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An Insight into CAI's Jacksonville Metropolitan Chapter-In-Organization

*CAI - More than just another pretty face...*

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## *A Note from the Treasurer...*

As our chapter continues to grow and we have more and more people attending our breakfast meetings, I think this is an appropriate time for us to discuss professional etiquette. I realize that everyone should already have a good understanding of what professional etiquette is, but I would like to discuss how it is, in my opinion, the single most crucial aspect in our Chapter's development. Having been involved with many other organizations throughout the state that service this amazing industry that we are all a part of, I have seen the results of both good and bad etiquette.

I would first like to take a moment to reflect on the true purpose of why we are all involved with CAI, to better the community association industry in the Jacksonville Metropolitan area. Anyone that has different ideas as to why they are involved with CAI should seriously rethink this. The two primary categories of members that I am going to discuss are the property managers and the business partners.

I will start by discussing how the business partners should act. I am always amazed to meet business partners throughout the state that tell me that they are at a meeting to sell their product or service. Just to give them the benefit of the doubt, I like to respond by asking them if they hope to get the "sell" either directly or indirectly. Although it may not

seem to be a major distinction, it really is. I think there are very few business partners that would say that they don't hope to see their sales go up due to their involvement. However, the increased sales should come as a result of simply meeting more people and getting to know them, as opposed to giving a sales pitch to everyone that you meet at a function. It is very appropriate to introduce yourself and who you represent and give out business cards so that if someone wants more information, they will be able to contact you. By all means, if someone asks you for more information at a meeting, feel free to discuss what you do with them. I would also encourage all of the business partners to invite a manager out to lunch to get to know more about what they do and what their days are like. It will definitely enhance your understanding of the industry. The goal of business partners should simply be to meet as many people as possible and to do so while providing a pressure-free environment in which everyone can feel comfortable. If this happens, then the managers and board members will all feel comfortable attending any and all events.

The second group that I will discuss is the property managers. They are much the same as the business partners in that they have the ability

to control how comfortable the board members that attend our event feel. Many people may not realize how fortunate we are to have the number of board members that we do attending our meetings. Even many of the larger chapters throughout the state do not have the board member attendance that we do. With that being said, let's make sure we continue to promote an atmosphere where they feel welcome and unthreatened so that they will attend the events and further their knowledge base of how to effectively run their associations.

If we all continue to work together, there truly is no limit to how successful our chapter can be. And for those that are wondering if they will ever get a chance to sell their product and service, that's what trade shows are for. In case you are not aware, we will be co-sponsoring a trade show with Property Manager Pages on October 21<sup>st</sup>. This should be an incredible event and we hope that all the business partners and management companies will participate by having a booth at the show. We also hope that all of our association board members will attend and that all of the managers will encourage their boards to come and learn more about associations.

**Attend the August  
18 meeting, and  
win one of several  
raffles prizes!**

# Not Vengeance...Just Good Business

By: Ken Arnold, CEO Association Financial Services  
Jeffrey M. Oshinsky, Esq., in-house general counsel

Recently, some have questioned boards of directors that take action to foreclose on delinquent unit owners, maintaining that they are acting out of vengeance. *Since when does a corporate board deserve criticism for properly exercising its fiduciary responsibility to its members?*

Community associations suffering from the consequences of owners not paying their maintenance fees are now being faced with a new dilemma:

- Deciding whether to foreclose on units with delinquent balances, or
- Waiting patiently for financial institutions holding mortgages on delinquent units to foreclose.

Community associations—condominium and homeowner associations—have been given the legal right to foreclose a lien for unpaid assessments and the costs of their collection in substantially the same manner in which a mortgage of real property is foreclosed. Everyone who purchases a property that is subject to a Common Interest Realty Association (CIRA) is informed of the association's rights. In fact in Florida, a seller is required to deliver those documents and the real estate brokers involved should be insuring compliance with the laws.

A CIRA cannot properly function without the cooperation of its owner members. Maintenance fees are essential to the health and well being of associations as they pay for vital utilities, insurance, services, and amenities. If owners don't pay those fees, the burden for the ensuing delinquency falls squarely on the shoulders of "good paying owners." Therefore, it is imperative for associations and their boards to proactively do everything within their power to mitigate delinquencies and collect these fees. It's not only the right of a responsible board of directors, it's their duty to their constituent owners. The decision to foreclose is an important business decision, not an emotional one as some have alleged.

This issue has only come to the forefront of CIRA dialog as a result of the deliberate failure of financial institutions to actively pursue foreclosure remedies when the value of their collateral is worth less than the outstanding loan. In the past, especially in the recent past when real property values were steadily climbing, if a unit owner was not paying his mortgage or maintenance fees, banks would aggressively pursue foreclosure remedies. If Mr. Smith did not pay, he would be replaced by Mr. Jones, because banks could easily sell the property. Now, however, given the significant reduction in real property values, these financial institutions are sitting on their hands and allowing the associations to suffer, while the owners who pay their fair share are asked to carry the burden for those who don't.

In many cases the best course of action is for the association to take control of its financial well being by consistently enforcing its rights to lien and foreclose on delinquent units. The economic landscape and bank behavior are not going to substantially change in the next two to four years. In fact, the Associated Press recently reported that nearly 12 percent of FDIC-insured banks were at risk of failing, the highest level seen in 18 years.

There are several good reasons why an association should move forward and take title to delinquent units.

- If a delinquent unit owner continues to remain on the mortgage and title, he can more easily mount a protracted foreclosure defense further delaying the association's collection of maintenance fees. Additionally, this exposes the association to increased write-off/bad-debt as it delays when a bank takes title. Association foreclosures are generally easier to move through the legal system as the only defense is payment. Once the association has the title, there are multiple strategies available to speed the way for a bank taking title.
- Once an association has acquired title to a unit, it is now in a strong position to rent the unit and recoup previously unpaid assessments and generate much needed cash flow.

- New strategies that have been developed, including forcing the first mortgagee to finalize their foreclosure and take title, are only available if the association has completed its own foreclosure and taken title to the unit.

## Myths about Association Foreclosures

Certain myths need to be debunked regarding actions taken by associations to foreclose on delinquent units. Does an association have an obligation to pay the mortgage on the unit? The answer is "no." While the association does take the delinquent unit subject to the mortgage, the association does not assume the mortgage as part of its foreclosure and is under no obligation to pay the underlying mortgage note. On the other hand, an association should insure a unit to which it has taken title to protect the association, especially if it plans to put a renter in the unit.

The reluctance to foreclose on delinquent units on the part of some association boards of directors is often due to the belief that a foreclosure is too expensive and therefore not a good business decision. While it's true that the business decision should be influenced by a cost-benefit analysis, there are collection solutions available to associations that can make this a win-win proposition.

Other boards, afraid of being perceived as vengeful and mean-spirited, are loathe to take legal action against their neighbors. However, their concern is misplaced. Absent the cooperation of all unit owners, the association, community and paying owners suffer. Why protect the delinquent owners at the direct expense of caring, paying owners?

There is no reason to wait for a financial institution to take action when while effective legal remedies will permit the association to improve recovery of assessments owed to it.