November 1, 2012

Mr. William Breetz, Counsel
Connecticut Urban Legal Initiative, Inc.
University of Connecticut School of Law
35 Elizabeth St, Hartford, CT 06105

Sent Via Electronic Mail: william.breetz@law.uconn.edu

RE: Uniform Law Commission Drafting Committee on Residential Real Estate Mortgage Foreclosure Process and Protection Act

Dear Mr. Breetz:

I am pleased to submit comments discussing the Uniform Law Commission's Drafting on Residential Real Estate Mortgage Foreclosure Process and Protection on behalf of Community Associations Institute[1]. Please accept our sincere appreciation for the privilege of providing comments to this esteemed group. Due to the limited amount of time we had to review the draft and respond to a request to provide comments to the Drafting Committee, we focused our comments on Section 508: Super-Lien for Association Common Charge Assessments. Nevertheless, we are providing you with additional information below that may provide fodder for your discussion regarding transfer of title, recordation, timely payment of assessments and other procedural steps related to foreclosure of a home in a community association.

CAI would be honored to continue to participate in the process and provide feedback on other areas of the Act that may affect community associations.

Community Association Model of Housing

Owners in a community association are bound by deed-based covenants, conditions, and restrictions (commonly known as CC&Rs) and other rules adopted by their community. In addition to providing governance services for the community, the association provides critical services that often include maintenance of common elements, maintenance of community infrastructure (roads, bridges, lighting, buildings, facilities, and storm water systems), community services and amenities (refuse collection, pools, security, club houses, playgrounds, etc…) obtaining insurance coverage, and providing for water and electric utility services. Community associations also ensure that funds are set aside in capital replacement reserves so owners are not exposed to large, unanticipated special assessments. To ensure these community functions are met, all homeowners pay regular

[1] CAI is the only international organization dedicated to fostering competent, well-governed community associations. For nearly 40 years, CAI has been the leader in providing education and resources to the volunteer homeowner leaders who govern community associations and the professionals who support them. CAI's more than 32,000 members include homeowners, professional managers, community management firms, and other professionals and companies that provide products and services to community associations.

assessments, which are lien-based. By joining together, association homeowners build stable communities and enable greater enjoyment of their homes than they would be able to afford on their own.

The community association model of housing has dramatically expanded in the United States over the past decades with most new home construction in states like California, Florida, Nevada and Arizona using this housing model. This trend will likely continue as the community association model of housing accommodates growth in ways that are consistent with the fiscal needs of local governments and smart growth principles. Community associations are generally predicated on density, marketability, proximity to employers, and access to education, health and other community services. In 2011, there were over 314,000 community associations, accounting for more than 25 million housing units nationwide. More than 62 million Americans, almost 1 in 5 households, live in a community association.[2]

Foreclosures Harm Common Bond of Associations

Owners in community associations face significant financial pressures due to foreclosures in their neighborhoods. As homeowners become delinquent on their mortgage, it is likely the homeowner also becomes delinquent on their community assessments. When an association homeowner chooses not to pay their assessments (for any reason) other homeowners must account for the lost revenue. Common responses to lost revenue are assessment increases, adoption of special assessments, borrowing from reserve funds, and a host of other unsustainable financial adjustments. In each case, the financial burden of financing continued critical association functions falls on the remaining homeowners, many of whom are struggling to keep their own mortgage obligations current. These increased housing costs inevitably cause households that would otherwise be financially stable to become distressed, deepening the downward cycle in the community.

When a home does go into the foreclosure process, the association is faced with the prospect of no assessment income and the financial burden of maintaining the property for exceptionally long periods of time. Associations will often record liens against properties that are delinquent in their assessments as a means to recover a portion of lost revenue. In many States, community associations are afforded limited lien priority and will receive an amount equal to 6 months of assessment delinquencies. While recovery of this limited amount is helpful, these communities must still absorb substantial losses, which often exceed $10,000 per home. In states without this legal protection for association homeowners, communities face the prospect of their entire claim being vitiated when a foreclosure is completed.

Once a foreclosure is complete, CAI members report their communities continue to face substantial financial difficulty as servicers fail to fulfill the most basic obligations of property preservation. Servicers are required under Freddie Mac, Fannie Mae, and HUD guidelines to preserve properties, to communicate with a governing community association, and to ensure timely payment of applicable community assessments.[3] Servicers disregard these requirements as a matter of routine.

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[2] http://www.caionline.org/info/research/Pages/default.aspx

Data from 2011 CAI member surveys of community association managers show that associations receive timely payment of assessments from less than 30 percent of real estate owned (REO) properties. These data match CAI's 2010 survey findings that show a similar lack of timely assessment payments by servicers once a foreclosure has been completed and title has been transferred to a lender, Fannie Mae, Freddie Mac, HUD, or other owner.[4] CAI members also report that in many instances the transfer of title following foreclosure is purposely delayed as a means to avoid these obligations.[5] Residents are forced to take on the extra financial burden of these properties and the impact on these homeowners is acute.

Uniform Law - Residential Real Estate Mortgage Foreclosure Process and Protection

CAI applauds the Uniform Law Commission in its recognition that the existing language as it relates to super-line for association common charge assessments, initially adopted decades ago (1980), is not an equitable system that will create strength and stability in the U.S. housing market.

CAI further applauds the ULC and the Drafting Committee and the Joint Editorial Board for the thoughtful and creative proposals to address Section 508: Lien for Sums Due Association; Enforcement. Unfortunately, the four alternatives proposed will not adequately address the housing crisis. According to Fannie Mae and Freddie Mac, foreclosure time-frames range from 270-750 days or nine to 15 months.[5] The uncollected assessments - between six and 15 months - has a significant impact on the operations and services of a community association. This financial discrepancy creates a situation where other unit owners in the community are forced to pay for the delinquent property owner, critical services are cut or a significant special assessment is required of all property owners.

CAI encourages the Drafting Committee to consider the following alternative:

- 12 months super priority for all regular periodic common charges, plus interest, association's actual legal fees, court costs and other related fees and an additional month of common expense assessment for each additional month or part thereof that subsequently passes without judgment having entered and title having passed.

In addition, CAI encourages the Drafting Committee to discuss the notion of utilizing escrow accounts for community association assessments. Creation of an escrow account, similar to an account that would escrow for property taxes and mortgage insurance, in conjunction with 12 months super priority would create a more equitable system resulting in a more stable housing market

Conclusion

Community association homeowners have faced unique challenges as a result of the foreclosure crisis. Establishing a model that compels servicers to meet all responsibilities to community associations and prompting delinquent consumers to contact all parties necessary to restore the status of their mortgage will prevent foreclosures and ensure stronger communities.

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[4] http://www.caionline.org/about/press/Pages/CommunityAssociationsHitHardbyHousing,EconomicSlump.aspx
[5] https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf and http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf.

Appendix A: CAI California Legislative Action Committee, 2012 Community Association Survey

CAI is very pleased to comment on the current draft and we look forward to continuing the conversation so that **community associations are appropriately understood and represented in the Uniform Residential Real Estate Mortgage Foreclosure Process and Protection Act.**

Again, please accept our sincere appreciation for the privilege to be part of the process.

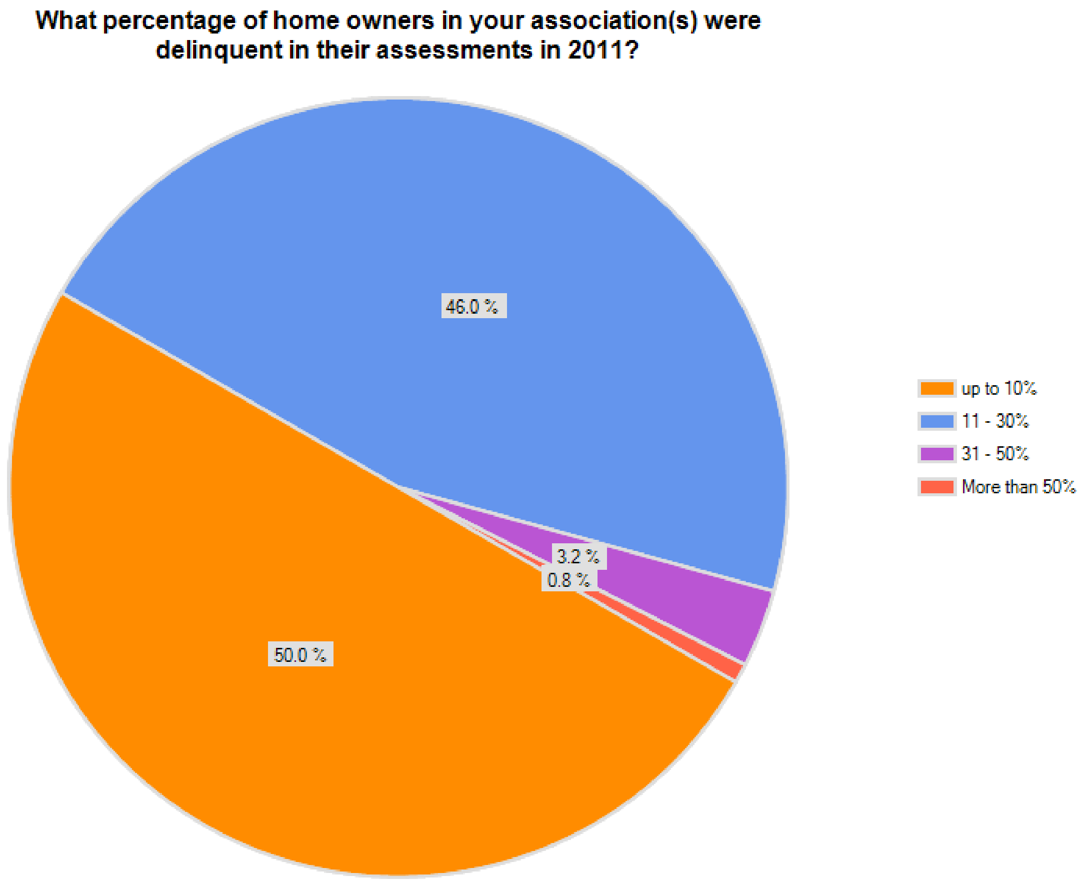
If you have any questions regarding this letter or if CAI may be of any service, do not hesitate to contact me at (703) 970-9224.

Sincerely,

Dawn Bauman, CAE
Senior Vice President, Government and Public Affairs
Community Associations Institute

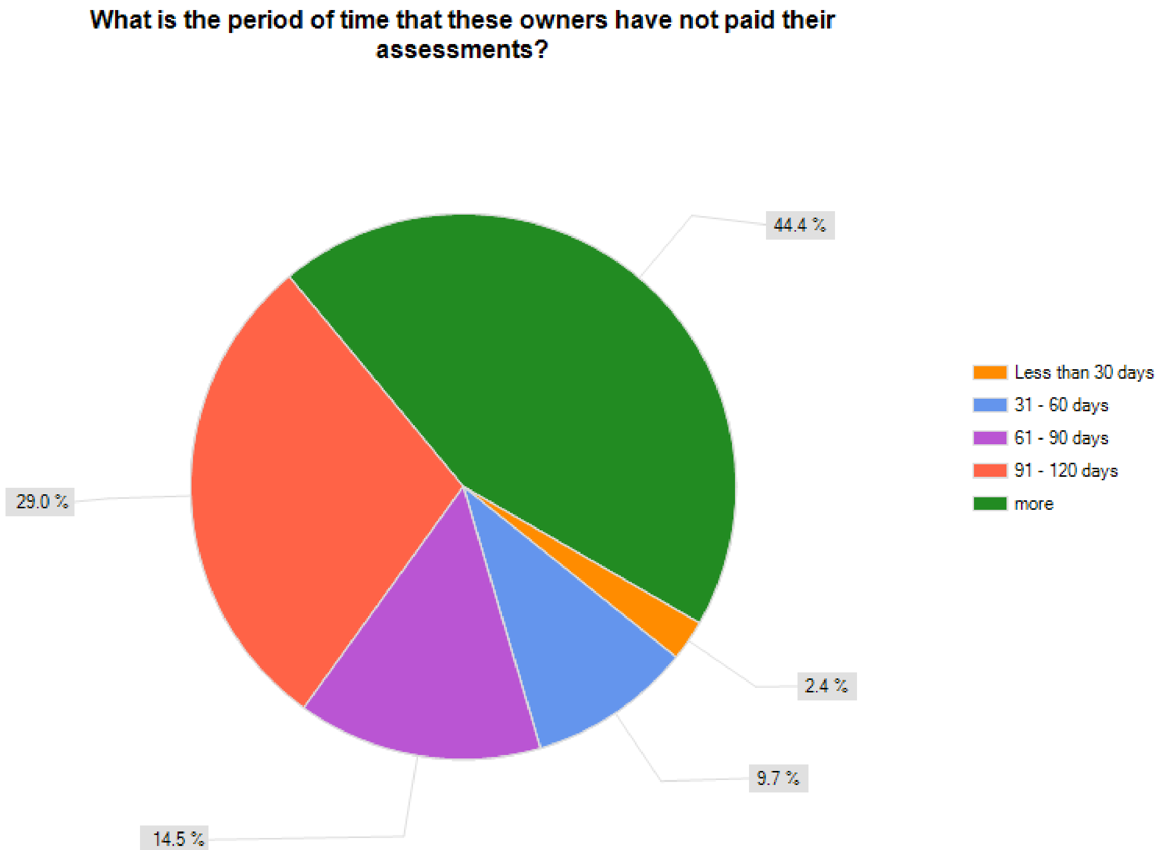
Appendix A

CAI California Legislative Action Committee 2012 Community Association Survey



» Half of HOA's surveyed had delinquencies of more than 10%.

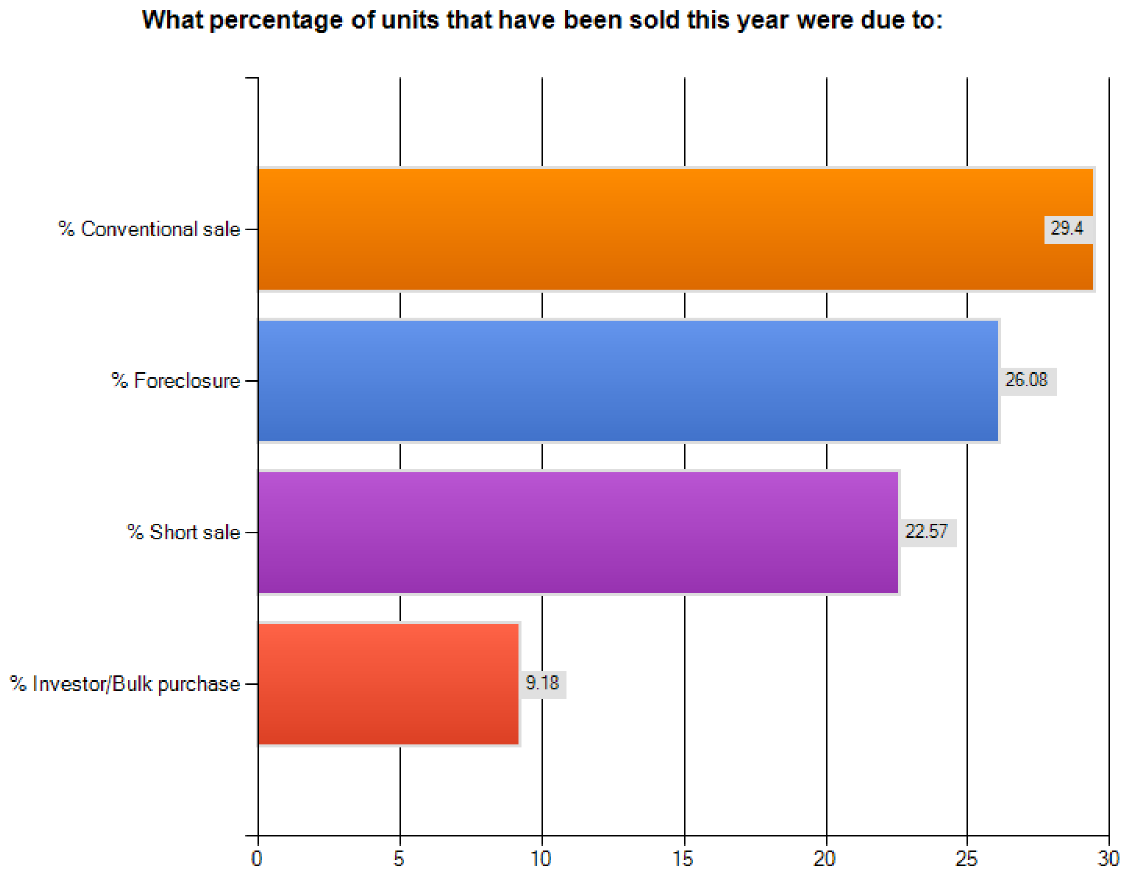
» 46 percent of HOA's surveyed had delinquency rates between 11 and 30 percent.



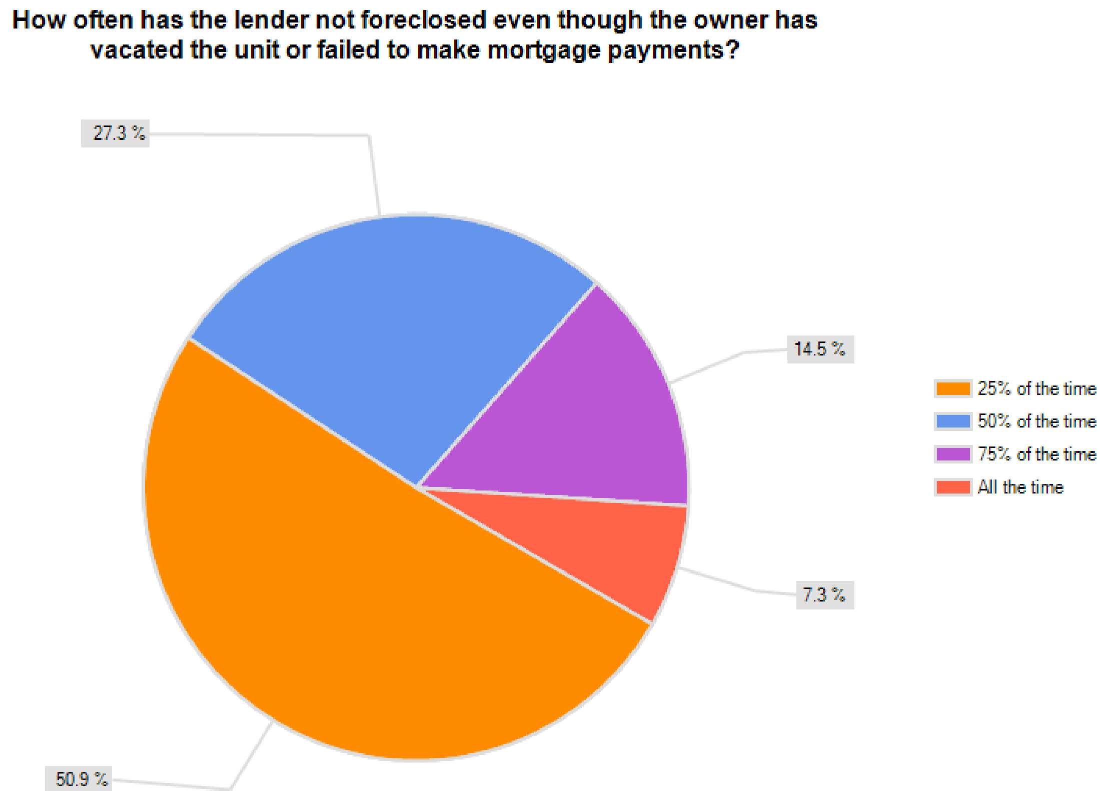
» 97 percent of delinquent assessments are more than 30 days late.

» 73 percent of delinquent assessments are more than 91 days late.

» 44 percent of delinquent assessments are more than ***4 months*** late.

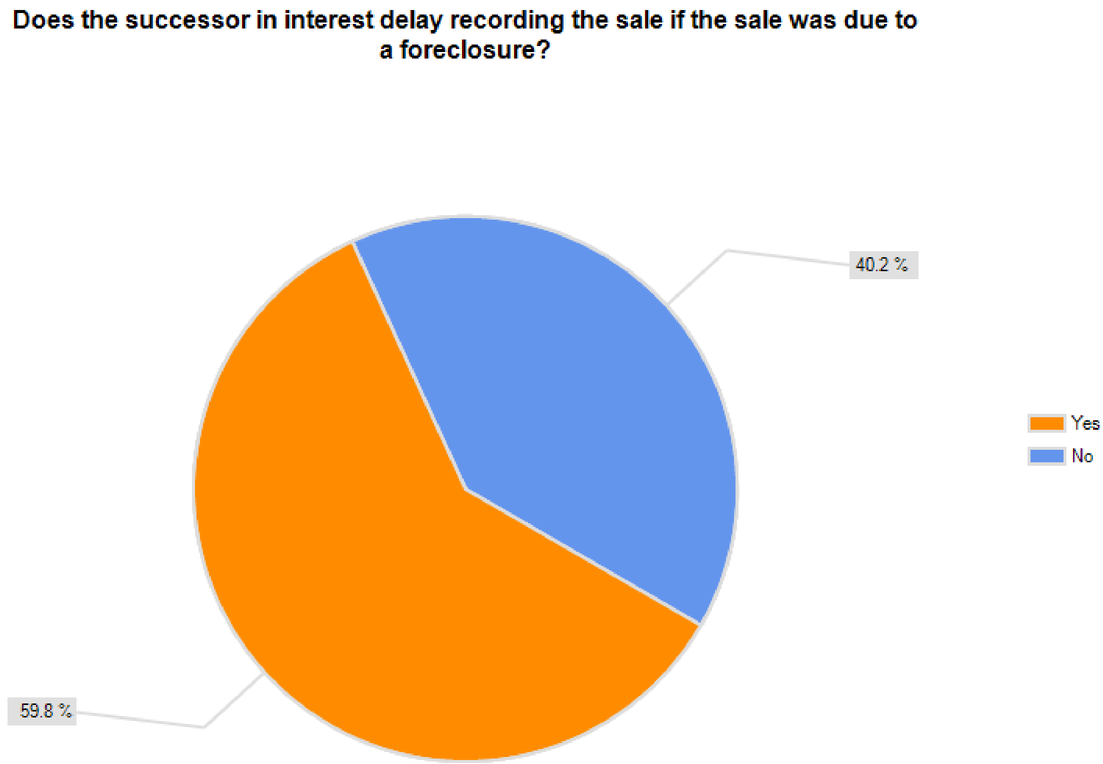


» 49 percent of all common interest development sales in 2011 were foreclosure and short sales.

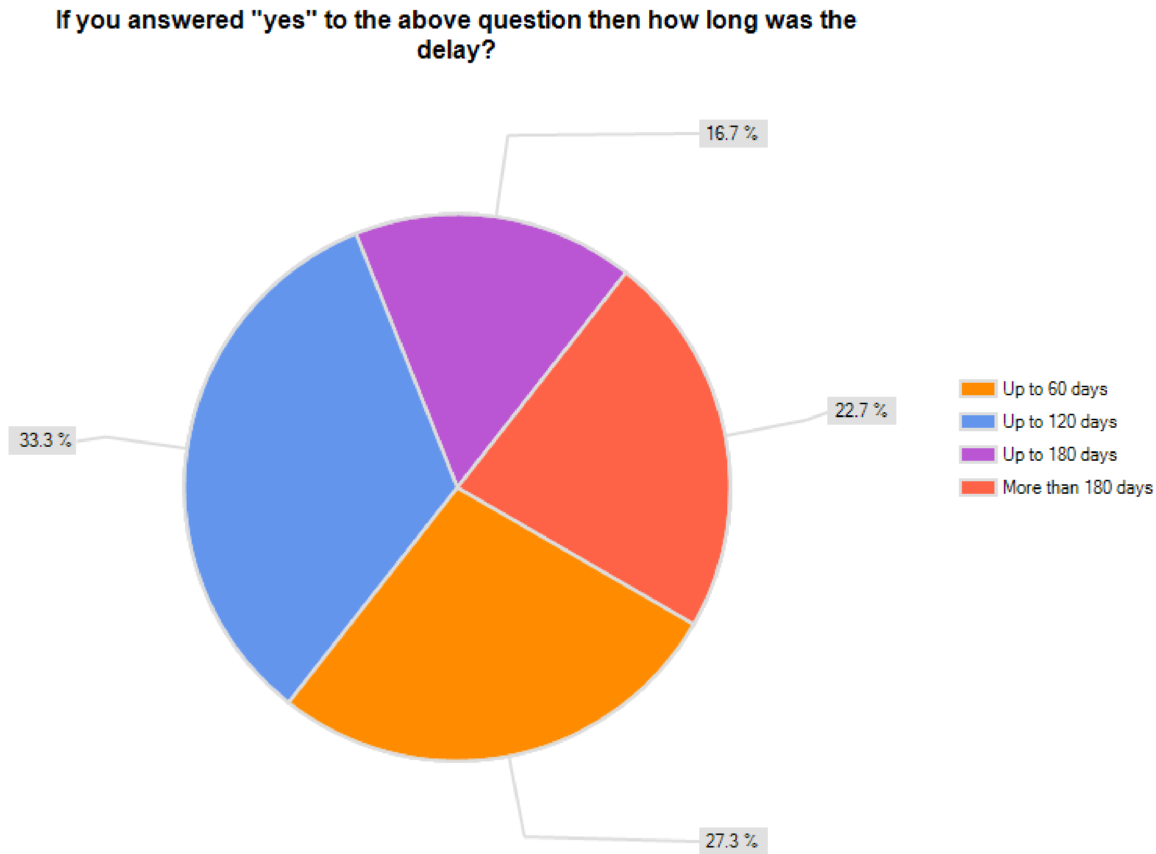


» Lenders routinely fail to foreclose on properties after vacated by the owner.

» 38 percent of communities report that lenders refuse to foreclose on vacant and abandoned properties more than 50 percent of the time.

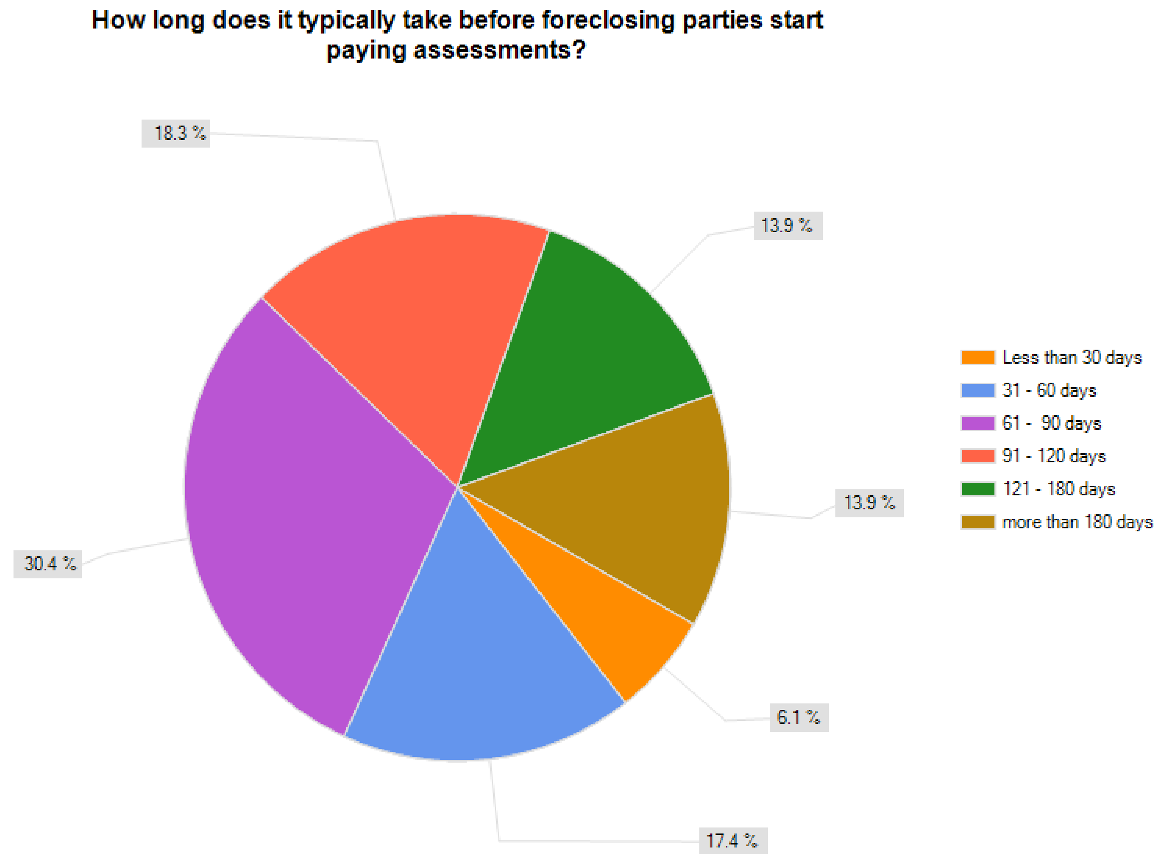


» 60 percent of foreclosure sales are not recorded in a timely manner by the foreclosing party.



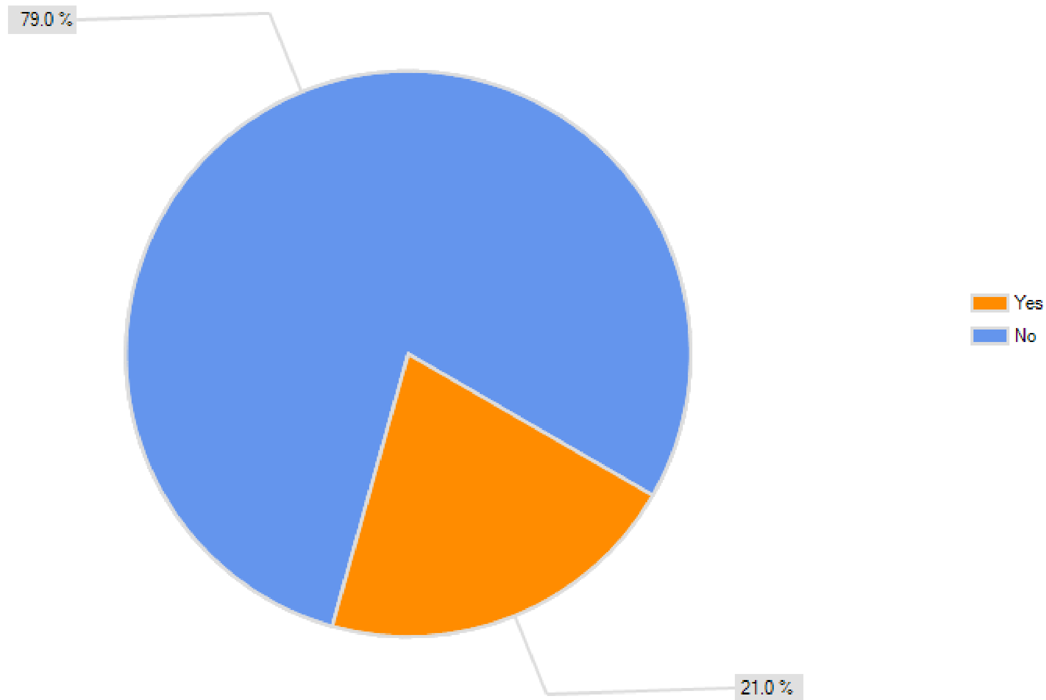
» 73 percent of delayed foreclosure recordations were delayed more than 60 days.

» *23 percent of delayed foreclosure recordations were delayed more than 6 months.*

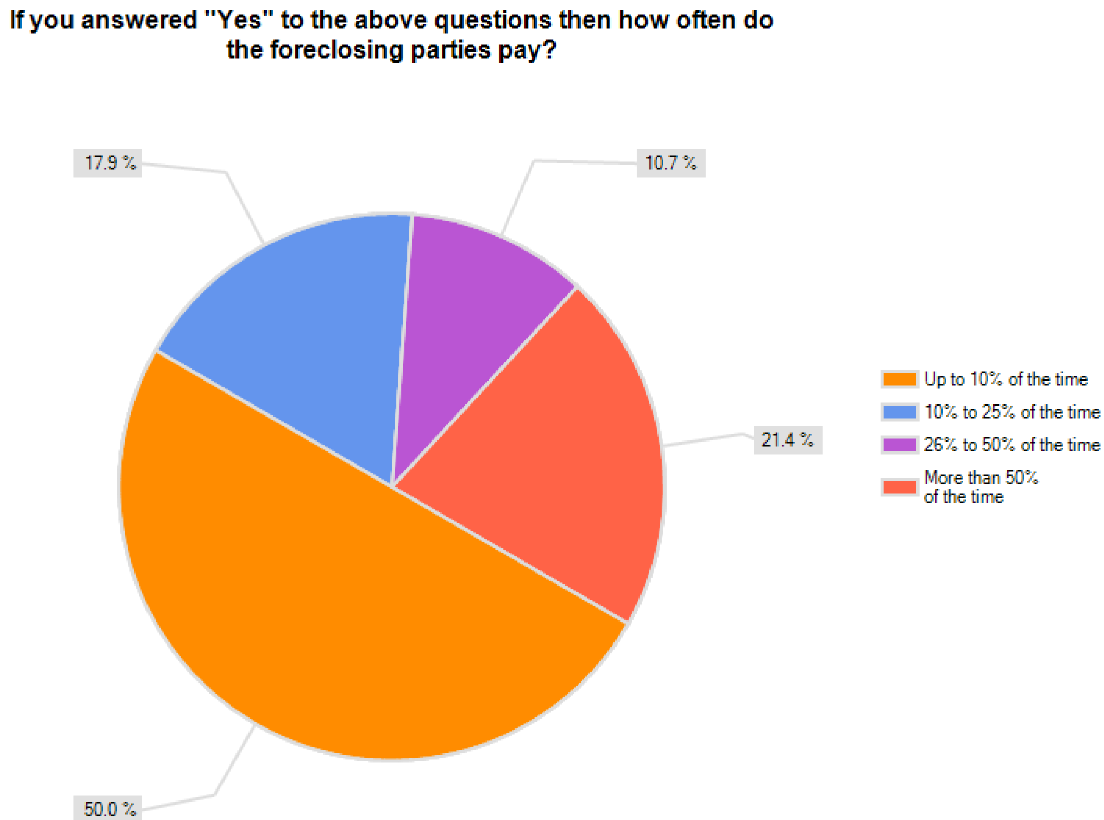


- » 24 percent of the foreclosing parties begin to pay assessments within 60 days of sale.
- » 76 percent of the time, assessments are not paid until more than 60 days after the sale.
- » 28 percent of the time, assessments are not paid until more than 4 months after the sale.
- » 14 percent of the time, assessments are not paid until more than 6 months after the sale.

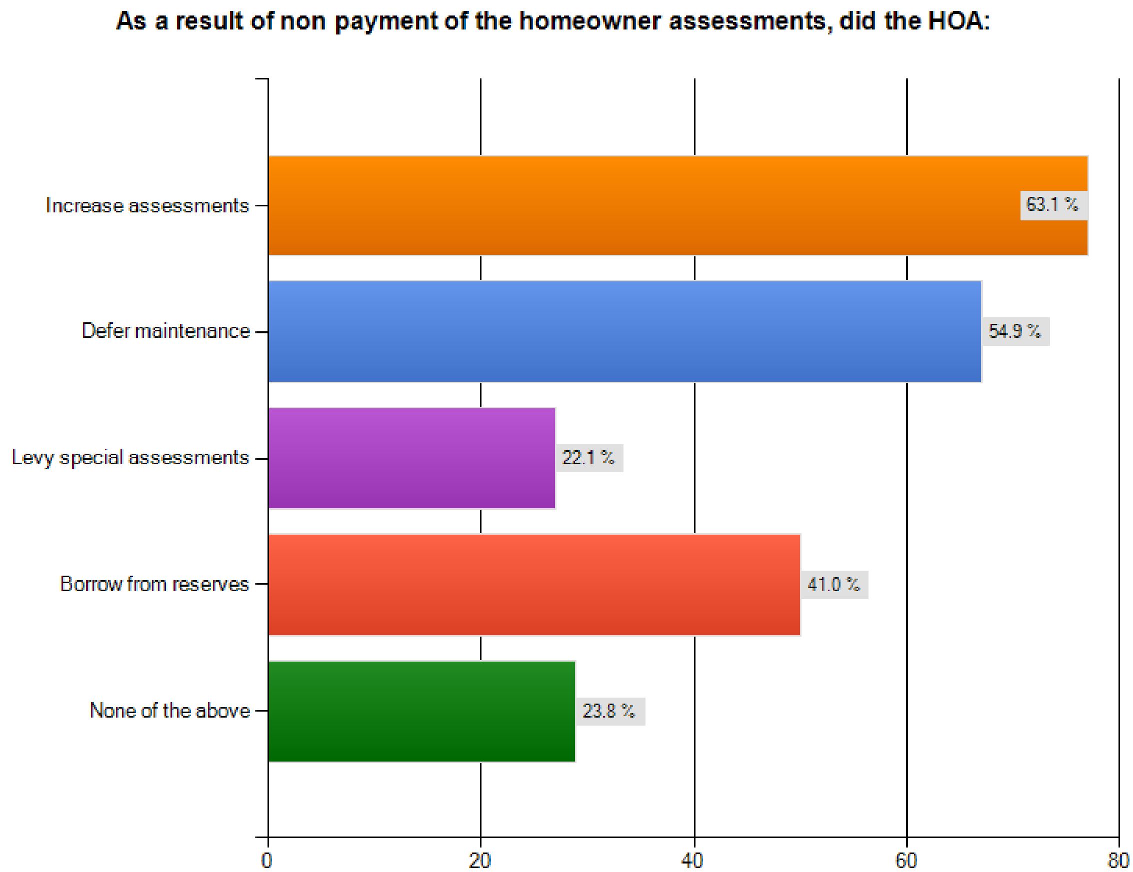
Do the foreclosing parties pay ANY portion of the past due assessments?



» 79 percent of the time, foreclosing parties fail to pay *ANY* portion of past due assessments.



» Of the foreclosing parties that do pay delinquent assessments, their "consistency rate" of payments varies from as low as 10 percent to as high as 50 percent of the time.



This chart illustrates the harm that is done when foreclosing parties fail to timely record sales, leaving the HOA with no ability to identify or locate the new owner for purposes of invoicing assessments.

» 63 percent find it necessary to raise assessments, harming fixed income owners, perhaps to the point of causing them to become delinquent in their payments.

» 55 percent defer maintenance, drastically reducing the curb value of the properties and community, in addition to incurring future expensive repairs.

» Only 22 percent of HOAs can or elect to levy special assessments due to financial limitations of the association members.

» 41 percent of HOAs find it necessary borrow from their own reserves, if they have any. This method requires prompt repayment and supplants the very purpose of the reserve account which is for major rehabilitation of the community's physical plant.

» 24 percent of the time, no relief is available to make up for the loss of delinquent assessments. This eventually invites neighborhood blight, which ironically reduces the foreclosing parties' asset value in the property they now own.