

# When paying the mortgage is not enough

BY SARAH OVASKA - STAFF WRITER

When Becky and Chris Hobbs' home was foreclosed on and the family evicted from it this spring, the couple had not missed a house payment. They had, however, not paid their homeowners association dues.

"I had no idea that anyone other than your mortgage company can evict you from your house," Becky Lew-Hobbs said. "It's absurd to me that one late payment can evict you."

Skipping out on homeowners association dues can have extreme, and often unexpected, consequences. Increasing numbers of the neighborhood-based groups are turning to foreclosure proceedings to collect on overdue fees, which the associations use to maintain community clubhouses, pools and the like.

Few homeowners realize that the covenants that spell out the allowed height of their grass or the color they may paint their garden shed also give the homeowners association the power to foreclose.

With only limited state court data available on foreclosures, no entity tracks how often or how many families like the Hobbses face foreclosure because of delinquent homeowners association bills. But lawyers that represent homeowners and the associations, as well as property managers and consumer right advocates say they've seen a steady increase as the economy continues to stagnate and more families are stretched to their financial limits.

The issue reaches far in North Carolina, with about half of the homes and condominiums in the state falling under the purview of such associations, according to the Homeowners Association of North Carolina, a for-profit group.

Hobbs, her husband and their two young children were evicted from their home in the Village Lakes neighborhood, a 380-home subdivision

in East Raleigh off New Bern Avenue, in April, after a \$137 unpaid bill blossomed into more than \$5,500 in late fees and legal fees from the homeowners association's lawyer.

The family spent more than a month out of their home until Becky Hobbs' father paid off the total.

Court records show that since 2007, the neighborhood has started foreclosure proceedings on 23 other residents who owe from \$115 to \$478. Like the Hobbses' case, nearly all were dismissed once residents paid the owed money and accompanying lawyer's fees.

The Hobbses' troubles started after Chris Hobbs lost his job in the landscaping industry and stayed home to care for their two children. He was out of work for more than a year, and the couple struggled to stay afloat. Becky Hobbs' salary at Kioti Tractors in Wendell allowed them to stay current on their mortgage payments and pay other bills.

They knew they were behind on their HOA dues but hoped for some understanding from the neighborhood group and planned to catch up once their financial situation stabilized. Becky Hobbs said she never thought it would put their house at risk.

## Stories in conflict

Her account of the situation differs from that of Charles Flowers, the Raleigh attorney hired by the Village Lakes Homeowners Association to collect the money owed by the Hobbs.

Hobbs said she and her husband never received any notices or certified letters telling them what they owed and didn't know about the foreclosure until a sheriff's deputy showed up in April with an eviction notice.

But Flowers said his office sent multiple pieces of correspondence informing the Hobbses of what they owed and telling them the house was going to be sold in a foreclosure proceeding.

## If you have troubles making payments

Read the covenants you signed with your homeowners association to find out what powers the group holds.

If you think you may fall behind in your dues, talk to the group to see if you can work out a payment plan.

If you're already behind, don't ignore any mailings from the association or any law firms.

If you need Legal Aid, call 866-219-5262 or go to <http://www.legalaidnc.org> to find an office near you.

Before the recession, foreclosure filings by homeowners associations were rare and usually sparked by an owner's refusal to pay dues as a personal protest over how a neighborhood was managed or the like.

Now, it's more of a problem, said John Stone, owner of Community Association Services, a Pinehurst company that manages more than 200 subdivisions across the state, including the one where the Hobbses live.

## Delinquencies hurt

"Everything's changed; it is a monetary situation," Stone said. "Now, when they don't pay, it's because they don't have the money."

That creates a difficult situation for homeowners associations. They don't really want empty houses and unkempt lawns, which can bring down home values. But they depend on member dues to keep up the appearance of a neighborhood and to manage clubhouses, pools and playgrounds.

Notices to pay can be ignored, and lawyers say that sometimes the only way to get a resident's attention is to threaten foreclosure.

Rarely does a person end up on the street. Most people pay what they owe

once they realize what's at stake, said Tina Frazier Pace, a Raleigh lawyer who dedicates most of her practice to representing homeowners associations.

"They just want to get paid," Pace said. "When one homeowner doesn't pay, every body else has to make up the difference."

But some critics say the ability to take away a family's home is too much power for HOAs.

"A person can lose their home for being \$100 behind or \$200 behind," said Victor Boone, head of the Raleigh office of Legal Aid, a nonprofit agency that offers representation and legal advice for the poor in civil legal matters.

### Once a week

**Legal Aid** averages at least one plea for help a week in its **Raleigh office** from a homeowner who has had a foreclosure proceeding started against them, said **Yolanda Taylor**, the Legal Aid attorney who specializes in foreclosure work.

The biggest hurdle for Taylor's clients is coming up with the money to pay the attorney's fees charged by lawyers hired by HOAs. She recommends that homeowners begin talking with their HOAs about a payment plan as soon as they fall behind on their dues.

"The attorney fees can soar," she said.

Last winter, Taylor helped Marcella Harden keep her home in Knightdale after her HOA moved to foreclose on her home.

Harden, a single mother of three, had lost her job and seen her income plummet to a third of the \$70,000 she had made as a manager in a health care company.

She was in the hospital recovering from surgery when she learned she owed her HOA \$130, and that lawyers were going to foreclose on her home of four years because of it.

### 'I felt at a loss'

Harden said the lawyers' fees brought the total she owed to \$1,500.

"I felt at a loss," she said. "Every resource I called in North Carolina basically said their hands are tied because HOAs had that much power."

Eventually she found Taylor, and with the Legal Aid attorney's help, Harden was able to work out a payment

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- Victor Boone  
Legal Aid of NC

plan and keep her house.

A \$1,200 cap on lawyer's fees for uncontested collections is in place, but Pete Powell with the N.C. Administrative Office of the Court said he's worried that some lawyers use the cap to charge as much as they can. There's also confusion in different counties about how to handle the foreclosure process. The law needs clarity, he said.

"There are potentially some abuses going on," he said. "We would like the legislature to step in and get control of the situation."

### Legislature looks in

The legislature created a bipartisan committee in November to address concerns about homeowners associations.

Co-chaired by Reps. Bill McGee, R-Clemmons, and Jennifer Weiss, D-Cary, the committee held four hearings on the issue in the winter and spring and came up with recommendations to adopt more protections for homeowners when the legislature convenes this January.

In addition to the \$1,200 cap on what attorneys can charge for uncontested foreclosure proceedings, legislation already requires that homeowners be notified of what they owe before foreclosure proceedings can start.

"We need to look closely at remedies," Weiss said. "It's really important that homeowners have the protections that they should have."