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THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT

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Six Best Practices for HOA Landlords

You've decided that it's no longer smart to wait for a bank to foreclose on delinquent owners' units. Instead, your HOA has stepped up to begin foreclosing and taking possession of those units. Now what? Here we offer six best practices for HOAs when it comes to their landlord duties.

1. Don't be a loosey goosey landlord. "Make sure you enter into a written lease agreement," advises Dennis J. Eisinger, a partner at Eisinger, Brown, Lewis & Frankel PA in Hollywood, Fla., who represents more than 500 condo and HOA associations. "Also, make sure the HOA goes through the same tenant screening process you'd require if you were leasing out your own personal unit."

2. Explain to tenants the status of the unit. "Disclose in the lease that the property is presently, or may be, subject to a mortgage foreclosure action," says Eisinger. "We have form leases we provide to our association clients that say something along the lines of, 'This property may be subject to a mortgage foreclosure action, but pursuant to the federal Protecting Tenants at Foreclosure Act, tenants may have the right to extend their tenancy if there's a foreclosure.' We're disclosing there's a possible mortgage foreclosure but also that there's a statute that might give tenants extra protection."

3. Create one person for tenant contact. "We usually advise HOAs to make sure you have a point person for tenants," says James R. McCormick Jr., a partner at Peters & Freedman LLP in Encinitas, Calif., who represents associations. "It might need to be your property manager, or you might even need a separate property management company. But if issues come up—such as things that need to be fixed or questions about whom to send rent to—it's better that the tenant and the board know who that point person is."

4. Determine whether to insure the unit. "Boards might consider insurance on the unit," says McCormick. "I just had a lively discussion with one of the associates in our office. She said we should be telling all our association clients to obtain insurance on their foreclosed units. My response was, 'Why? The HOA doesn't have an interest in that property. It's an owner, but the bank is in a position senior to the HOA.' Her response? "If something happened, the bank would probably file suit against the HOA for negligence because it didn't maintain the property properly.'"

Eisinger also suggests having insurance to cover damage the inside of the unit.

The upshot? If even lawyers debate this issue, the answer is unclear. "It might be something to consider, or double check with your insurer to see if your policy maybe already covers such things," says McCormick.

5. Don't pay for things that aren't your responsibility. "HOAs don't have to pay property taxes or the mortgage because they're not liable for those things," says Eisinger.

6. Make sure your accounting doesn't inadvertently let lenders off the hook."It's my understanding from accountants that the rental income an association collects should be posted as 'other income' on the association's balance sheet rather than used to reduce assessments on that unit," says Eisinger. "If the bank forecloses, you don't want to have wiped out that delinquent–assessment debt on the HOA's books. You want to maintain those delinquent assessments. That might mean the income would be taxable as rental income, but I still think that's pretty good advice."

Bottom line: Ask your accountant if there's a way to book rental income without opening the door to a lender's argument that there are no delinquent assessments it's required to cover post–foreclosure.