

Condo Associations

Judge taps receiver to collect rents on units in foreclosure

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Ebenezer Boakyee's condo board should be collecting nearly \$11,000 in maintenance fees every month. Instead, it barely banks \$3,000 because many of the units are owned by investors who have stopped paying their association fees.

Because of the short-fall, Opa-locka's The Oaks at Miami Gardens condo association is struggling to survive even as absentee unit owners collect rent from tenants.

"It has been a rough ride for the association in the last year and a half," said Boakyee, a board member of The Oaks who works as an administrative assistant at Jackson Memorial Hospital.

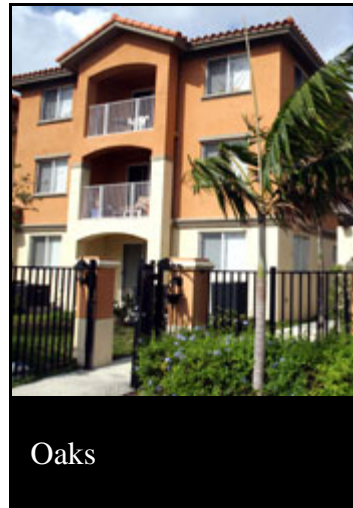
Last month, The Oaks board finally got some help when a judge appointed a receiver to collectively go after the rent of tenants whose landlords have stopped paying maintenance fees.

The receiver's job is limited to collecting rent on behalf of the association; he or she can only go after rent on units the condo has begun foreclosure action against over the owner's failure to pay condo fees.

Condo boards have always had the option to ask courts to appoint receivers, but previously, each unit was dealt with as a separate case. For already financially distressed boards, that was a costly and time-consuming option.

By combining cases, Miami-Dade Circuit Judge Ellen Leesfield has made the process more cost-effective.

So far, court-appointed receiver Seth Heller has nine units for rent collection at The Oaks. That number will grow as the association initiates foreclosure actions



on other units, he said.

As more South Florida unit owners quit paying association fees, condo boards are struggling to pay for building maintenance, insurance and other expenses. Targeting rent payments to delinquent owners is gaining popularity.

Built in 2005, The Oaks is the product of a housing boom gone bust. Investors bought about 95 percent of the 61 units, said Boakyee, who owns two condos that he rents out. Now, almost half the condos are facing foreclosure either by lenders or the association, according to Miami-Dade County property records.

In a final bid to get some money out of their property, owners often quit paying condo fees when they face lender foreclosure, even if they have a tenant in place.

By seeking the appointment of a receiver, the association hopes to collect maintenance fees for as long as a tenant lives in the unit facing foreclosure by the association, Boakyee said.

Yet, it's unclear how successful a receiver can be collecting from tenants, said attorney Karl Klein, of Miami's Klein Law Group. Klein does not work for The Oaks but helps other condominium associations who are having trouble collecting maintenance fees.

"There is a high likelihood the tenant may move out," he said. "A lot of tenants, when they find out that there are legal proceedings going on regarding their units, they become uncomfortable and want to leave."

'REVOLUTIONARY' TOOL

When Judge Leesfield appointed the receiver on March 24 to collect rent from nine tenants in units the board is seeking foreclosure against, she gave boards an important new tool to boost the collection process.

"That's the brilliance and the beauty of this [approach;] it is really, really revolutionary," said Mitchell Drimmer, whose company, Miami's Association Financial, handles collections for The Oaks. Drimmer helped the board petition for the receiver.

Receiver Heller said he charges \$25 a month for each unit, but bills the unit owner, not the association.

Lawyers who work with condo associations welcome Leesfield's ruling.

"That's new; that's something I haven't heard before," Klein said. "[The ruling] is a great step in the right direction, and it shows you the amount of creative thinking from the condo associations and their attorneys to try to maximize their cash

flows.”

LANDLORD RESISTANCE

Some associations already collect rent directly from tenants without having to go before a judge. The Floridian of Miami Beach condo association is one of them, said board president Dana Martorella. The Floridian’s declaration of condominium has a clause that permits the association to collect rent from tenants whose landlords are behind in their maintenance payments, said Martorella.

The Floridian was converted to condominiums in 2004 during the height of the residential boom.

As with The Oaks, many of the buyers were investors.

“In most cases, we are finding that the unit owners prefer to have the renter pay the association their rent rather than have us foreclose on their units,” she said.

But not all delinquent unit owners are willing to give up their rental income, said Miami attorney Barry Blaxberg, who represents the Floridian and the Bentley Bay South Beach condo association, which also collects rent directly from tenants.

Blaxberg said an owner of a unit in a condo property he wouldn’t identify threatened his tenant with eviction if the tenant continued paying rent directly to the association instead of him.

“We told the unit owner, ‘Don’t you dare evict this person because we will protect him ... and when we sue you for foreclosure, we are also going to seek an injunction against you for bothering your tenant. And if you continue to bother him, we will ask the court to hold you in contempt of court.’ ”

TWO OPTIONS

Condo associations whose condo documents don’t grant them the right to collect rents have two limited options:

v Amend their declarations of condominium — which can be costly and requires approval of the majority of unit owners.

v Adopt a lease addendum — which requires the approval of the board, said Miami attorney Rosa de la Camara of Becker & Poliakoff. The addendum is only effective if the condo documents already give the board the power to approve leases, she said.

An amendment may not have an impact on existing tenants and delinquent owners.

“The amendment cannot take away rights that current unit owners have as it relates to leasing arrangements,” said Blaxberg. “In my opinion, it could only apply to future owners.”

Condo consultant and attorney Klein said another way to deal with the situation is simply asking delinquent owners to provide their rental income to the association to cover their debt, or face foreclosure.

“It works probably two-thirds of the time,” he said.

FORECLOSE QUICKLY

Some community association advocates aren’t sure that negotiating with delinquent owners is a good idea. They urge associations to foreclose the units and take title as quickly as possible.

That way, the association would own the condo and could continue to rent it out until the unit’s lender forecloses on it, said

Donna Berger, executive director of the Community Advocacy Network.

“Our recommendation is be aggressive and proceed as quickly as possible to foreclose,” said Berger, managing partner at Katzman Garfinkel Rosenbaum in Fort Lauderdale.

Owners who stopped paying their condo dues have most likely stopped paying their mortgages, too. They know they will lose the condo and may not care what type of tenant they put in their units, she said. If the association takes title to the unit, it will have more control over who becomes their new neighbor.