

Mitch

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August 3, 2009

Reply to: Buffalo Grove

Dana Point Condominium Association
c/o Terry Olton
1519 East Central Road
Arlington Heights, IL 60005

ATTORNEY-CLIENT PRIVILEGE
PERSONAL AND CONFIDENTIAL

**Re: Dana Point Condominium Association
 Mortgage Foreclosure against Marius Hortopanu
 Unit Address: 1505 E. Central Road #212B
 Case No. 09CH24192(Cook, County)**

Dear Manager:

Please note that our office is supplying this letter to the association as a courtesy and at No Charge. We have been served with and reviewed a mortgage foreclosure complaint in the above case which names the Association as a defendant. The original loan was taken out on December 15, 2006 for \$134,400.00. As of the date of filing of the complaint, which was July 17, 2009 the owner owed \$133,370.15, plus attorneys' fees, costs and interest to the lender. The Association is named as a defendant in order to terminate its lien for unpaid assessments on the mortgaged unit.

Our records indicate that we have already initiated collection proceedings against the unit owner per your instructions.

In this case, the Association was served on July 21, 2009, and therefore the Association's responsive pleadings, if any, must be filed as soon as possible. In order to prepare the appropriate responsive pleadings in the mortgage foreclosure action, we must be provided sufficient preparation time. The Association has several options in dealing with the mortgage foreclosure action, which options are explained in the Attachment. **Based upon our review of the current collection activity of the account and the mortgage foreclosure action filed by the lender, we recommend that the Association proceed with Option 2.**

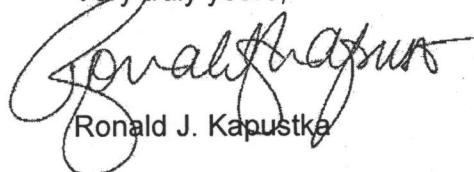
Lastly, the Illinois Condominium Property Act provides that the purchaser of a unit at a foreclosure auction, other than a lender, or the subsequent buyer of a unit from the lender, has the duty to pay up to 6 months of the prior owners unpaid assessments immediately preceding

institution of an action to enforce collection of the assessments. The requirement that the association must have instituted collection activity against the prior owner in order to make the claim for unpaid assessments from the new owner is not clear in the statute. Although it is our position that sending a 30 day notice constitutes "institution of an action", that may be challenged. Accordingly, the Association should consider whether it wants to proceed with collection action.

UNLESS WE RECEIVE SPECIFIC INSTRUCTIONS TO PURSUE A DIFFERENT COURSE OF ACTION BY August 13, 2009, WE WILL PROCEED AS NOTED ABOVE.

If you have any questions with regard to any of the above, please give us a call and we will be happy to discuss the Association's rights and alternate courses of action with you.

Very truly yours,



A handwritten signature in black ink, appearing to read "Ronald J. Kapustka".

Ronald J. Kapustka

RJK:cmk
CDA01-61094

MORTGAGE FORECLOSURE OPTIONS

As explained in the attached correspondence, the association has been made a party in an action filed by an owner's mortgage lender against the owner-mortgagor based upon their failure to make their mortgage payments. In determining what steps the association should take in response to this lawsuit, the following factors should be considered in making a decision as to the manner in which to proceed, which are: the amount and date of the original mortgage; the amount owed on the mortgage at this time; the current market value of the unit; amount, if any, of any equity in the unit taking into consideration any and all subsequent mortgages; the amount of unpaid assessments due on the unit and whether a surplus may be generated from a possible judicial auction of the unit.

The Association has several options with respect to action that may be taken in the foreclosure case which are explained below.

Option 1: The Association files an Appearance and Answer to the complaint. This would enable the Association to keep up to date as to the status of the foreclosure and be in a position to determine when the responsibility for assessments shifts to the mortgagee, new owner, or possessor of the unit. In addition, based upon the amount of equity which there may be in the unit and the amounts owed to the association, it will make it easier for the association to obtain payment for the unpaid assessments out of the surplus funds, if any, from the foreclosure sale. The fees and costs for this will be approximately \$ 500.00 to \$600.00.

Option 2: The association files no responsive pleadings in the mortgage foreclosure case, however, our office will monitor the foreclosure proceedings, obtaining copies of important pleadings and important pieces of information, including the amount of the judgment; the date by which the owner must pay off their mortgage in order to avoid an auction of their property; the date of the auction; whether there is any surplus; and finally, the name and address of the subsequent owner. The fee to monitor this case will be \$260.00 and includes all correspondence sent to the association concerning the above information.

Option 3: If the unit owner is "severely" delinquent in the payment of assessments to the Association, and it appears that there is substantial equity in the unit to cover not only the outstanding loan amount, but the amounts owed to the Association as well, the Association could file a cross-complaint against the unit owner. Due to the costs in proceeding with this remedy, we recommend that the Association proceed with this option ONLY if there is considerable equity in the unit and the amounts owed to the association are considerable. The fees and costs for this will be approximately \$2,000.00 to \$5,000.00.

Option 4: The association takes no action whatsoever. In the foreclosure, (unless the Association files its own lien foreclosure complaint) regardless of what action the Associations takes, a judgment will be entered against the Association which terminates the Association's lien interest in the unit. The lender's lien takes priority over all other liens and the lender will be paid first out of any proceeds from the foreclosure sale. If there are any surplus funds as a result of the final sale amount at the foreclosure auction, the Association may be entitled to apply to the Court for payment out of those proceeds. If an Answer was not originally filed, there will additional pleadings that will have to be filed in order to get those funds. Additionally, if no responsive pleadings are filed in the mortgage foreclosure action, the Association will not receive any subsequent court filings which would keep us advised as to the status of the mortgage foreclosure action. If the association needs this information at any time, please contact us and we can obtain that information for a nominal fee. Lastly, we will be closing our file as to this particular owner and mortgage foreclosure action.