



CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING

#17-0069

TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Cynthia A. Everett, City Attorney

DATE: January 4, 2017

TITLE: Motion Authorizing Lien Foreclosure Action

Recommendation

It is recommended that the City Commission authorize the City Attorney's Office to file a lawsuit to foreclose a lien against property located at 1731 N.W. 26th Avenue, Fort Lauderdale, Florida 33311 (the "Property").

Background

The City Attorney's Office seeks to file a lawsuit on behalf of the City against the Estate of Ethel Mae Copeland (the "decedent") to foreclose a mortgage lien against the Property.

On January 30, 2003, the decedent received a loan from the City to complete emergency repairs to the Property. In connection with the loan, the decedent executed a City of Fort Lauderdale Residential Rehabilitation Program Mortgage and a promissory note in the amount of Four Thousand Eighty Nine Dollars and Thirty Five Cents (\$4,089.35) (the "Note and Mortgage"), copies of which are attached hereto as Exhibit 1.

The decedent died on July 18, 2015. On November 8, 2016, the Personal Representative of her estate filed a verified motion seeking a determination that the Property is exempt as homestead property and an order directing the Personal Representative to sell the Property and distribute the proceeds to the decedent's children.

On November 28, 2016, the City filed a secured claim against the estate based on the unpaid Note and Mortgage. On December 16, 2016, the Personal Representative filed an objection to the claim filed by the City.

Pursuant to Section 733.705(5), Florida Statutes (2016), when an objection is made to a claim filed in a probate proceeding, the claimant has thirty (30) days in which to file an independent action on the claim; if they fail to do so, the claim is forever barred.

Although the City Attorney's Office believes this statute is inapplicable to this situation, in an abundance of caution it seeks the authority to proceed with the lawsuit as it continues to research the issue in order to preserve the City's claim. The deadline for filing the action is January 13, 2017.

An initial review of public records has not revealed any superior liens or interest against the Property. The City Attorney's Office will reassess the likelihood of success once a comprehensive title report has been received and reviewed. It will then determine whether or not a foreclosure suit is the appropriate resulting action to take.

Upon completion of the foreclosure action, the City Attorney's Office intends to force a sale of the property. If the property is sold to a third party bidder, the City will receive payment against or up to the amount of the Final Judgment of Foreclosure as entered by the court.

Resource Impact

Funds for this agreement are available in the FY 2017 Budget in the account(s) listed below:

<i>Funds available as of December 29, 2016</i>					
ACCOUNT NUMBER	INDEX NAME (Program)	CHARACTER CODE/ SUB- OBJECT NAME	AMENDED BUDGET (Character)	AVAILABLE BALANCE (Character)	AMOUNT
001-GEN010101-3119	Other Gen Govt – Social/Cultural	Services & Materials/ Legal Services	\$481,318	\$330,520	\$5,000
TOTAL AMOUNT ►					\$5,000

The fiscal impact associated with this action are costs associated with the foreclosure action, which include but are not limited to the following: title searches, filing fees, service of process, publication, appointment of a guardian ad litem, and foreclosure sale fees. The precise sums cannot be determined at this time, but will likely range from \$2,500 to \$5,000. The Note provides that the City shall be entitled to recover reasonable attorney's fees and costs incurred by it at both the trial and appellate levels in any action upon the Note.

Attachments:

Exhibit 1 – Note and Mortgage

Prepared by: Candace Renee Duff, Assistant City Attorney

Charter Officer: Cynthia A. Everett, City Attorney