



THE CRESCENT

September 24, 2010

In recent months there have been a number of questions regarding lawn or other upkeep issues. Most of the time, the Board is aware of these issues but, unfortunately, the process of resolution is not always straight-lined. This article will address how resolution is sought in these homes with two different scenarios.

First, that of a homeowner who is current on Association fees and second, that of a homeowner who may be delinquent in fees and may also be facing foreclosure or bankruptcy.

The first example set forth is for a house that has a lawn that is not being maintained by a resident who is current on all POA dues:

1. It is inspected by the ACC.
2. A letter is generated giving the homeowner 15-30 days to correct the problem
3. If there is no response, another letter is generated indicating the placement of a fine.
4. A decision will then be made whether or not the Association will take corrective action and bill the charges to the homeowner.

Factors in making the decision regarding corrective action are:

- Is the homeowner delinquent in Association fees?
- Is the homeowner in foreclosure?
- Is the homeowner in bankruptcy?

The Association has the right to fine for violations and the right to take corrective action. However, in this example of lawn maintenance, the Association must upfront the cost of the corrective action which could be excessive in Association costs, especially when there are multiple properties in need of corrective action. The action taken must be assessed as to the probability of collecting the money spent versus the detriment to the community if the infraction is not corrected.

One cannot look at the corrective process without questioning the collection process. While there can be many variations on the collections, the process below is generally followed:

- Thirty (30) days delinquent – a letter is sent asking for payment and notice that late fees will begin accruing.
- Sixty (60) days delinquent – a demand letter is sent, indicating that the account will be turned over to an attorney for collection.
- Ninety (90) days delinquent – the account is turned over to the attorney for collection and to have a lien placed against the property

Once the account is turned over for collection, the Board will then decide whether or not to file a law suit seeking to obtain a judgment. If the mortgage holder or tax liens are in process, the Association will notify the mortgagee, through legal documents, of our claim. In South Carolina, tax liens and mortgage liens take priority over all other liens.

Should the property be foreclosed upon and there is no equity (which is common today), the Association will receive no money at foreclosure. There is the option of filing a law suit and obtaining a judgment to be attached to other property, if it is deemed that we have a chance of collecting the money that is owed to us. Bankruptcy filing can further delay the above process for a period of time. Depending on the Chapter filed, the Association may not be able to take any other action until the bankruptcy filing is completed or released.

By looking at the above, one begins to understand that unless the POA is willing to upfront considerable cash with the possibility of little or no recovery, the Board must proceed judiciously on how corrective actions are taken.

Usually the Board will start with a minimalist approach and put the lawn on a minimal maintenance schedule. The overall goal is that of striking a balance between not allowing one property to negatively affect neighboring property values and pride of the neighborhood and not running the Association deep into

further financial obligations at the expense of those who are meeting their obligations.

These matters can become more complicated very easily. For instance in the case of lawn maintenance, perhaps the offending property is no longer occupied and the utilities have been cut off. The Association has no right to turn on the water even if it was willing to pay for it. In the case of infestation of any type, the lawn could require costly treatment which would be an additional cost to the POA.

The Board ends up with the authority to correct infractions but finds itself hampered by regulations, costs, legal time drag and other factors. We hope this letter answers your questions regarding these matters.

Sincerely,

Crescent POA