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HDFC CO-OPS AND FORECLOSURES: RESOLUTION AND RESORATION?

EXPERTS WAY IN ON WHAT COULD BE DONE

BY A.J. SIDRANSKY 25 OCTOBER 2018 [FINANCE](#)



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At the heart of the crisis currently affecting affordable housing in New York City are the dozens of HDFC co-op buildings that are threatened with

foreclosure by New York City for real estate tax delinquency or failure to pay water and sewer charges. While the obstacles facing the shareholders in these buildings may seem insurmountable at times, often the best way forward is to take a breath and size up the situation and what can be done to correct it.

Why Do These Foreclosures Occur?

One of the bedrock obligations for any property owner, co-op, landlord or commercial operator is the payment of real estate taxes. For many, those payments are simply a matter of proper financial management. But HDFC co-ops frequently suffer from both poor management and the inability to pay.

According to Glory Ann Hussey Kerstein, the organizer of advocacy group HDFC Coalition Anti-Foreclosure Committee: "The biggest factor in HDFC foreclosures is the City's flawed model of disposing of landlord-abandoned buildings in the 1980s and 1990s to the tenants then in place. The City's treasury was hemorrhaging, and in the rush to unload these buildings to rid itself of the cost of building ownership, little to no repairs and sub-par training for tenants were the City's order of the day. Tenants got buildings 'as-is' and received no training in housing court procedures, probate court requirements, negotiating commercial leases, lead paint abatement or vacancy management, or how to conduct sales. No surprise that 90 percent of the HDFCs now facing foreclosure were incorporated as co-ops in the '80s and '90s when this flawed model prevailed."

The bottom line is that the population who became owners under this program -- primarily lower-income rental tenants -- were ill-equipped to

manage the buildings themselves. In most cases, they couldn't afford to hire professional management, as would be the common case in wealthier, 'market' co-ops. That lack of effective knowledge, experience, and financial wherewithal has led to a perfect storm of circumstances resulting in these foreclosure actions.

Interestingly in most cases, unlike market-rate co-op buildings, HDFC co-ops rarely have a formal underlying permanent mortgage held by a financial institution. Under virtually all standard mortgages, the mortgagee—i.e., the bank—collects a portion of the real estate taxes owed each month with the monthly mortgage payment. This is known as a real estate tax escrow. The bank forwards these monies twice a year to the City in payment of real estate taxes to keep the taxes current and to protect the lenders' collateral position secure. In the case of many HDFC co-ops—especially because there is no permanent lender—no one is collecting the tax money. And often the proper notice from the City about taxes owed and due, or the non-payment of said taxes, is never received by the shareholders.

A Case in Point

Barry Korn, a mortgage banker and Managing Director of Barrett Capital Corporation, explains the notification process as follows: "The City must make two reasonable attempts to serve notice. If unsuccessful, they can mail the notice, by both regular and certified mail. As HFDCs must register with New York City each year, providing the city with a contact, the city should have a recent contact." As previously reported in *The Cooperator*, New York City Department of Finance often has incorrect and/or outdated contact information for these properties, their ownership, and/or management. Korn outlines what is supposed to happen in a normal situation. "A process server must produce an affidavit of service, which is filed with the court,"

he says. "A judge reviews the affidavits, and, if in order, can issue a judgment of foreclosure. In the case of many HDFCs there's no evidence of process of service. The attorney representing a HDFC co-op for which I am arranging financing personally searched and could not find any affidavits of service. Furthermore, the appropriate building representatives also claim they never received notice." This may be an all-too-common occurrence.

Financing Out of a Mess

Korn is currently assisting a 56-unit HDFC property located in the Bedford Park section of the Bronx to resolve its foreclosure issues. The building has been in the HDFC program in excess of 25 years. He explains his strategy as follows:

"We will arrange private bridge financing for the building from a traditional, private, short-term lender to pay off the arrearages in real estate taxes and also, to facilitate the renovation of some units owned by the co-op, as well as three commercial units. The renovated residential and commercial units will be rented out, and the proceeds from these rentals, as well as from increased maintenance receipts of occupied units under a new budget plan for the building will be used to pay down, and hopefully pay off, the bridge loan. In the event they can't pay off the entire loan, we will seek conventional underlying co-op permanent financing when the bridge loan comes due and the building's financial picture has improved."

The general terms of the bridge financing are from 12-18 months floating over prime, carrying an interest rate today of approximately 10 percent.

The loan also requires the payment of origination fees of between 1 percent and 2 percent and requires an appraisal. Korn says these loans usually include a six-month extension option. No personal liability is required from the shareholders.

As to the availability of permanent financing when the bridge loan comes due, Harley Seligman, Senior Vice President at National Cooperative Bank, which is a major lender to co-op apartment properties nationally, indicates that permanent financing to these co-ops is available. However, as is the case with all applicants, the loan decision is made on a case-by-case basis.

In the end, while the problems your HDFC co-op may be facing in terms of financial viability, stability and health may seem daunting, there are options open to you. Remain calm and consult qualified professionals to get on the right path.

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