The Battlement Mesa Service Association

The Banks, Foreclosed Properties and the BMSA

By Keith Lammey, President, Battlement Mesa Service Association

At many of the recent Battlement Mesa homeowners association meetings I attended this fall, I kept hearing, "Why don't the banks have to comply with the same property maintenance standards as the rest of us? "Why don't you go after the banks? Why do they get special treatment? Actually, they don't get special treatment. It just looks that way.

We've all seen it happen. One of our neighbors, often neighbors who always took pride in the appearance of their property, encountered a few too many financial challenges and their mortgage company ("the bank") filed a foreclosure action. Predictably, our neighbor moved out and almost without exception the property immediately declined to the point that it was downright unsightly. We all know that Battlement Mesa is a covenant-protected community, so how can this happen? Naturally people conclude it is simply because "the banks" get special treatment, but that isn't the case.

Here's is the deal. Foreclosure begins with a notice called the "Notice of Election and Demand" (NED) that the bank sends to an owner stating the bank is exercising its right to foreclose.

Under the Colorado State Statutes, homeowner associations like the Battlement Mesa Service Association (BMSA) are granted certain rights, called superlien rights, that are superior to the first mortgage holder. In order for the bank to pass "clear title" on to the next purchaser, they must pay the HOA's superlien. The bank doesn't plan to retain ownership of the property, and they want to sell it as soon as they can. In order to do so, the bank must pay our superlien but they don't have to pay the lien until they own the property, which doesn't occur until a Public Trustee's sale is held.

Typically, if the owner of a property isn't paying their mortgage company, they aren't paying their HOA assessments either. Normally by the time that an owner receives the NED letter from the bank, he/she already owes the BMSA for several assessment billings, and we may have already referred the account for collection. And since the HOA Declarations grant the BMSA the right to charge back collection fees and expenses to an owner, the owner not only owes the BMSA for assessments but also owes substantial attorney fees.

Usually when the bank sends the NED, if the owner hasn't already stopped paying the BMSA, he/she will now. At this point, the owner isn't paying and the bank doesn't own the property yet so the BMSA isn't getting any payments.

That's when the owner moves out and couldn't care less what the property looks like. The bank cares but they don't own the property yet so they don't have any right to do anything with the property and have no legal obligation to maintain the property. Unfortunately, the weeds don't pay any attention to that. They continue to do what weeds do: Grow! And they do.

Meantime, the BMSA is left in a quandary because its superlien right is limited to six months worth of BMSA assessments. At the current rate, this means the maximum that the BMSA can collect is $148.00 (Six months at $24.67). By the NED date, the owner likely has six months worth of unpaid assessments plus a few hundred dollars of legal fees. If fines are levied for unsightliness, the owner no longer cares so he/she makes no effort to comply and the bank doesn't care because they don't yet own the property yet.

Sure, the BMSA has the right to go on to the property and clean it up and charge the cost of the clean up to the owner. But, almost without exception, the BMSA cannot recoup the expense so it is reluctant to spend your money to clean up the property.

After what often seems like a lifetime, eventually the Public Trustee sale is held, the bank finally owns the property and the BMSA can finally force the bank to clean up the property...and we do.

(Originally published in the Grand Valley Echo).