

## HOA Foreclosing to Rent Units? First, Know the Risks

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In this week's tip, we suss out the pros and cons of whether to foreclose on a delinquent owner with the intent to rent out the unit to recoup your HOA's fees.

"A couple of years ago, I'd have told my clients asking about foreclosing and renting, 'Don't expect to recoup all your money through a lease because the mortgage company's going to foreclose on the unit pretty quickly,'" explains [Michael S. Hunter](#), an attorney and partner at Horack Talley Pharr & Lowndes PA in Charlotte, N.C., who represents associations. "Now I'm not so quick to say that because banks are taking so long to foreclose. Now associations can collect 6-12 months of rent before the bank forecloses."

**Jed L. Frankel**, a partner at [Eisinger, Brown, Lewis, Frankel & Chalet PA](#) in Hollywood, Fla., who advises community associations, is cautious when he advises clients on the foreclosure-to-rent strategy. "I've had some clients doing that for a couple of years, but it's very dangerous," he says. "Once the association owns the unit, it becomes a landlord--assuming you rent it out. Florida is a very pro-tenant state, so you become responsible for upkeep and insurance for the unit. That opens the association up to economic liability."

Even if you can't rent out a unit you've foreclosed on, there are benefits to foreclosing, says Ben Solomon, an attorney and founder of the Association Law Group in Miami Beach, Fla., who advises more than 500 associations and also represents developers through his second law firm, Solomon & Furshman LLP.

"When associations say, 'We're not going to wait for the bank, and instead we'll pursue our own legal remedy,' it puts direct and indirect pressure on the bank," explains Solomon. "If there's no competing interest for title to the property, you've given a lot of extra breathing room to the bank. But when the association files foreclosure, there are varying results, but there can be good results. For example, when a short sale is presented while the association is foreclosing, that puts a lot of pressure on the bank to accept the short sale. It also tends to speed up the lender's own foreclosure because lenders realize there isn't going to be anything to work out with the borrower. That's why associations should be foreclosing. But the way lawyers charge legal fees makes it cost prohibitive."

For more insight on foreclosing-to-rent, see our new article, [What Your HOA Should Know About the Foreclosure-to-Rent Strategy](#).