

HOA AND TAX LIEN ISSUES

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HOMEOWNERS ASSOC. DUES

- A Hidden Problem
 - > Creation – with the original subdivision; developer creates HOA with Covenant, Conditions and Restrictions.
 - > Part of the title to the land so it “runs with the land”
 - > Can it be removed or will they “haunt” forever?

HOMEOWNERS ASSOC. DUES

- Homeowner’s Association Remedies:
 - > 1. They can foreclose on someone’s personal residence in Arizona
 - > 2. They can sue on the debt and garnish
 - > 3. The remedies are not mutually exclusive, i.e. election of remedies does not apply.
 - > 4. They can record a judgment lien which will attach to the land and stay there until paid [includes attorneys fees, costs and interest]

HOMEOWNERS ASSOC. DUES

Possible Remedies: Pre-Filing ONLY

A. Bankruptcy – Chapter 7

1. cannot discharge the lien but can discharge personal liability for anything pre-filing
2. Anything accruing after filing is still due and payable. 11 USC § 523(a)(16)
3. Lien survives but is subordinate to first DOT

B. Bankruptcy – Chapter 13

1. Can lien strip if homeowner's first DOT is greater than the value of the home.
2. Post filing dues still accrue if Homeowner continues to have a possessory interest in the property.

HOMEOWNERS ASSOC. DUES

• Other solutions?

- "surrendering" in Chapter 7 - Doesn't work if lender won't foreclose or conduct a trustee's sale. See In re Burgueno, 2011 Bankr. LEXIS 1956, (Bankr. D Az. 2011)
- Chapter 13 solution? Put residence in plan with title transferred to lender. See In re: Rosa 495 B.R. 522 (Bankr D. Hi. 2013)

REAL PROPERTY TAX LIENS

- County Government has the authority to put a lien on any property in its jurisdiction for unpaid property taxes.
 - Interest rate is 16% ARS 42-18053
- If not paid within 3 years can be sold at auction.
- If homeowner does not redeem the certificate within 3 years of its sale the property can be foreclosed upon by judicial foreclosure. ARS §42-18152

REAL PROPERTY TAX LIENS

● WHEN DOES IT BECOME AN ISSUE?

1. Homes without mortgages [because first lienholder will usually pay to avoid foreclosure]
2. Reverse Mortgages – generally a condition of mortgage that homeowner keep taxes and insurance current.

REAL PROPERTY TAX LIENS

● Judicial Foreclosure by Certificate holder

● [ARS §42-18201 et seq.]

● Requirements:

- > 1. At least 30 day written notice of intent to file (but not more than 180 days)
- > 2. Certified mail to listed addresses/entities

● Redemption still possible [but can include atty's fees and costs]

**IF HOMEOWNER DOES NOT RESPOND
FORECLOSURE WILL HAPPEN AND TITLE IS LOST**

REAL PROPERTY TAX LIENS

● SOLUTIONS?

- 1. Pre-sale : work out payment schedule so that oldest year is paid before sale; work on remainder thereafter
- 2. Post-sale?
 - > A. Work out payment with cert. holder
 - > B. File Chapter 13 bankruptcy with payment plan.
