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## Should This HOA Board Member Resign?

This week's tip addresses a foreclosure-related question from a [www.HOAleader.com](http://www.HOAleader.com) reader: "We live in a small townhouse community of 17 units. The vice president's townhouse has been in foreclosure for over a year. The association is named party to the foreclosure lawsuit. Association annual dues appear to be paid. The association has been reluctant to notify the homeowners of this foreclosure listed on county records. My question is whether the vice president is required to resign his post due to a statute or conflict of interest."

"I haven't seen this precise question yet, and it's an interesting one," says [Elizabeth White](#), a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "We had a similar situation in our local county, where public notice of foreclosures is required. One of the county supervisors had her home foreclosed. The local press got wind of it, and there was a big public debate about whether she should resign. The sad part was that she was a really good supervisor. At the time, I wondered what would happen if the same situation arose on one of our boards."

Why is there even a concern? "The problem in many states is that foreclosure will wipe out any assessments owed to the association, and the board member may no longer be a member if he doesn't own property in the community," says White. "It also goes back to fiduciary duty. A board member owes a duty to the corporation over and above his own self interest. This puts the board member in a really, really difficult bind because he'll say he's going to be objective or will abstain from any board discussion about the foreclosure. But then you've got less than a full board."

Matthew A. Drewes, a partner at Thomsen & Nybeck PA in Edina, Minn., who represents associations, also sees the potential for problems. "I'm not completely shocked an owner would have some level of concern under the circumstances," he says. "But I don't think it necessarily gives rise to a conflict of interest for the board member."

So while problems could arise from the vice president's foreclosure, our experts don't see them yet. In fact, Jed L. Frankel, a partner at Eisinger, Brown, Lewis, Frankel & Chalet PA in Hollywood, Fla., who advises community associations, is pretty impressed with this vice president. "I think he's a great member," Frankel explains "You know who owners stop paying first? The association, not their mortgage company. So here's a guy who's facing losing his home, and he's still paying his dues and volunteering to help the HOA. I wish we had other people like that."

What about the answers to our reader's questions? Does the HOA need to disclose the foreclosure to members? And does the VP need to resign? Find out in our new article, [Should a Board Member in Foreclosure--But Current on HOA Dues--Resign?](#)

Best regards,  
Matt Humphrey  
President