Bankruptcy heals stalled CDD communities

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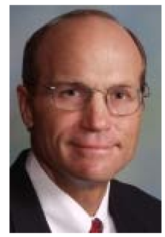

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If you bought a home in a master planned community after 2005, it is probable that (1) you are subject to a Community Development District; (2) all sales in your community have stopped; (3) you may not have the amenities that you were promised and (4) operations and maintenance in your community are woefully deficient.

Your community is fractured and all the relevant parties - the developer, the CDD and the holders of the bonds loaning the money to the CDD - are frozen like deer in the headlights and cannot agree on how to restart the community. A fractured community is evident to all prospective purchasers, and your home value and chances of selling your home are dismal.

On Friday, July 30, 2011, the United States Bankruptcy Court for the Middle District of Florida approved the Plan of Reorganization for Fiddler's Creek, LLC, and numerous subsidiaries and affiliates, under Case No. 9:10-bk-03846-ALP. This holds promise for other fractured CDD communities.

Unfreezing the CDD workout arena

Up until the Fiddler's Creek bankruptcy there was "no worst horrible" litigation solution or workout structure for a stalled master planned community with CDD/bondholder financing. Now there is a road map created by the Fiddler's Creek bankruptcy.

The typical master planned community debt structure

The typical structure for these master planned communities involves a few thousand acres of undeveloped land with one or more community development districts established by the developer for the purpose of borrowing money from bondholders and using that money to build infrastructure such as roads, water, sewer and amenities such as clubhouses, pools and tennis courts.

The CDD imposes assessments on the unsold developer land, and the CDD collects the assessments and pays the principal and interest to the bondholders. If the assessments are not paid, there is a lien on the developer's land that is co-equal to a lien for ad valorem taxes.

In addition, the developer usually borrows money from institutional lenders such as local, regional and national banks for the development of additional infrastructure not paid for by the CDD (e.g., additional roads, water and sewer or community recreational facilities, such as clubhouses and pools). CDD special assessments service the bond debt, and CDD operation and maintenance assessments pay for ongoing CDD operations.

Fiddler's Creek facts

Fiddler's Creek involved two CDDs which issued approximately $105 million in bonds for infrastructure to a community that would ultimately contain 6,000 residences but at the time of the bankruptcy contained approximately 2,000 residences.

There was approximately $170 million of bank debt, not including the CDD debt, and an approximate value of the community based on the developer's figures was approximately $270 million.

The Fiddler's Creek CDD workout structure

The plan basically provided the bankrupt developer with a forbearance period of three to four years of not paying any assessments but reamortized unpaid assessments (i.e. unpaid principal and interest paid to the bondholders) over the remaining term of the bonds. All operations and maintenance assessments were brought current.

Benefits to homeowners

In the plan approved by the court, the developer and its lenders achieved a forbearance period required to catch its breath (or to weather the economic storm), which could not have been obtained in a non-bankruptcy modification unless 100% of the bondholders consented thereto. The ability or failure to obtain 100% bondholder approval to non-bankruptcy modifications has been the main hurdle for obtaining non-bankruptcy approved modifications.

Now that the Fiddler's Creek Plan has been approved, the operations and maintenance will be brought back to 100%, any uncompleted CDD projects will be completed, the fractured nature of the community will ease and home values will have a fighting chance to recover.

Although the Fiddler's Creek case was somewhat unique because the court and CDD believed the developer had a credible plan for post-bankruptcy success, based on the Fiddler's Creek Plan, other similarly situated developers could negotiate similar results with both non-bankruptcy and bankruptcy-approved plans. There is now a method to heal a fractured CDD community.

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