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Condo association struggles mount as delinquencies jump

Legislation aims to give associations greater authority

BY YUDISLAIDY FERNANDEZ

As many condo and homeowner associations continue to struggle because residents have stopped paying fees, some are seeking outside financial and administrative assistance to sort out their troubles.

Many unit owners aren't paying association fees because their incomes have dropped and they can't pay all their bills, while others have stopped paying as a sign of protest because many of their neighbors aren't paying, said Ken Arnold, founder and chief executive officer of Miami-based Association Financial Services, a firm that offers financial services to condo and homeowner associations.

"There are people who can pay but because others are not paying and services are going down, they say they are not going to pay their assessments either," said Mr. Arnold, whose company represents condo and homeowner associations throughout the state.

Many aren't paying because they can't afford it.

With unemployment at 11.3% in Miami-Dade, credit card interest rates rising and financing still scarce, homeowners are getting hit from all sides with few alternative avenues, leading many to become delinquent on some of their monthly payments. When deciding what not to pay, many select their association dues.

As fewer unit owners pay their fees, Mr. Arnold says, many associations run into financial trouble because they aren't collecting enough money to pay for the property's maintenance and for an attorney to foreclose on non-paying owners.

Associations can foreclose on a property for non-payment of assessments, while banks can foreclose because the homeowner stops making mortgage payments. Sometimes, Mr. Arnold says, the individual is meeting mortgage payments but failing to pay association fees.

Often homeowners think the association doesn't have the power to take away their home when it does, says Donna Berger, a community association attorney.

"When prioritizing the bills, 'do I pay my association or do I pay my Macy's bill?'" she says is a question many owners are asking themselves these days.

It's important for unit owners to know, she says, the association and the bank can both foreclose on the property. "They (the associations) are like the bank. They can take your home."

Mr. Arnold's company, Association Financial Services, steps in offering financial solu-

tions to associations struggling to stay afloat because of high delinquency rates.

"In some cases, the association needs money to pay the attorney to move ahead on the foreclosure," he says. "We get paid back once the case is settled."

For an association, Mr. Arnold says, the quicker it can get a new fee-paying owner into the unit, the better it is for the residents and the association.

The financial group's services include accounts receivable servicing and collections, capital improvement loans, interest-free revolving lines of credit, attorney cost deposit advances and other specialty loans.

Mr. Arnold explained that the lines of credit are backed by the association's account receivables and can be used to pay attorney fees or to fill budget gaps caused by fewer collections. The loans plus interest are to be paid by the delinquent unit owners once those cases are resolved.

For many of his association clients, he says, he takes over collections.

"We've been able to increase collectibles by instituting different procedures" to collect overdue fees, Mr. Arnold says, such as sending out late letters, collection letters and calling owners to make sure they understand their responsibility and provide them with payment methods.

For example, the financial services firm helped Aventi at Aventura, a 180-unit waterfront town home community in Aventura with a \$75,000 monthly budget to meet, increase monthly assessment collections by 24%, he said.

The group also made a \$300,000 loan to an unspecified 160-unit waterfront tower near Miami Beach that had reached a 53% delinquency rate in payments.

Today, condo associations are hit by record-high delinquency rates as a significant number of residents have

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stopped paying dues, says Bruce Hohenstein, longtime property manager.

"Many condo buildings and homeowner associations are faced with a delinquency rate that exceeds anything we've seen in the past," said Mr. Hohenstein, vice president of operations with Janus Property Management.

Through maintenance fees, associations collect enough to pay for the year's anticipated expenses, Mr. Hohenstein said, including landscaping services, utility costs for common areas and maintenance of amenities like gymnasiums and pools.

"When you have 10%, 20% or 40%, for one reason or another, not making payments for services," he explained,



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condo associations are hindered because they don't have enough money to operate.

In the past five years, more people have abandoned townhomes and condos they could no longer afford and stopped footing the association bill, and some landlords who have renters in their units have also stopped paying their dues, Mr. Hohenstein said. The collections process becomes very complex and extra layers of expertise and accounting are needed, he said.

In smaller condominiums and communities, the staff works on a volunteer basis, while large ones tend to have an outside firm that handles all transactions, Mr. Hohenstein said.

But to deal with the hassles of collecting from delinquent owners, he says, requires specialized skills and databases that often associations don't have access to.

The reason the services of association-assisting financial firms are sought more now, Mr. Hohenstein said, is that it's more cost-effective to have a professional firm step in and oversee collections.

With times tough, some unit owners decide they won't pay monthly dues because they aren't using the community's amenities, and some associations want to use that as a tool as well to prohibit non-paying owners from using pools or gyms, pointed out Ms. Berger, the association attorney.

The homeowner association has the right to prevent residents delinquent on maintenance fees from using the property's amenities, said Ms. Berger, managing partner at law firm Katzman Garfinkel Rosenbaum. But condo associations aren't allowed to prohibit unit owners from using the building's amenities. A bill in the Florida Legislature aims to change that this year.

Ms. Berger's suggestion to homeowners: "Don't hide. Don't stop opening your mail. Reach out and negotiate. Some-

times the associations don't want the hassle of a foreclosure. If you say you'll pay half the money, they'll work with you."

But the law is different for homeowner and condo associations.

New legislation could pass this session in Tallahassee giving condo associations more power to collect assessments directly from renters, make lenders take over fee payments for homes in the foreclosure process and give condo associations the power to keep non-paying owners from using building amenities.

State Rep. Julio Robaina is re-introducing in separate bills several measures that failed under one bulky bill in the last day of the past legislative session.

One is HB 329, a bill filed Monday. Under this proposal, if a condo unit being rented out is delinquent more than 30 days, the association would have the power to charge the tenant the amount the landlord, the unit owner, owes the association.

In the case of condominiums in foreclosure with unpaid assessments of 90 days or more, the bill would give the association power to deny owners or tenants the right to occupy units or use common areas, recreation facilities, parking or marina space, and deny them the right to vote on association matters.

Within 30 days of filing foreclosure action on a unit, the bill says, a lender would have to pay the association six months of assessments, which should be credited to the unit's account. If the case is still pending when that period ends, the lender is to pay the association future outstanding fees owed by the unit until the case is resolved.

Mr. Robaina, a Miami-Dade representative who was previously South Miami's mayor, last year chaired the Legislature's Select Committee on Condominium & Homeowners Association Governance.

"I think it's so necessary to deal with these problems; I dedicated half of my bills to deal with these problems," Mr. Robaina said. "I know this (splitting the bills) will make it easier to get them passed..."

With economic relief coming slowly and unemployment still high, more associations are expected to face financial difficulties in 2010.

Mr. Arnold of Association Financial Services says it's definitely going to take years for many condo and homeowner associations to stabilize because a high volume of foreclosures is slowing the court process. The key, he says, is to solve the payment issues before having to foreclose.

"There are a lot of associations that for one reason or another have not done anything to proactively resolve these problems," he said. "For those associations, it's going to take a lot longer."