

# MIAMI TODAY

June 12, 2008

## Troubled condo associations have few options but to cut

BY MARILYN BOWDEN

Residents of condo buildings where many financially strapped owners are not paying their condo fees will have to make up the difference until the housing crisis works itself out, experts say.

"This is a very widespread problem," said Stephan R. Titleman, president of the Property Management Division in The Continental Group, an association management firm representing about 1,200 communities in Florida.

"It's especially prevalent in places such as downtown Mi-

ami where there is overbuilding and few people show up to the closing table, or in conversion projects where the developer is long gone and units are owned primarily by investors who never intended to be owners of real estate."

Condo associations in trouble, he said, have few options other than to cut services to absolute necessities such as utilities and insurance.

"The practical outcome is that communities are not being maintained in the same way as before this crisis," said Donna Berger, managing director at the law firm Katzman Garfinkel and

executive director of Community Advocacy Network, a state-wide not-for-profit initiative that advocates on behalf of more than 1,000 communities.

"People who are paying are going to have to bear the burden in the short term for those who aren't," she said. "That's why it's so important not to make it more difficult for associations to collect maintenance assessments. If it's impossible to go after delinquent owners, you're punishing those who are paying."

While the developers' maintenance guarantees exempt them from paying maintenance on unsold units in new buildings,

Ms. Berger said, they do have to fund deficits as needed.

"Developers are not, generally speaking, a problem," Mr. Titleman said. "They are creative in saving dollars, and oftentimes a financing arm – whether it's a second-party equity finance team or the bank themselves – will come in and save the day because they need to maintain what may ultimately be their asset."

But condo associations are restricted by their condo documents from moving other reserves around to cover delinquencies, he said, "and I have never seen a reserve fund set aside for delinquencies."

"We are in the process of establishing lines of credit that we can extend to our clients as a temporary solution to cash-flow problems, but most of the time today it's going to have to be special assessments."

Ms. Berger said there's a lot of misinformation that associations can't touch owners who don't pay maintenance fees and assessments.

In fact, said Jared Beck, a principal of Beck & Lee Business Trial Lawyers, "Under Florida law, the association has the option to file a lien and foreclose on the delinquent property."

"Such liens are inferior to a claim brought by a mortgage holder, so if an association feels that a lender foreclosure is imminent, the association must move to foreclose quickly."

Mr. Titleman said Continental is advising clients to consult their attorneys about accelerating the collection process for unpaid fees, skipping the 30-day reminder notice of delinquency and moving directly to the 10-day demand letter, after which they can file for authorization to proceed to foreclosure.

"We are merging our management information system with the systems used by our clients' attorneys," he said, "to help expedite the collection process."

In some cases, the association can then rent out the unit, Mr. Titleman said, generating some income until the bank forecloses on it.

Banks do assume responsibility for payment of fees once they have foreclosed, Mr. Beck said.

"Interestingly, however, given the rising number of mortgage defaults, there is now a palpable disincentive for banks to move quickly on foreclosure, because they don't want to assume the association fee payment responsibility along with the overall expense of the foreclosure process."

"This disincentive on the banks' part only exacerbates an already bad situation for owners, as units in default remain in arrears on their payments."

But owners who are not paying fees should realize that the poor maintenance that results affects the value of the units they're trying to sell, Mr. Beck said, "and, of course, a higher level of assessments necessarily diminishes the value of the individual unit."

"Ultimately, the only viable option for unit owner-users in an affected condominium may be to work together as an association to tighten up management of the building, cut costs wisely and, where necessary, streamline the collection process to capture as high a percentage of the assessments as possible."

"We know of extreme situations," Mr. Titleman said, "where, as a result of lack of funds, condo owners are cutting the grass and taking care of facilities themselves, realizing that if nothing is done it can get to the point where property values will decline."

"The condominium form of ownership only truly works where there is a significant degree of cooperation among the owners," Mr. Beck said, "and that is certainly no less true when economic conditions are rough."