

BANKING KORNER

Although many of our members are unaware, despite the fact that the housing market began its serious plunge in mid-2007 and despite the fact that it has been slowly recovering over the last several years, foreclosures have measurably impacted our Association more over the last few years than before! The reason is that due to federal and state legislation that was passed in an attempt to minimize the number of foreclosures, the process has simply been delayed, which has become more common in the last few years. And, that process has been somewhat costly to your Association. With regard to these costs, however, we are going to keep you apprised of which banks “help” us versus which ones “don’t”, on a periodic basis. Read on...

To provide as short an explanation as possible, thanks to our State Legislature and its passage of the current Maryland Homeowners Association Act and because of our second lien position in a foreclosure, the lender is obligated to pay us only the pro rata portion of the recent Principal amount of the assessment and not any costs, interest or legal fees. As an example, if a property was sold in foreclosure on June 15, 2015 and then sold to a new owner on December 31, 2015, we would have the legal right to payment of only \$158.11 ($12/31/15 - 06/15/15 = 199 \text{ Days} \times (\$290.00 / 365)$). So, although we are owed at least \$290.00 (Annual Assessment for 2015), we can legally only collect the above portion unless we had a previously filed lien, in which case we could collect an additional 4 months' Principal (\$95.34). And, to make matters worse, virtually all of the foreclosures involve multi-year delinquencies and because Lenders have delayed their action for so long, we have been owed several thousands of dollars but can legally collect only the \$158.11 or \$253.45 cited above and must write off hundreds or thousands of dollars. Since our By-Laws require that we take legal collection action, we incur a great deal of added expense, plus costs and interest because State law firmly favors the Lenders. Luckily, the rate of foreclosure has been declining over the last couple of years and for 2016, **we wrote off only \$23.33.**

BUT, we have found that some banks, despite the “Letter-of-the-Law”, recognize that we are a nonprofit Community Association that depends on these revenues to maintain and improve the Community, which benefits all property owners and the banks that have mortgage holdings in the Community. We intend to keep you, our members, aware of which banks “help” us via more generous payments and of which banks strictly adhere to the “Letter-of-the-Law”. While those Lenders that pay only what is required are acting legally, those that pay the full or greater amount than is required deserve some recognition since they have chosen to act more generously toward our Community. And, there are also Planned Unit Development Riders (PUD Riders), which appear to be parts of many/most Deeds of Trust today. Basically, this is an agreement between the Lender and the Borrower that requires the Borrower to pay all Association fees or the Lender may pay them and add them to the Borrower's mortgage balance. While we cannot share any proprietary information, due to privacy laws, we can provide you with the name(s) of the Lender(s), the total amount owed and the total amount paid. What you do with that information is up to you.

- 1) In December 2017, we again wrote to Wells Fargo's CEO regarding that institution's response, dated November 24, 2017, to our letter, again addressed to Wells Fargo's CEO, dated October 09, 2017. In short, this bank's November 24th response to our letter basically stated that they believed that they had previously responded to our correspondence and that they would not provide any further response relative to this topic, which then regarded a **2009-2017 delinquency, totaling more than \$9,100.00**. Despite this “final” response, our letter of December 06, 2017 advised that we would continue to contact Wells Fargo regarding its refusal to acknowledge its obligation, under the Planned Unit Development Rider, at least annually until the matter has been resolved via some manner. In addition to our continuing to follow-up with this most uncooperative financial institution, we are also seeking another judgment against the property owner, after which we will look to sell that property at a Sheriff's Sale.
- 2) In January, 2017, an agent for Bank of America paid one of our largest delinquencies in full and also included payment of the 2017 Annual Assessment! This was another product of a PUD Rider and had been several years in coming. This payment, **in the amount of \$6,209.86**, brings this property current through December 31, 2017 and cleared a 7-year delinquency, on which we had obtained **2 judgments**. The **legal fees**, which were totally recovered, **totalled \$3,748.00**.
- 3) In January 2017, we again received a response from **Wells Fargo Bank** regarding another follow-up, sent to this Lender's President and CEO, and relative to the delinquency described in 7), below, which has now risen to **almost \$7,300** and applies to **years 2009-2016**, for which we now have **two judgments**. We carefully explained that per the terms of the PUD Rider between Wells Fargo and its Borrower, the lender requires timely payment or it will pay the arrearage. In my discussion with this Bank's representative, however, all that she would say was that Wells Fargo does not pay HOA Fees!

When I asked why it did not honor the terms and conditions of its Agreement (PUD Rider), the representative could not/would not respond.

- 4) In June 2016, we had a rather unusual occurrence but a positive one for the Community. It involved an ultimate 10-year delinquency (2006-2015) on which **we obtained a judgment in November 2012** for the 2006-2011 portion. Because the homeowner still did not pay, we advertised the house, for purchase, at a Sheriff's Sale in 2014 and the homeowner, realizing that we were going to proceed with selling his house, **paid \$4,700 in May 2014**. But, subsequent to this, **CitiMortgage foreclosed its lien** and because it sold the property for more than the amount of the remaining mortgage, there were "excess proceeds of sale", from which we requested payment of the balance that we were owed. After settlement of the foreclosure and court approval, **we received an additional \$3,570. In total, then, we received full payment of \$8,270**, thanks to our judgment, and the REO Servicer paid the 2015 obligation. This is proof-positive as to how expensive judgments can be.
- 5) In February 2016, one of our worst delinquencies was foreclosed and owed us \$9,110.16 for a 10-year delinquency! Initially, the REO representatives for **Nationstar Mortgage** insisted on strictly adhering to the "Letter-of-the Law" but after months of negotiation, **this lender paid us \$6,770.38, or 74.3%** of what we were owed. And, we have a judgment for the balance, so if possible, we can attempt to collect from the previous owner since this is a personal debt.
- 6) In January 2016, we had two (2) properties on which we were owed **\$3,252.32 (5 years) and \$3,197.55 (4 years)**. **Caliber Home Loans paid both of these balances, in full**, under PUD Riders and, then, paid the 2016 assessments for both.
- 7) In January 2016, **Wells Fargo Bank** foreclosed a property and **paid us only \$501.61** on a 4-year delinquency. **We had to write off \$1,941.27** since this bank refused to pay that difference.
- 8) In October 2015, we wrote to **Wells Fargo Bank** and asked that it pay a **\$5,242.52 delinquency (2009-2015)** pursuant to a PUD Rider. They first sent us a letter advising that it held a first lien position, which was already a known fact. In November, when we followed up, **Wells Fargo advised that it would not pay but would not provide a reason!**
- 9) In October 2015, **Wells Fargo Bank paid us \$2,315.27** to clear a 4-year delinquency on a property that it was foreclosing.
- 10) In August 2015, **CitiFinancial paid us \$2,755.34**, under a PUD Rider, to clear a 4-year delinquency. Payment was in full.
- 11) In April 2015, the REO Servicer for **CitiBank paid us \$5,104.39, or 72.8%** of what we were owed on this foreclosure. We have a personal judgment for the balance, which may allow us to eventually recover it.
- 12) In March 2015, we had a 4-year delinquency on which we could have legally collected only \$303.75 (from 05/22/13 through 06/17/14). And, we didn't become aware of this sale until September 2014 because the Settlement Company failed to contact us prior to the June 2014 settlement. **BUT**, as result of a letter of explanation that was sent to the Lender, **Branch Banking & Trust Company (BB&T) paid us the entire amount of the delinquency, totaling \$2,181.83**.
- 13) In December, 2014, we were first made aware of a foreclosure that had occurred on July 15, 2014. **The foreclosing Lender was Wells Fargo Bank** and as we always do, when asked for a statement of what was owed, we responded with one that listed all moneys that were due. This, too, was an abandoned property on which the Lender had not performed any maintenance. Although we exchanged correspondence for more than two weeks, **the Lender ultimately paid only the 2014 assessment (\$290.00)**, and **we wrote off \$1,920.28**, owed for 2011, 2012, 2013 & part of 2014.
- 14) In August 2014, we received payment of only \$185.92 as a pro rata payment of the 2014 Assessment. Unfortunately, this was a property that had been abandoned years before, on which the **Lender was Bank of America**. This Lender assigned its interest to an REO Servicer in May of 2013 and when this Servicer came to us in June 2014, it advised us that ownership had been turned over to FNMA (Fannie Mae). None of the federal real estate insurers pay any more than is legally required. So, while we were paid \$185.92, **we were owed a total of \$3,967.35! That resulted in a write-off of \$3,781.43**. If only Bank of America had taken action sooner, we may have been able to have avoided some of this 2010-2014 debt.

15) In March 2014, there was a foreclosure of a property that was originally financed by Countryside Financial, which **institution was bought by Bank of America in January 2008**. Although the delinquency dated back to 2008 and the property had been abandoned and remained in a state of disrepair for several years, **the Lender did nothing!** Although we were paid the \$290.00 assessment, **we had to write-off \$4,903.83 owed for the years 2008-2013**.

We continue to file suits, obtain judgments and request payments from Lenders pursuant to PUD Riders and we attempt to negotiate better-than-minimum payments from them in foreclosure situations but our success, or lack thereof, strictly depends on which Lenders willingly cooperate and which do not. Thus far, our worst two Lenders are Bank of America and Wells Fargo but **our leading problem Lender, by far, is Wells Fargo**.