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CARPENTER HAZLEWOOD DELGADO & WOOD

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Surplus Funds: Another Assessment Collection Tool By Nikita Verma Patel

Even in these tough economic times, there are instances in which Surplus Funds result from a Trustee's Sale. Surplus Funds, also called Excess Proceeds, are the monies left over after a Trustee's Sale (bank foreclosure sale) after the lender has been paid in full, and the costs and fees of the foreclosure sale have been paid. If there are any Surplus Funds, they are disbursed to any junior lien holders in priority. An association's lien for unpaid assessments and related charges is prior to all liens, except the first mortgage. Specifically Arizona Revised Statute (A.R.S.) Section 33-1807, provides, in part, that an association's lien for assessments and related charges is prior to all other liens, interests, and encumbrances, except: (1) liens and encumbrances before the recordation of the CC&Rs, (2) a recorded first mortgage, or (3) liens for real estate taxes and other governmental assessments. As such, if an owner is delinquent in the payment of assessments and Surplus Funds result from a Trustee's Sale, the association is in first priority to receive that extra cash.

If Surplus Funds exist, the trustee may pay an association's lien on receipt of a written claim. Or, the trustee may elect to deposit the balance of the proceeds with the county treasurer in the county in which the sale took place. If the trustee elects to do so, the trustee as a plaintiff shall commence a civil action in superior court in the county in which the sale occurred. Any person with a recorded or other legal interest in the property at the time of the sale may apply for the release of proceeds by filing an application for distribution in the civil action that was filed by the trustee. Any person who receives the application or who claims a right to the proceeds may file a response to the application within thirty days of the mailing of the application. Pursuant to A.R. S. Section 33-812(H) if an association is required to file an application or response in order to recover the proceeds, the association may request from the surplus funds an award of reasonable attorneys' fees and costs incurred.

In these tough economic times, when a trustee's sale occurs, the property generally reverts back to the beneficiary. However, in limited instances, the property is sold to a third party and surplus funds exist. When a property is sold to a third party at a trustee's sale, it is important that the association promptly follows up to determine whether any surplus funds resulted from the sale. Even though the association is in first priority to collect any surplus funds, if an association does not submit a claim and/or application for disbursement in a timely manner, the association may not be able to recover any funds.

Although the availability of Surplus Funds is infrequent due to the state of the economy, it is not nonexistence. Collecting delinquencies through Surplus Funds can be an effective collection tool that should be utilized when available.



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