

Dealing With Bank-Owned Units

Adam J. Cohen
Common Interest Magazine

Banks frequently become the owners of condominium units and other homes in residential associations after their borrowers default on their mortgages. They either acquire them through the foreclosure process or, occasionally, accept them directly without the need for litigation through a “deed in lieu of foreclosure.” When this happens, the bank generally assumes the same rights and obligations as any other unit owner.

Of course, usually the bank does not have the slightest interest in association meetings or any other community involvement. Instead, the bank wants nothing more than to sell the unit as quickly as possible to extricate itself from its responsibilities to the association and to recoup its losses on the defaulted loan. Banks typically sell foreclosed homes quickly at steep discounts resulting from physical neglect and motivated by the taxes and costs which would result from continued ownership. Unfortunately, both the presence of foreclosed homes and their reduced resale prices may also lower property values of the other units in the community.

In this unpleasant situation, the two things that the association wants the bank to do most – maintain the unit and pay the common charges – are exactly what the bank wants to avoid, since it means devoting more money to a “bad” loan and spending it on a unit which it does not use. Just figuring out how to contact the bank can be difficult. Checking at town hall is a good start, because banks are legally obligated to notify the town clerk whenever they begin or complete a mortgage foreclosure. They must also include their contact information in those notices, which can be viewed by the public on request.

If a foreclosed unit falls into disrepair, the association’s board can impose fines against the bank after giving the bank notice and a hearing just like any other unit owner for violating its maintenance rules. These might range from broken windows and unsanitary conditions to winterization and vacancy hazards which can result in burst pipes and vandalism. In severe cases, complaints can also be filed with municipal officials. Although towns cannot create maintenance requirements targeted at foreclosed properties, they can enforce generally applicable property regulations and blight ordinances. Also note that if the unit was occupied by a tenant at the time it was foreclosed, that tenant is usually legally entitled to continue living there for at least 90 days after the bank takes title or the balance of the lease term, and the bank may have enhanced upkeep obligations to ensure the unit remains habitable under state law.

Getting banks to pay common charges can also be challenging. Unless the foreclosing bank held only a second mortgage, the nine-month priority rule is usually irrelevant for a bank-owned unit. That is, since the mortgages (along with all other liens) have been extinguished by the foreclosure, the association’s common

pullcom.com  [@pullmancomley](https://twitter.com/pullmancomley)

BRIDGEPORT | **HARTFORD** | **SPRINGFIELD** | **STAMFORD** | **WATERBURY** | **WESTPORT** | **WHITE PLAINS**
203.330.2000 | 860.424.4300 | 413.314.6160 | 203.324.5000 | 203.573.9700 | 203.254.5000 | 914.705.5355

Dealing With Bank-Owned Units

charges coming due after title changed hands become the only nongovernmental liens remaining. The board should send its demand letter to the bank as the unit's owner, but will have more success if it knows the law firm which handled the foreclosure for the bank and the company which the bank retained to manage the acquired unit, so that they can be given copies as well. One of them should be able to alert the proper department within the bank.

One final caution. When is a bank-owned unit not a bank-owned unit? When the bank begins the foreclosure but deliberately does not complete it, for months or even years, to avoid the obligations which come along with assuming title. These "zombie foreclosures" mean the unit owner wrongly believes he is off the hook for upkeep and common charges, so nobody takes care of anything. Be sure to check whether the bank has actually completed its foreclosure and legally taken title before sending it the common charge and maintenance demands. Sometimes banks will honor these before taking title and sometimes they won't, but they will not be legally required to until after they take title.

Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Associations Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from amendments of governing documents to revenue collection strategies and commercial disputes. Reposted with permission from the CT Chapter of the CAI.

Professionals

Adam J. Cohen

Practice Areas

Appellate

Business Disputes

Condominiums, Residential Associations and Community Organizations

Construction

Municipal Law

Real Estate Litigation

Town Governments, Departments and Authorities

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with "Unsubscribe" in the subject line. Prior results do not guarantee a similar

Dealing With Bank-Owned Units

outcome.