UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

53rd Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute

September 12-13, 2019
Austin, TX

PROPERTY OWNERS' ASSOCIATION BORROWING & OPINION LETTERS

Presented by:
Brady E. Ortego
&
Clinton F. Brown

Authored by:
Brady E. Ortego, Eric B. Tonsul, Clinton F. Brown

Authors Contact Information:

Brady E. Ortego
Roberts Markel Weinberg Butler Hailey
San Antonio, Texas

bortego@rmwbh.com
210.731.8858

Clint Brown
Roberts Markel Weinberg Butler Hailey
Austin, Texas

cbrown@rmwbh.com
512.279.7344

PROPERTY OWNERS' ASSOCIATION BORROWING & OPINION LETTERS

I. INTRODUCTION AND GENERAL OVERVIEW OF THE PROCESS AND COLLATERALIZATION

While seemingly more popular in states other than ours, Texas property owners' associations (POA or POAs) have to continually consider borrowing as an option to add to the POA financial management toolkit. Major renovations of common areas or common elements, capital improvement projects, and/or disaster recovery projects serve as the most common basis for POA borrowing. Rather than completely draining the POA's reserve account, POAs may borrow to fund, in whole or in part, the major renovation projects, capital improvement projects, or disaster recovery projects.

While a general overview of the process and documentation is prudent, the focus of this paper is to provide mortgage lending attorneys information on the borrowing pitfalls that POA attorneys are obliged to navigate in addition to the due diligence required to be performed by POA counsel. Additionally, the reader will note certain sections separate condominiums and single-family/townhome POAs. If not separated, the reader may work under the notion that the subject matter covers all POAs. This is important to understand as condominiums are statutorily created entities pursuant to Chapters 81 and 82 of the Texas Property Code while single-family/townhome POAs are entities generally created and governed by the various POA dedicatory instruments.[1]

As you know, the loan process begins with a Loan Commitment Letter generally outlining the key components of the loan including the purpose, term, interest rate, fees, reporting requirements, and conditions and requirements of the POA. Not all loan commitments graduate to loans, typically because not all the proposed conditions and requirements can be met. These "pitfalls" will be addressed later in Section II below. In these cases, the Loan Commitment Letter was the cause of the investigation into the borrowing limitations. Loan Commitments come with a price (which is credited toward the loan fees if closing occurs), so POAs are better served by performing the investigation up front. POA attorneys, when given the opportunity to participate in the process from the beginning, may be able to increase the chances that the commitment graduates to a loan. The borrowing deficiencies sometimes land on the POA attorney's desk during the loan commitment review process, but only after it is signed and the POA pays the commitment fee to the lender. POAs can reduce the risk of losing the loan commitment fee if their attorney is involved in the investigation up front prior to execution of the Loan Commitment Letter.

Thereafter, the diligence period follows where the lender presents a Closing Checklist succinctly presenting both

[1] "Dedicatory Instrument" is defined in §202.001(1) of the Property Code as each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development.

Title search: Property Owners' Association Borrowing & Opinion Letters

Also available as part of the eCourse
2019 William W. Gibson, Jr. Mortgage Lending and Servicing eConference

First appeared as part of the conference materials for the
53rd Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session
"Property Owners Association Borrowing: Association Solvency and Underwriting Red Flags"