

# When You Have No Choice

*Successfully maneuvering through post-foreclosure evictions and rentals*

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In recent years, the number of California community associations continues to rise with no slowdown in sight. In addition, the lingering, negative effects of the recent recession have severely impacted California homeowners and their associations, as well as the homeowners' ability to hang on to their property. Over the past decade, people who were not financially qualified to buy real property made poor business decisions, resulting in their ownership of association properties.

In addition to the obvious, negative result of this influx of non-qualified homeowners is the number of homeowners failing to pay their assessments. When boards of directors vote for the association to foreclose against a delinquent owner's property they maintain the right to rent

out the foreclosed property (subject to rent skimming laws), which often requires evicting the former owner from his or her former property. When renting out property post-foreclosure (and evicting a former owner if necessary) the following guidelines will make the project easier to manage for you and less scary for your board, thus ensuring the process runs smoothly.

## Comply With Legal Requirements

It is critical that an association's foreclosure process complies with all legal requirements. Frequently, judges are unfamiliar with association post-foreclosure evictions as compared to routine landlord-tenant attempted evictions. As a result, judges and attorneys (representing former owners)

will argue whether the foreclosure was proper (i.e., whether the association holds title). This can result in lengthy and costly hearings unlike typical eviction proceedings, so be forewarned and prepared.

In light of the potential legal obstacles facing association post-foreclosures, boards and community managers should rely on an association's legal counsel as opposed to a general eviction attorney who likely handles routine evictions in bulk. A host of association related issues may likely be raised, such as assessment delinquency and governing document compliance and enforcement. This requires a legal expert in association practices who will provide relevant post-foreclosure eviction information inapplicable to standard evictions.

## Prepare for Tenants

Once eviction occurs, the board is free to rent the foreclosed property (subject to rent skimming laws). Prior to rental, the board should insure the unit, unless the association's insurance broker confirms, in writing, that the unit is covered under the association's general property liability policy. Then, the board can commit to renting the property like any other association common area. Maintenance standards are

referenced in the association's governing documents, which must also state that the association has the right or power to lease association property.

Boards and managers must confirm that the governing documents and the association's leases explicitly require that the tenant is subject to all obligations in the association's governing documents and that any breach of those obligations is a default under the lease. This is necessary because tenants are not bound by governing documents unless they separately agree to be bound, unlike owners who are contractually bound by the governing documents' covenants through their purchase of a property in the association.

## Consider Lease Terms & Rent Skimming Law

Managers must be mindful of the California Homeowners Bill of Rights, which provides that if a separate interest is purchased (i.e., the senior lender of a unit forecloses) tenants have at least 90 days before eviction proceedings may commence. To deal with this issue, association leases should be limited to 90-day terms with a month-to-month tenancy thereafter, or at least have provisions in the lease covering this issue.

Further, California's rent skimming law, codified in

California Civil Code § 890, must be understood and applied. The law states that associations must pay all rental proceeds for the first year after acquisition of a property to a senior lender's mortgage. It is arguable whether this law applies to an association's foreclosure or whether it just applies to the senior lender's foreclosure. To our knowledge, there are no published cases involving rent skimming violations by associations. Work with association legal counsel so that your boards can make informed decisions, weighing the risks and benefits of renting the unit.

Many issues arise with post-foreclosure evictions and property rentals; the most important takeaway is that doing nothing is not an option. And keep in mind doing nothing is different than deciding not to take action. Boards should review existing issues and make informed decisions. If they do, their actions will be defensible and they will have met their fiduciary duties.

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