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Consumer Law

Bill would limit foreclosures over some unpaid homeowner fees

A bill proposed by the Legal Aid Service of Broward County would ban foreclosure filings by homeowner and condo associations over unpaid fees up to \$250.

The Plantation-based agency, which is seeing more clients requiring help with foreclosure cases, is seeking support from association attorneys and a sponsor for the bill it wants to take to Tallahassee for the 2008 legislative session.

George Castrataro, supervising attorney for Legal Aid's consumer law unit, said the agency's push has gained the attention of state condo ombudsman Danille Carroll in Tallahassee.



Lauren Panton

"She's being supportive and she's connected me with people ... to help with language" for the bill, he said.

Carroll was traveling and unavailable for comment before deadline.

Castrataro knows condo legislation often is contentious and expects a rough ride.

"There will be a lot of fighting back and forth," he said.

State Rep. Julio Robaina, R-Miami, said he would consider supporting the bill or including the limit on foreclosures in a proposal he'll submit for tougher recordkeeping requirements for associations.

"We've seen people foreclosed for under \$10," in unpaid fees, said Robaina, who has championed condo legislation for several years. "Something like \$250 makes all the sense in the world. I've even said \$500 could be the threshold."

Castrataro said the need for change is growing.

"We're so sensitive to the harm that can face clients that we'll force a client to settle to protect them from greater harm" of losing their home, he said.

If Legal Aid's foreclosure caseload continues to climb, the agency expects to be representing about 150 clients this year, Castrataro said. Many involve small amounts of

unpaid association fees that can balloon into several thousand dollars when attorney fees are added.

The agency's foreclosure caseload from June 2005 through May of this year tripled from 15 to 46, mirroring the region's deepening foreclosure crisis.

South Florida foreclosure filings counted by the Daily Business Review nearly doubled to 4,156 in August from 2,193 in the same month a year before.

Pembroke Pines homeowner Lauren Panton almost became one of those statistics. She and her mother, Norma Morris, own a home in Towngate at Pembroke Pines. Panton said her master association misapplied a \$200 payment in October 2006 and filed a foreclosure suit in January over the supposed missing payment.

It took months to clear up the account, but legal fees took the case costs to almost \$3,000.

"The costs grew higher rapidly as I showed signs I would pursue" the case in court, said Panton, who wrote several letters saying the association had misapplied a payment.

In the end, Panton's mother paid the disputed fees, and the case was dropped.

Panton, who didn't know her mother intended to make the payment, still is outraged at the prospect of losing her home over \$200.

"I would join any advocacy group because it was done in a conniving manner and was so subject to interpretation. If you're not cognizant of resources available to you, you can lose your home on a technicality," she said.

Towngate association attorney Michael Chadrow of Brough Chadrow & Levine in Weston doesn't see it that way. The firm represents about 300 community associations.

"Associations are not for profit, and as such they must have adequate cash flow to function," he said. "To get that, they collect assessments."

With the dollar limit that Legal Aid proposes, numerous associations with small quarterly fees could wait years for nonpaying owners to reach the \$250 mark, he said.

Attorney Donna Berger of Katzman & Korr in Fort Lauderdale said the proposal should be more flexible. She suggested a minimum foreclosure amount of \$250 or the equivalent of two months maintenance, whichever is less.

"A one-size-fits-all approach has a much different impact on a 350-unit high-rise than a 10-unit homeowner association," said Berger, executive director of the statewide Community Advocacy Network, a consortium of association directors, property managers and owners.

Most condo associations in Florida have fewer than 50 units, she said. Homeowner associations can be smaller.

Legal Aid's Castrataro said he's already been advised to add a requirement that associations give adequate notice to owners, perhaps at 30-, 60- and 90-day intervals.

"Associations don't want to look like the bad guys," he said.

Under state condo law, associations can place liens or pursue foreclosures for any amount of past due fees, but a 30-day foreclosure notice must be given to owners.

A change adopted this year for homeowner associations requires them to mail a demand letter with a 45-day notice that a lien will be placed on the property title.

That must be followed by a 45-day notice of foreclosure, said association attorney Gary Mars of Hyman Spector & Mars in Miami.

After that, the homeowner can submit a “qualifying offer” or settlement plan to avoid foreclosure, he said. The plan must include provisions for payment plus interest, attorney fees and costs within 60 days.

Legal Aid’s effort to preserve home ownership isn’t the first.

For three years, state Sen. Gary Siplin, D-Orlando, has proposed a bill that would limit condo association foreclosure actions to unpaid fees of at least \$2,500. Associations would have to give 180 days notice and could not charge for attorney fees and costs. The measure died in committee in this year’s legislative session.

Siplin did not return a call for comment by deadline.

The proposal would have left associations with no recourse and unable to recoup their full costs in pursuing delinquent accounts, Berger said.

She and assistant state condo ombudsman Bill Raphan said associations and homeowners need to review the issue of overdue fees.

Many associations give too many notices and wait too long to collect, Berger said.

That creates ample opportunity for a delinquent owner to file for bankruptcy to protect the home from foreclosure and leave the association as an unsecured creditor unlikely to collect, she said.

But owners also must understand that association fees are not discretionary, Raphan said. His office in South Florida has seen growing complaints this month from owners who haven’t paid enough to clear their accounts.

They’ll pay delinquent fees but not attorney fees and costs, or subtract a lien fine from their payment.

Both tactics leave the accounts delinquent, Raphan said.

“You must pay assessments whether you agree with them or not,” he said. “That’s the real problem.”

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