

We Understand Community Associations.

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The Eyesore NEXT DOOR...

Written By:
Marilyn Ratzel, Partner

What can you do about foreclosed properties?

You probably have seen the stories in the news. Georgia continues to have record months for mortgage foreclosures, and it is predicted that the housing market still has a very long road to recovery. Meanwhile, communities across Georgia continue to be negatively impacted by the ongoing foreclosures. Not only do these foreclosures result in drastic decreases in home prices, but foreclosed properties often end up neglected and unmaintained, and, in some cases, attracting pests, rodents and even squatters or vagrants.

Foreclosed properties are a source of frustration for boards of directors, homeowners, and community association managers. One of the most common questions received over the past three years is how to deal with foreclosed and abandoned properties that are not being maintained. Unfortunately, there is no perfect solution, especially when dealing

with absentee and non-responsive bank-owned properties. However, community associations do have options to forcing the maintenance of these properties.

Self Help / Abatement:

One option for community associations to consider is exercising self-help to remedy these conditions, if allowed under the governing documents for the community. Most community association documents allow the association, acting through the board of directors, to enter upon any property, fix or remove a violation of the documents, and assess the costs of doing so back against the property owner. This is called self-help or abatement. Typically, the governing documents will also require specific notice to be given to the property owner. Using this self-help authority will allow an association to enter the property, take the minimal actions necessary to bring the property into compliance with



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...it may be better to consider other options.

community standards, and assess the costs back against the bank or new owner.

Often, even after receiving notice from the association of its intent to exercise its right of abatement, absentee bank owners will not respond or take actions to correct maintenance violations. The association can then add any costs of the self-help, such as mowing the property, to the property account. These amounts should be included in any pay-off letter provided to the bank when the bank finally sells the property. Many times these amounts are paid without question, but even when questioned, in most cases, banks pay those amounts when shown that proper notice of the intent to exercise the right of abatement was provided.

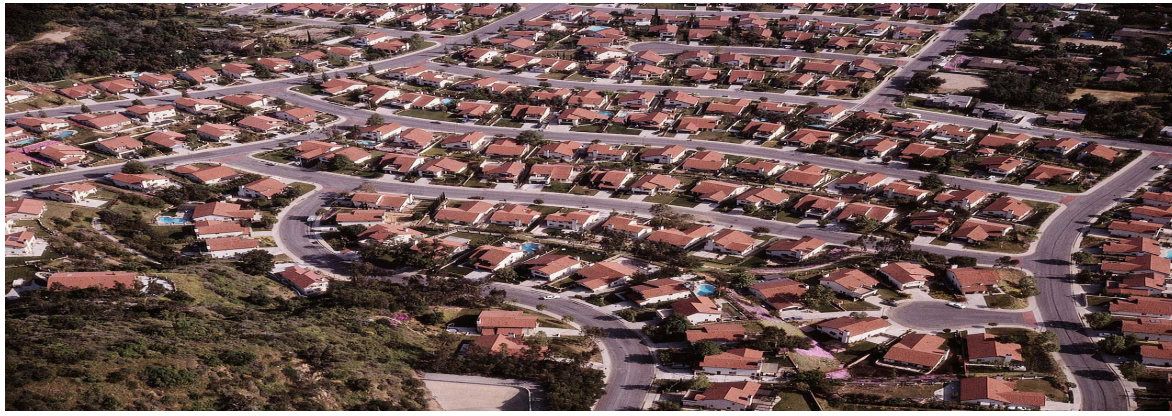
The exercise of the right of abatement is not the perfect solution for every case. Generally, self-help is best used for situations where the maintenance needed is minimal and can be performed quickly and for a relatively nominal cost. If the property is in need of a major repair, such as replacing siding or repainting, it may be better to consider other options.

The timing for the exercise of the right of abatement is also crucial. If an owner has

abandoned the property and the bank has not yet foreclosed, exercising the right of abatement may not be the best option, as the lien for costs of self-help charged back to the property will be extinguished by the foreclosure. This scenario is particularly frustrating for many communities, as banks are waiting longer and longer to foreclose, even after the property has been abandoned. In some cases, the association will simply absorb the costs of the maintenance, with the idea that the benefit obtained from keeping the community standards maintained is worth the costs of the maintenance.

Another question that comes up with self-help is exactly how long an association will have to wait to recoup any costs charged to the property owner. In Georgia, there is a four-year statute of limitations on collection of association assessments. Hopefully, the property will be sold well within this four-year mark and the association would recover these costs sooner rather than later. However, in the event the fees and assessments are piling up, a collection demand and/or a lawsuit, discussed further below, is an option.

Imposing fines for failure to maintain can also be an option, to the extent allowed in the



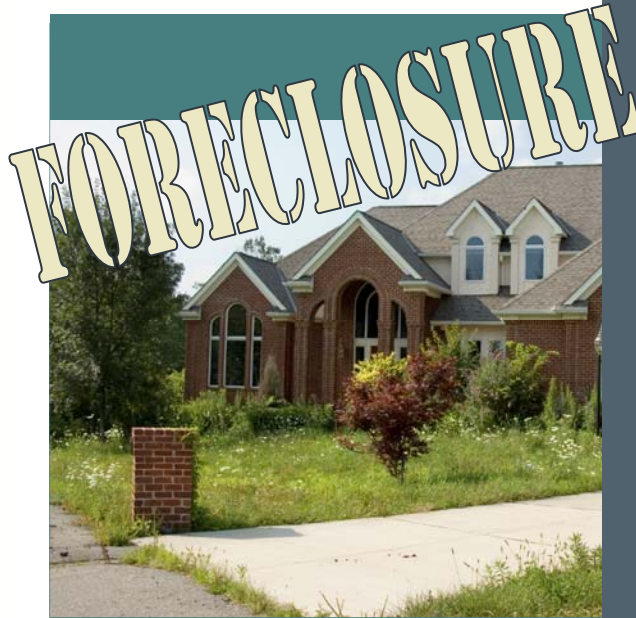
association's governing documents. However, this is not always the most ideal situation, as it often does little to alleviate the underlying issue of the lack of maintenance.

Contacting the Bank:

Easier said than done, right? Certainly, there are some cases where it is almost impossible to identify or locate the owner of a foreclosed property. Even though Georgia law requires banks to file a foreclosure deed within 90 days of the foreclosure, since the law does not contain any penalties for noncompliance, it is often ignored. However, frequently the ownership information can be obtained through the county land records. Most banks have an REO (real estate owned) department in charge of its foreclosed properties. The REO departments or the banks will contract with property preservation companies, who specialize in securing and maintaining foreclosed properties. It may take some perseverance, but tracking down someone in the REO department for bank-owned properties can often yield results.

Contacting the bank can also be a good option even when it has not foreclosed on a particular property yet. In cases where the owner has abandoned the property, but the bank has yet to foreclose, and the property is in a condition that poses a serious health or safety concern for the community, a notice to the bank on record as having an interest in the property often can be effective, particularly when sent by the association's

attorneys. They say a picture is worth a thousand words—sending pictures of abandoned and unmaintained property can nudge the bank into action. In most cases, the bank doesn't want to lose any more value of a property headed for foreclosure, nor does it want any liability for a potentially dangerous condition.



Another option once a property has foreclosed is to consistently check the internet to see if the property is listed for sale. For example, Fannie Mae has a website for its REO properties, www.homepath.com. This website is a very useful resource. A lot of times, if the foreclosed property ends up being owned by Fannie Mae, the agent selling the home is identified on Homepath and can be contacted concerning ongoing maintenance violations.

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Contact Us:

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Code Enforcement:

Ask any county code enforcement office what they receive the most calls on in the past two years, and the response will overwhelmingly be foreclosed properties. For example, statistics provided by DeKalb County Code Compliance Division shows that 52% of the reported code violations from April through June 2011 were for properties with overgrown grass and landscaping, the vast majority of which are foreclosed properties. Another 5% of the reported code violations were for vacant and unsecured properties.

Most counties have ordinances prohibiting the overgrowth of grass and weeds, and requiring abandoned properties to be properly secured. Although code enforcement agencies will not enforce an association's private covenants, if the condition of the foreclosed property rises to the level of a violation of the county code, it falls within the realm of enforcement by code enforcement.

Many boards of directors and managers have discovered that most code enforcement offices are overwhelmed with complaints on foreclosed properties. However, many of these code enforcement officers are also making these complaints a priority. While it may be difficult for code enforcement officers to keep up with the tide of complaints, code compliance is an available resource for communities struggling with unkempt or abandoned properties. Once a violation is verified, if the property owner does not take steps to maintain a violation, most counties will assess fines up to \$1,000 a day.

Suing for Compliance:

Last but not least, bringing a lawsuit against the property owner to require maintenance is, at times, an effective and necessary option. This option is most useful when the property has actually foreclosed and is owned by the bank. Usually, where there are maintenance violations, there also are delinquent assessments. In this market, banks respond to attorney collection demands and lawsuits. When times were good, banks were willing to let late fees, fines and interest accumulate, to simply pay at closing. Nowadays, banks are not so keen on accruing more debt. An attorneys' threat of a lawsuit to enforce the covenants and to recover unpaid assessments often motivate the bank in the right direction.

The unfortunate fact is that we will be dealing with foreclosures and foreclosed properties for some time to come. While there may not be a perfect solution for every situation, using some of these options can help alleviate some of the frustration.

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**Individual situations may vary. This document is not intended to use as specific legal advice.*

