Transcript of the exchange between Diane and the VHA lawyer, Melissa, on 4/10/24

The link to the video is here:

https://mail.google.com/mail/u/0/?tab=rm&ogbl#inbox/FMfcgzGxSlQdzRSvJcKCdVSKSnLDjlrQ?projector=1

Diane’s question begins at 1:39:43 into the presentation.

**Diane:** Just going back to the enforcement, I noticed you can go to placing a lien and then beyond, you can go to judicial or non-judicial enforcement. Can you explain the difference?

**Melissa:** Yup, sure. So, basically, first of all, if you have a lien for fines only you cannot have non-judicial enforcement. And by non-judicial enforcement we’re talking about a trustee sale where you would basically have the shortened notice periods, the recorded notice of intent to lien and then notice of sale, and then sale of property on the courthouse steps by auction. So that’s the trustee sale foreclosure process that we call non-judicial foreclosure. The other way to do it is a judicial foreclosure action which is filing a law suit and foreclosing on the lien that way. There are advantages to doing that. It’s fairly unusual in this context as is any sort of foreclosure in the HOA context is unusual at this point. Both types are heavily regulated. They’re extremely specific with regard to notice. And you know when it’s just fines, **I know HOAs have got a really bad rap for, with regard to foreclosing on people’s homes for three dollars and seventeen cents worth of fines, or whatever.** [[1]](#endnote-1)In California we can’t foreclose for fines, non-judicially, so it’s never gonna happen**. It’s interesting, I just did a whole presentation and paper on, basically the idea, just because you can doesn’t mean you should.** [[2]](#endnote-2)I don’t think that if the problem is some sort of dispute over something you got fined for, I don’t think foreclosure and taking someone’s home is an appropriate remedy for that problem. If someone is not following the rules a more appropriate response would be to sue them in superior court for violation of the rules, not to take their home. So, I think it’s a matter of having the enforcement response be appropriate to the actual violation that’s occurring. That’s the difference with regards to either assessments or fines in terms of liening and foreclosing. **And I do recommend that if people do get seriously delinquent, for whatever reason, that you do lien that because then it protects the association.** [[3]](#endnote-3) If you just let it ride and collect on it when the property’s sold or otherwise figure it out. So, I don’t think liens are to be avoided, I just think the foreclosure process needs to be considered carefully in terms of whether it’s worth it or **whether it’s appropriate**[[4]](#endnote-4). Does that answer the question?

**Diane:** Well, kind of. But when you are saying in California that you can’t foreclose for fines, is that…

**Melissa:** Not non-judicially. You can’t have a trustee sale for fines.

**Diane:** And does that apply to failure to pay the dues?

**Melissa:** No. If it’s delinquent assessments you can foreclose judicially or non-judicially. Typically we would not go to a judicial foreclosure for delinquent assessments. But, you know, again it just depends on the circumstance and there’s some flexibility in it. The foreclosure process is fairly unusual in the HOA context. There was a lot of chatter but it doesn’t happen a lot.

**Diane:** Yeah, but there’s like no shortage of horror stories of people losing their houses because they got behind, and then they got swamped with the interest and the late fees and maybe attorney’s fees, I don’t know. But they got buried in debt and lost their home. Even, sometimes, when it’s paid off. If you eliminated the non-judicial foreclosure and just went with a judicial foreclosure, you’d at least have a court. Some independent body, like a judge overseeing it or reviewing it. But if it’s just the homeowner who’s deeply in debt, up against the homeowner’s association, I can imagine that the homeowner would always lose.

**Melissa: I’m gonna stop you there because I don’t agree with that characterization at all.**[[5]](#endnote-5) The non-judicial foreclosure process is very specific. It requires months and months and months and months of multiple notices which are recorded. And there are lots of obligations on the part of the association to be in communication with people. And in California you are not allowed to foreclose on people in that manner for small debts or for fines only. And frankly you aren’t, you and your neighbours are not lenders to your neighbours. So, I appreciate the care and compassion for them, **but there are a lot of people in your community that can’t afford their own homes if they’re required to take on the burden of paying other people’s assessments in addition to their own.** [[6]](#endnote-6)So, there has to be some balance between watching out for a neighbour that is having trouble and acknowledging that in some circumstances people can no longer afford to live in a community where there is a common requirement to take care of common assets of the community together. Unless you’re willing to voluntarily contribute to pay your neighbour’s assessments on an ongoing basis, it’s just not the system we’ve set up. So, I think there are plenty of guardrails in place to make sure that the process is not abused. And there’s been no evidence whatsoever that your board or a legal counsel have any intent to be predatory with regard to assessment collections. So, I would absolutely not recommend taking away anything in your toolbox that would compromise the financial integrity of your community. Because without collecting assessments you are unable to comply with your maintenance and other requirements that the association is required by law to carry out. They go hand in hand.

**Diane:** OK

**Melissa:** OK, cool.

1. This statement trivializes the conduct of HOAs regarding foreclosure. The consequences to the person/family losing their home are serious. [↑](#endnote-ref-1)
2. We would like to read the paper that Melissa wrote. [↑](#endnote-ref-2)
3. This is good advice. We know from personal experience that liens are effective. Using a lien guarantees that the HOA will get paid—eventually. [↑](#endnote-ref-3)
4. We believe that it is NEVER appropriate to foreclose on a VHA member. [↑](#endnote-ref-4)
5. To be clear, the “characterization” that Melissa doesn’t agree with is that the homeowner “would always lose” in a legal battle with their HOA. If someone is unable to pay their dues, how could they afford legal representation. Our HOA has a law firm on retainer. I don’t see how a homeowner could possibly “win” in such a scenario. I doubt that it has ever happened. [↑](#endnote-ref-5)
6. There are 225 homeowners in Village Homes and the monthly assessment is $230. If one homeowner fails to pay, VHA’s monthly income drops by $1.02 per household. So, the statement that “lots of people” could not “afford their own homes” if they had to cover for the homeowner in arrears is preposterous. [↑](#endnote-ref-6)