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Lenders: Read This Before Foreclosing a Membership Club

Article By:

Glenn A. Gerena

A lender who holds a mortgage on golf courses and other recreational amenities should consider two issues (among others) before foreclosing on the property when club members have use privileges at those facilities.

Issue 1: Does a lender take title subject to the club memberships? A foreclosing lender takes title subject only to real property interests existing at the time the mortgage is granted. Generally, club memberships and the memberships agreements grant personal property interests and, therefore, the lender would not take title subject to them. However, there are cases where courts have determined that club memberships were real property interests based on plat descriptions and references to memberships in the real property public records. For example, a community's declaration of covenants may include easements or other interests in favor of club members or property owners that could be considered real property interests. A lender and its counsel should carefully review title documents and plats before concluding that the lender will not be subject to club memberships.

Issue 2: After foreclosure, how is the lender or foreclosure purchaser to keep the club members as dues payers and customers? Although most lenders and foreclosure purchasers do not want to assume membership agreements, they do generally want to keep the members as dues payers and purchasers of the club's products and services. The new owner should implement a membership plan or other type of offering to club members immediately after the foreclosure, which is carefully crafted to induce the club members to continue to generate needed revenue.

Offerings to existing club members should be made on a preferred basis compared to what is offered to new members. The pricing of memberships, dues and fees should further a business plan created by knowledgeable professionals based on current market data. The introduction of the membership plan or offering should be accompanied by well crafted communication that addresses concerns and issues that members will likely have after a foreclosure. The new owner should have trained staff in place to answer members' questions and proactively solicit their enrollment in the new club. In addition, the membership documents and communication should be crafted so as not to create successor liability.

Filing and prosecuting the foreclosure complaint may be the easy part. Conducting diligence on the memberships and planning how to continue project revenue are likely the keys to success for the lender.

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