



NON-JUDICIAL FORECLOSURE

Issue

Unlike primary residential dwellings, timeshares are vacation properties with short-term use, typically a week or two annually. The loss of a timeshare may impact one's quality of life, but it does not leave the owner without a place to live. As a result, less than 1 percent of timeshare owners contest foreclosure actions when pursued by lenders or homeowners' associations.

Applying judicial foreclosure laws to timeshare interests is costly in comparison to the value of a single timeshare unit. It is also very time consuming as well as a burden on the already stretched judicial system in many states. As a result, the trend has moved toward adopting or making better use of non-judicial foreclosure options ("NJFs"), which are typically less expensive, more efficient, and do not require as much judicial supervision.

Impact

Most timeshare owners' associations have the legal responsibility to maintain, repair, and replace the resort's common elements, such as recreational facilities, roofs, roads and parking lots. The maintenance and repair obligations of the association are funded through the annual assessments paid by the timeshare owners collectively. If for some reason an owner stops paying his financial obligations, the association has to spread those costs among the rest of the owners in the association.

In states that don't have non-judicial foreclosure, the remaining dues-paying timeshare owners may be forced to cover 100 percent of a resort's assessment obligations. As each owner's individual share increases, an association may try to reduce expenses by deferring maintenance and repairs—thus decreasing the value and desirability of the entire resort. This also causes more owners to simply "walk away" as they are unwilling to subsidize a disproportionate share of assessment obligations. If this situation continues to snowball, it could result in the financial failure of the resort. In jurisdictions with NJFs, an association can cost-effectively acquire the delinquent timeshares and resell them to new paying owners, or rent them for the benefit of the association.

Position

ARDA and ARDA-ROC support non-judicial foreclosure laws which provide strong consumer protection provisions. As mentioned above, it is important to recognize that timeshare foreclosure actions often go uncontested—frequently due to owner financial difficulties, disinterest in continued involvement with a resort, or discontinued use of their timeshare. To ensure that the rights of all timeshare owners are preserved, ARDA and ARDA-ROC support NJF legislation with two particular consumer protections for timeshares:

- Owners subject to foreclosure are free to “opt-out” of the non-judicial process and choose a traditional court procedure and protection through judicial foreclosure; and
- Foreclosed owners are not subject to deficiency judgments for the delinquent assessments. (This means the delinquent owner is not pursued in order to collect the assessments after the foreclosure is complete, and his/her credit-rating will not be affected by the foreclosure action.)