Short Sale Counter Offers Can Generate More Cash Flow for Community Associations

by Peter L. Meltzer

When a large HOA in Riviera Beach is presented with a short sale offer for less than 100 percent of the past due assessments owed on the residence, its answer is always: Thank you, but no thanks. This HOA has decided that it would be better served by presenting a counter offer for the full amount and perhaps opening the door to negotiations, rather than accepting just a fraction of what it is owed under a short sale and bringing in a new owner, even though the new owner will presumably begin paying the assessments on the property.

This aggressive strategy is not without its risks, as a Miami-Dade condominium association has experienced firsthand during the last several years. The association for this property with more than 50 units steadfastly refused to accept short sale transactions for lesser amounts than it was owed, and, as a result, several deals were scrapped, and the units went through a lengthy foreclosure process of at least one to two years. The association was ultimately only able to collect roughly an equal amount to what it had been offered years ago as part of the short sale transactions on these units, and it lost additional years in revenue while the units went through the foreclosure process.

With the exorbitant numbers of foreclosures in communities throughout Florida, short sales have proven to be one of the most popular measures for banks and homeowners to avoid foreclosure. These transactions, in which the bank agrees to accept less than what it is owed, can bring new buyers for residences whose existing owners have typically not been paying their maintenance fees and assessments, so community associations find it very tempting to accept short sale proposals when they arise.

When a short sale transaction is negotiated between a lender and their borrower/homeowner, the community association, which is also a lienholder on the residence for past due assessments, will be asked to approve the transaction. The association is typically offered to accept just a fraction of what it is owed, since the banks understand that the association will be highly incentivized to replace the delinquent owner with a new and paying buyer. If the association does not accept the offer and approve the deal, then the transaction will probably not be finalized and the bank must continue with its foreclosure proceedings against the property.

As a general rule of thumb, community associations should be as aggressive with short sale offers as their budgets allow. For example, a severely cash strapped association may not want to make an aggressive counter offer because it can ill-afford the risk of the short sale falling through.

In many cases, community associations will be better served by risking the delay that the foreclosure process presents rather than immediately accepting a short sale offer that they believe is too low. They should consider presenting a counter offer for a greater amount, because the bank, seller, buyer, and broker(s) are also often very eager to see the sale finalized, and they may be willing to make additional financial concessions to the association in order to get the deal done.

In addition, regardless of the amount an association receives from a short sale—whether it is the amount of the initial short sale offer or a higher negotiated amount pursuant to a counter offer—it is still possible for an association to recover any remaining debt owed by the delinquent homeowner. Associations should not overlook the fact that they have the right to personally sue the homeowner for a money judgment—even after the short sale occurs and a new owner takes title to the property. That is the strategy that a coastal Broward County condominium association has taken with many of the short sales in its building. This condominium association prefers to obtain personal judgments so that it can execute on the judgment and obtain the delinquent owners' personal property—garnish wages, levy on cars, boats, etc.—or simply use the judgment as leverage in case the owner wants to rehabilitate his or her credit.

As a general rule of thumb, community associations should be as aggressive with short sale offers as their budgets allow. For example, a severely cash strapped association may not want to make an aggressive counter offer because it can ill-afford the risk of the short sale falling through. If the short sale is scrapped, then the association must choose between waiting for the bank to complete its mortgage foreclosure, which can potentially take years, or foreclosing the association's own lien for unpaid assessments if the owner is delinquent. The key for the community associations that are considering using counter offers in short sales is to understand and negotiate within their level of risk tolerance for the sale being terminated and the property going through the foreclosure process.

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