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NEWS

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Paid up? Owners can stay, even as foreclosure looms

With foreclosures still on the rise and more and more associations missing out on maintenance fees, some boards are willing to look past foreclosure proceedings as long as owners are willing to ante up.

Boards members around South Florida are beginning to wonder whether it is in the best interest of their associations to allow unit owners to remain in a home — even as a lender's foreclosure proceedings move forward — in order to pay off past-due association fees.

Members of the Lago Mar Colony Protective Association in Plantation recently placed a lien on a property whose owners were about \$2,400 behind in HOA fees. While the owners continued to fight the lender's foreclosure, board members were considering allowing them to stay in the home if they paid the past-due association fees plus what is owed for the next six to 12 months while the foreclosure with the lender is being settled.

"Where else could you

rent a property that size for that amount?" said Donna Berger, an attorney with Katzman Garfinkel Rosenbaum and a resident of the Lago Mar HOA. "[The] owner might very well lose the house to the bank, but in the meantime he does not need to lose it to the association for a much lower amount."

Lago Mar's board treasurer John Ellis did not return phones calls, but Berger said the board was still undecided as to its course of action as of press time.

Cases similar to the La-

go Mar issue are popping up across South Florida community association meeting agendas. Although associations have traditional legal tools to collect unpaid dues, some experts question whether associations truly have the means to fight unpaid fees through lien foreclosures.

"It is usually much easier to stave off a bank foreclosure action than it is an association foreclosure," Berger said.

Berger said that while no two situations are alike, associations should be

aware that allowing owners to stay if they repay dues is an option for associations to better deal with owners who may stop paying once a lender has filed for foreclosure. Associations can also opt to buy the home outright in hopes of recouping some lost money through renting.

"It's a change in philosophy: Lenders are taking close to two years [to complete the foreclosure process], so all the while nobody is paying anything to the association," said attorney Robert Kaye of the Fort

Lauderdale law firm Kaye & Bender.

Kaye said buying foreclosed properties is also an aggressive approach, but with home and condo unit prices down, associations can get a good deal. If the purchase goes through without a response from the lender, associations can own the unit or home within seven months and can rent it out, quickly recovering unpaid assessments.

"Associations should focus on units in good condition or those [that are] rentable," Kaye said.