

CODE ENFORCEMENT AS A REDEVELOPMENT TOOL: YOUR LEGAL TOOLBOX

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CODE ENFORCEMENT UNDER FLORIDA LAW

- Chapter 162, Florida Statutes – Local Government Code Enforcement Boards Act
- Intent – To promote, protect, and improve the health, safety, and welfare of citizens of the counties and municipalities of the state
- Impose administrative fines and non-criminal penalties to allow for an inexpensive method of enforcing any codes where a pending or repeated violation continues to exist.

Code Enforcement Liens

- Liens result from action taken by the Code Compliance Board or Special Master
- Lien can only be imposed following notice to the property owner that a violation exists, and when the property owner fails to correct the violation within the time provided.
- Board must first enter an order finding that the violation exists and provide the owner with the time period to correct the violation

Recording a Code Enforcement Board Lien

- If the property owner does not correct the violation, the Board may enter an order imposing a fine, or a fine plus repair costs. Administrative fees may also be recovered.
- A certified copy of the Board Order is recorded in the public records of the County where the local government is located.
- The fine continues to accrue until the property owner comes into compliance.

Commencing a Foreclosure Suit

- After 3 months of filing any lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien.
- Typically, the local governing body (i.e. Commission/Council) must also authorize the filing of a lawsuit in the name of the local government.

Concerns Related to Foreclosure Proceedings

- Length of time to successfully pursue the case.
 - Courts are overwhelmed with foreclosures
 - Twelve months at a minimum in South Florida
- Locating and serving the owner with a complaint
 - Rules for service of complaints are different than serving notices of violation
- Cannot foreclose on homestead property
- Defenses by property owner
 - No Notice of Hearing
 - Violation corrected
 - Fine is disproportionate to the violation or property value

Additional Concerns Related to Foreclosure

- Property Owner can file bankruptcy
 - No ability to proceed with foreclosure if bankruptcy case is pending
 - Can retain bankruptcy counsel to challenge property owner's right to bankruptcy proceedings
- Property Owner can sell property
 - Must name new owner in foreclosure proceeding
- Mortgage on Property
 - typically first mortgage will not be foreclosed.
 - local government will have to pay off outstanding encumbrances in order to obtain clear title

Acquisition of Property

- Court issues a certificate of title
- May still have to satisfy unpaid taxes or other assessments
- Must secure the property
- Must maintain the property
- Property is now exempt from ad valorem taxes
- What is the plan for developing the property?

Purchase of Tax Deed

- Section 197.542, Florida Statutes
- Property can be purchased by the highest bidder through sale at the courthouse
- Sales are now being conducted online
- Once tax deed is issued, the purchaser is entitled to immediate possession of the property.
- May still need to seek court assistance to remove the person claiming possession.

Liens Remaining After Issuance of Tax Deed

- Section 197.552, Fla. Stat. – A lien of record held by a County, Municipality, Special District, or Community Development District, that is not satisfied from the proceeds of the sale shall survive the issuance of the tax deed.
- The party who obtains the tax deed could be responsible for the payment of the outstanding governmental liens of record

CONCLUSION

USE YOUR TOOLS WISELY.

Thank you for your time.