation of leasing (via rule)

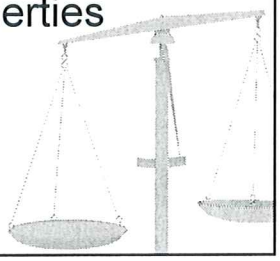
Restriction/Prohibition of Rentals

- Differentiation from Regulation
- Requirements for Adoption of Restrictions
- Options for restrictions (examples)
- Considerations

Lender/FHA Considerations

- FHA Lending Guidelines updated June 30, 2011 to incorporate the March 2011 waiver regarding leasing restrictions

Association Owned Properties



Associations Foreclosing Assessment Liens

- Why?
  - To encourage the first mortgage holder to commence foreclosure of its mortgage
  - To force the homeowner to make the choice to pay the assessments due or to leave the community

Redemption Period Has Expired

- The association takes title to a property following the completion of the foreclosure of its lien
- The association now owns the property subject to
  - The first mortgage (if applicable)
  - The real estate taxes

Redemption Period Has Expired

- Now What?
  - The association must decide what it would like to do with the property going forward
    - Market and sell the property
    - Seek to lease the property
    - Simply await the foreclosure of the first mortgage

Is Anyone Still Residing in the Property?

- If the unit is vacant:
  - Enter and secure the unit (change locks, garage door code, etc.)
  - Contact the utilities and have bills transferred to the association
- If the unit is still occupied:
  - Contact legal counsel
  - Contact the utilities and have bills transferred to the association
  - Enter and secure the unit

Is Anyone Still Residing in the Property?

- If it is unknown
  - Before entering the unit, place a notification on the logical entry points of the association's intent to enter and secure it on a specific date and time
    - Include contact information on the notification (i.e. property manager, member of the board)
  - Contact the utilities to have them transferred to the association

Holdover Tenants

- Someone that was a tenant from the original owner
  - If they have a bona fide lease
    - The tenant may stay in the unit up to 90 days assuming they remit rent to the association
    - If they do not remit rent, the association can formally evict the tenant

Personal Property that was Left Behind

- Any items of personal property left behind should be photographed or videotaped to avoid possible later disputes
- Any item of personal property must be stored for 28 days
- Consult legal counsel if the association would like to sell any of the personal property

Sale of the Unit

- Once the unit is vacant, the association is free to begin to market the property for sale
- The first mortgage will need to be satisfied as part of any sale transaction
- The association should <u>not</u> expend its resources readying the property for sale

Leasing the Unit

- If owned by the association, the association is free to rent the property
- The association must abide by any rental restrictions contained in the governing documents
- Association must notify prospective tenants that there is still a first mortgage on the property

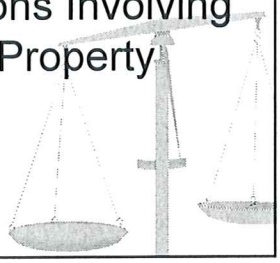
Other Leasing Items to Consider

- Section 8
- Rental Licenses

Key Items to Remember

- Once the association forecloses its lien and takes ownership of the property, it can no longer pursue the debtor personally
- When a property is owned by the association <u>no assessments accrue</u>
- The association should inquire with its insurance carrier
- When the association collects rental income for a property, the money collected should be treated as general income

Special Considerations for Collections Involving Rental Property



Tips for Collecting Assessments on Rental Properties

- Make Sure you have current contact information for owners
- Apply collection policies evenly to all owners
- Encourage owners to sign up for ACH

Dispelling the Myths

- Associations in Minnesota are limited in their ability to collect rent monies from tenants of delinquent owners

Associations Cannot "Lien" Rent Monies

- There is no easy short cut by which an association can attach or make a claim on rent money that is being paid by a tenant to a delinquent owner
- The association has the option of obtaining a judgment against the owner or a leased property and then attempting to collect on that judgment

Assignment of Rents

- Can an association amend its declaration to include a provision requiring owners who lease their units to grant the association an assignment of rents that would permit the association to collect rents directly from a tenant if the owner became delinquent in his or her assessments?

To Wrap Up…

- There is no magic solution to collecting assessments from investors or any other owners
- Keys to collecting assessments:
  - Adopt a collection policy
  - Follow it
  - Refer delinquent homeowner accounts to an attorney or other professional experienced in community association assessments collection