

THE GOOD NEWS FOR ASSOCIATIONS IN A PROPERTY TAX FORECLOSURE SUIT

By Sipra S. Boyd, Shareholder, Roberts Markel Weinberg Butler Hailey PC

Ever wonder why a homeowner's association is included as a defendant in a property tax suit? Understanding the answer to this question may help an association receive assessment funds even after the association's lien is extinguished as result of a tax foreclosure sale.

If a homeowner becomes delinquent in paying his ad valorem taxes, the taxing entities must file a judicial foreclosure action. All tax suits are governed by the Texas Tax Code which outlines the details of the tax foreclosure process. The taxing entity instituting the tax suit must include all lienholders against a property in order for the property to be sold free and clear of all liens. Arguably, the property tax lien in Texas is one of the most superior liens.

When a suit is filed, all liens of record are identified by a title check on the property. The taxing entities will include the association in the tax suit only if the association has filed a lien affidavit in the real property records. If the association is served in a tax suit, it is best to have the association's attorney file an answer to make an appearance in the tax suit. Although the association does not technically need to participate in the tax suit (i.e. attend a hearing, etc.), this should assist in the association receiving notice of the availability of excess proceeds after the tax foreclosure sale.

The association should be included in a tax suit as an "in rem" or "lienholder" defendant. This means the association is simply included as a result of its lien affidavit which encumbers the property and any judgment taken against the association will be for purposes of foreclosing the association's lien, not for taking a judgment against the association personally. The association's attorney should also confirm this is true at the time the judgment is entered so that the association is not liable for any amount of the taxes.

At a tax sale, the property is sold at an auction at which the highest bidder purchases the property. Once the taxing entities claim the money they are owed under the judgment, any excess funds are placed in the registry of the court. At this point, the clerk should send notice of the excess proceeds to all parties in the property tax suit. All lienholders have two years to claim the excess proceeds. Once the association's attorney is notified of excess proceeds, an application for excess proceeds should be filed on behalf of the association to claim any amounts to which it is entitled under its lien. The process is relatively easy and rarely needs a hearing or attendance by a witness for testimony. The right of the association to claim the funds over other claimants depends on the priority established by the Texas Tax Code. Assuming a superior lienholder does not file a competing application, the association should receive all funds claimed.

Despite the fact that an association's lien is extinguished after a property tax sale, ensuring the associa-

tion's minimal participation in the tax suit could potentially result in satisfaction of the association's lien. The association may even recover attorneys' fees and expenses for filing a motion for excess proceeds. Remember to have the association consider filing a lien affidavit so the association will be included as a party in the tax suit. This extra step could result in good news for the association even if the association's lien is extinguished by a tax foreclosure sale. Make sure to turn over any citations for tax suits to the association's legal counsel so an answer can be filed. This way, any notices involving the tax suit, including the availability of excess proceeds, will receive the attention they need. ♦



Ms. Boyd represents single-family residential, condominium, and commercial community associations throughout Texas and her practice focuses on all aspects of Community Association Law. She currently serves on the Board of Directors as of the Greater Houston Chapter of the Community Associations Institute and is dedicated to fostering responsible and successful community associations.

