

The Chesapeake Region

BEACON

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2010 Financial Forecast— More Foreclosures Ahead!

By *Thomas C. Schild, Esq.*

With continued economic uncertainty and declining home values likely to continue in 2010, most associations will face another year with many owners who are behind in paying assessments.

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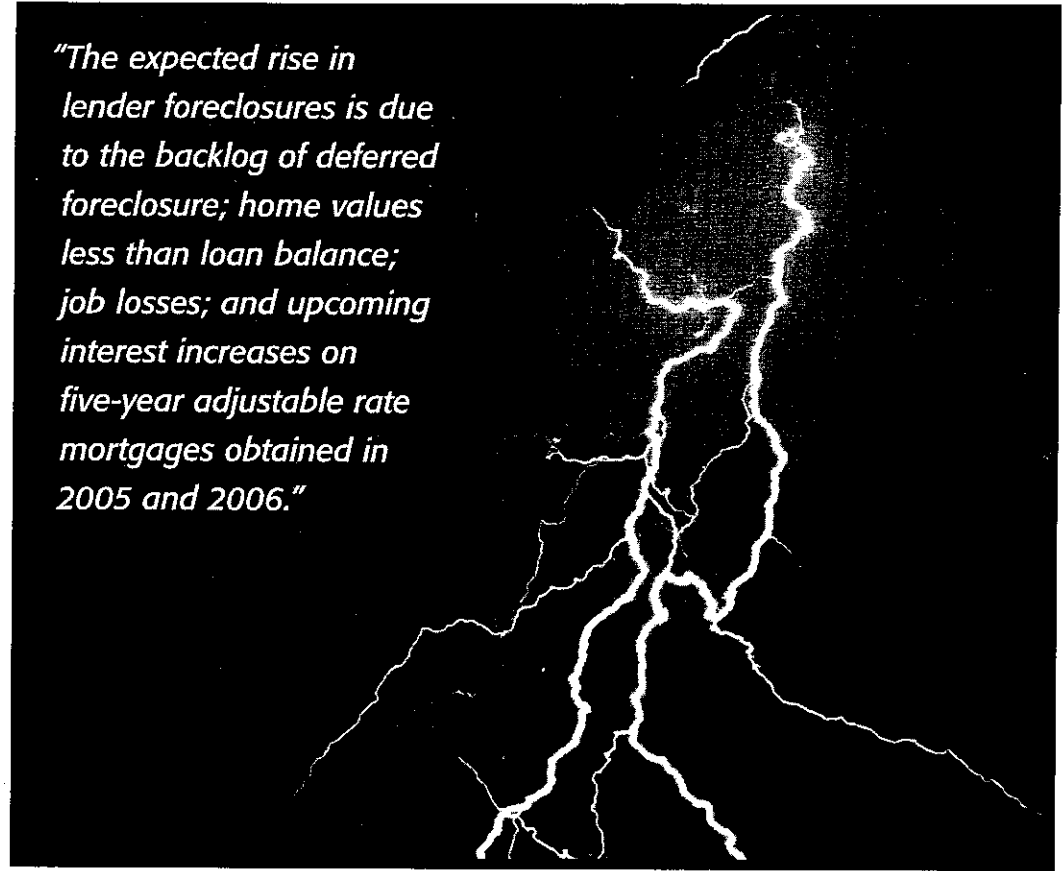


Lender Foreclosures Expected

After a lull in lender foreclosures in 2008 to mid-2009 due to changes in Maryland foreclosure laws and government efforts to encourage loan modification by lenders, the number of foreclosures in Maryland started rising significantly by summer 2009.

The pace of foreclosures is likely to continue to increase well into 2010 and 2011. The expected rise in lender foreclosures is due to the backlog of deferred foreclosures; home values less than loan balances; job losses; and upcoming interest increases on five-year adjustable rate mortgages obtained in 2005 and 2006.

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More Owner Bankruptcies

Some owners will file a chapter 13 bankruptcy to stop a lender foreclosure. In a Chapter 13, the owner agrees to pay some or all of the debt over 3 to 5 years.

When a lender forecloses, the association's lien is extinguished. The owner can avoid personal liability for the unpaid assessments by filing a chapter 7 bankruptcy after a lender foreclosure. Others simply move out and are unable to be located, making it difficult and costly to bring a court suit to collect the unpaid assessments.

Collect Assessments after Foreclosure

The purchaser at a foreclosure sale is responsible for payment of assessments from the date of the sale. However, payment is usually not made until the court ratifies the sale several months later.

Where a lender acquires a property through foreclosure and does not pay post-foreclosure assessments, the board should follow the same collection procedures which apply to other owners. After a lender forecloses, the association board of directors should take the following actions to collect assessments due from the foreclosure sale date:

- Contact the lender's attorney to obtain the name and address of the lender or person who purchased the property.
- Notify the purchaser of the amount of future monthly assessments and the procedures for payment.

- File new liens on the property for assessments due since the foreclosure sale date. Assessments also may still be collectible from the prior owner.

- If the amount due after foreclosure is substantial, determine if the former owner still resides at the foreclosed property or attempt to locate a new address.
- If the amount due is substantial, the former owner is located and no bankruptcy has been filed, file suit to obtain a court judgment—which can be collected by attaching wages, bank accounts, or other property.
- Consult with the association's attorney and accountant as to when and how to write off uncollectible assessments and related charges.

Although associations cannot prevent lender foreclosures, every board should plan now to monitor and respond to the expected increase in lender foreclosures and owner bankruptcies in 2010.

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He currently is past-Chair of the CAI Maryland Legislative Action Committee and is a member of CAI's National Faculty.