

# HOA foreclosures climbing as associations seek 'revenge' on delinquent homeowners

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Fed up with late dues and mounting maintenance bills, some homeowner associations are motivated by spite, over sound business sense, to foreclose on delinquent owners.

Property managers and condo board advisers say taking title to a property for a few thousand dollars in unpaid association fees in a "vengeance foreclosure" isn't always the best answer.



Brandon Kruse/Palm Beach Post

Juan Parra, president of the CitySide homeowners association, stopped expensive foreclosures and fined banks for not adhering to board rules.

But emotions can override fiduciary smarts when a neighbor is tapping the cable TV for free.

And because it's easier for an association to foreclose than a bank - no proof of ownership necessary, no issue with robo-signed documents - attorneys say the number of HOA foreclosures is climbing as boards get bolder.

"These are your neighbors, and they are foreclosing on you," said Michael Rabin, whose association foreclosed on his Royal Palm Beach home after he racked up more than \$10,000 in late fees. "If they don't like you, they can do whatever they want. It's scary."

When a homeowner association forecloses and takes title to a home, the idea is the board will be able to rent it out until the bank forecloses as the primary lien holder. With banks taking years to foreclose on some properties, the board can potentially collect thousands of dollars.

## HOAs 'mean business'

Attorney Donna Berger, managing partner at Katzman, Garfinkel and Berger in Fort Lauderdale and executive director of the Community Advocacy Network, is a proponent of associations foreclosing on delinquent owners.

"The fact is a lot of members aren't paying because they haven't seen that the associations mean business," Berger said. "Associations are educating themselves. They did the demands. Now they are saying go forward, don't wait around anymore."

Berger said most of the retaliation she has seen from boards has been in the suspension of such homeowner rights as an access card to get into a gated community or barring pool use.

Still, Frank Silcox, CEO of LM Funding, which lends money to associations and then works to bring accounts current for a percentage of the fees collected, said he often sees frustrated association boards file for foreclosure when other options could make the board more money in the end.

"They are angry, and they make a short-term decision," said Silcox, whose company is based in Tampa and does work in South Florida. "They're thinking they just want to get back at them."



Attorney Donna Berger encourages associations to foreclose on delinquent owners.

## Better alternatives

Often a home or condominium needs work before it can be rented, which is a cost to the association. Potential renters must be warned that the property could be repossessed by the bank. While there are laws that protect renters from a swift eviction, some people may be wary of renting a home with a questionable future.

The association board also gives up its ability to put liens on the property when it takes title to it and must pay legal fees.

For example, if an association forecloses on a property with \$5,000 in late payments, then pays \$2,000 in legal costs and \$1,500 in fees accrued during the months it takes to foreclose, it gives up a lien that would otherwise total \$8,500.

Juan Parra, president of the CitySide homeowners association in West Palm Beach, said when he took the position, the board was paying \$18,000 a month in legal fees and had lawyers advising it to foreclose.

"I immediately stopped that," said Parra, who believes there are better alternatives for boards. "Boards are inclined to retaliate because it's unfair to the people who are paying."

Parra's methods include charging a \$1,000 fine if exterior door locks are not the same. When a bank repossesses a unit, it typically changes the locks but doesn't read the association rules requiring uniformity and ends up owing the fine. The same goes for leaving the trash can out - a \$100-a-day mistake that can cost banks up to a maximum of \$1,000.

Parra also takes advantage of a state law enacted last year that allows associations to evict tenants in units with late payments. The law also gives associations the power to bypass owners and collect rent directly from tenants.

In 2008, CitySide was in such dire straits it cut its budget for security, landscapers and bug control. Now, Parra said the association is debt free and has nearly \$1 million in reserves.

## Selective enforcement

JPMorgan Chase Bank filed for foreclosure against Michael Rabin in April 2010, but his HOA beat it to the finish line.

It foreclosed and took title to his home last month.

According to court documents, Rabin owed \$10,706 in association fees when the final judgment was awarded in December. Add in attorneys' fees and other additional costs, and the amount ballooned to \$14,388.

Rabin said he was on a payment plan with the association but missed two months because of a reduction in salary. He's hoping a short sale that had been in the works before the foreclosure will still go through, but feels the association board was acting more out of malice than necessity when it took his home.

"The homeowners and the attorneys are just brutal," Rabin said. "I was accused of lying and cheating in a public meeting."

Some associations that work with West Palm Beach-based Banyan Property Management have seen success using foreclosure, company president Mark Quinn said.

At the Palm Beach Grande Condominium, nearly half of its units owed late payments in November 2009.

Quinn said the association started foreclosing and now owns title to about 50 units that it uses a rental company to manage.

"Basically, 15 months on, the association is financially sound," Quinn said. "They're still not healthy, but they are no longer bleeding cash."

Quinn said selective enforcement is key to making foreclosure work for an association. If a bank is on the verge of repossessing a property, it could make sense to wait and collect the liens when it takes title.

"Every once in a while you'll get someone that says, 'Let's just foreclose on that nasty person and get them out of there,' " he said. "You have to explain that that's not always the answer."