

**Dickson Steinacker**  
**March 2009 Homeowners Association Newsletter**

**Foreclosures and Liens**

With the rapid increase in foreclosures, many HOAs are asking the question: what happens to the lien the HOA recorded when the home goes into foreclosure?

In general, HOA assessments are both a personal obligation of the owner AND a debt of the property. *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App 246 (2004). This means that the “property’s” debt continues to accrue from ownership to ownership. It also means that the “owner’s” debt accrues only during his ownership and can be collected only from that particular owner.

When an HOA records a lien, it in essence is securing the “property’s” debt. The HOA may initiate a judicial foreclosure of their lien, however, in the current market there often isn’t sufficient equity to pay the lien after the mortgage and other senior lienholders are paid. Once the bank’s foreclosure occurs, the HOA’s lien is extinguished.

However, the HOA can still obtain a personal judgment against the owner for the amount that accrued during that owner’s ownership. Often times it is best to do so BEFORE the owner has moved out of the property and moved away where they are unable to be located for service. One benefit of obtaining the personal judgment is that you can then try to collect on that judgment either through a garnishment or execution.

Then, when the bank or new owner takes title after the trustee’s sale, they are then responsible for all dues that accrue during their ownership.

Going back to the “property’s” debt that continued to accrue from ownership to ownership, our firm theorizes that the new owner is responsible for the dues that accrued before they took ownership (despite the fact that the lien was extinguished) due to the fact that the debt also belongs to the property, but this theory is of yet untested.

Thus, Board’s should be advised that their liens will be extinguished on the date of the trustee’s sale, but all is not lost because the debt may still be collectable by bringing an action against the property owner personally.

The most important thing to keep in mind is that these general guidelines may be modified by the HOA’s CC&Rs, so particular attention should be paid to the language of the Assessment and Collection provisions.