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South Florida homeowners associations get tough in collecting delinquent fees

By Paul Owers and Lisa J. Huriash, Sun Sentinel

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Homeowners associations across South Florida are becoming more assertive in the fight to maintain property values and their own bottom lines amid one of the worst housing collapses since the Great Depression.

A new legal strategy and a sweeping condominium reform bill are empowering boards hit hard by budget shortfalls following a deluge of foreclosures in recent years.

Associations now are attempting so-called reverse foreclosures, which force lenders to seize homes more quickly than they otherwise would. Banks often delay taking back these troubled properties to avoid having to pay past-due assessments.

Meanwhile, new legislation that went into effect July 1 gives condo boards statewide more authority in dealing with delinquent tenants and unit owners.

Plantation City Council member Bob Levy commends associations for aggressively dealing with the crisis, but Fort Lauderdale lawyer Donna DiMaggio Berger said they had little choice.

"Many of these associations have had their eyes opened," said Berger, executive director of the Community Advocacy Network, a statewide group for common-interest ownership communities. "They've seen that inaction makes the situation worse."

The crash in home prices during the past few years pushed thousands of owners into foreclosure, although banks have been slow to take back the properties. Widespread vacancies left the state's 50,000 community associations starving for cash to pay for such services as cable, water and maintenance.

Many boards felt they had little recourse, except to charge higher fees to the remaining owners.

Last fall, though, the Association Law Group in Miami decided to try something different for one of its clients. The firm, representing the Keys Gate Community Association in Homestead, maneuvered to force a lender into court for a hearing that resulted in the bank seizing a home within the development.

The association, which already had taken title when the owner stopped paying fees, asked a judge to assign a certificate of title to the lender on the same day as the hearing. The judge granted the request, making the bank the legal owner. And with that came the responsibility of paying association fees.

Since then, the firm has completed at least 10 reverse foreclosures in Miami-Dade and Broward counties and has dozens more in the pipeline, said Ben Solomon, co-founder of the Association Law Group.

"We came up with this new legal strategy to address the flagrant stalling of lenders," Solomon wrote in an e-mail.

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"Each month of delay by the bank in its foreclosure process will typically turn into an additional month of bad debt to the association, which then must be paid unfairly by the [existing] owners."

Alex Sanchez, president of the Florida Bankers Association, said lenders aren't dragging their feet but instead are trying to work with borrowers to keep them in their homes. "If that's wrong," he said, "go ahead and accuse us of that."

The Jacaranda Lakes Homeowners Association is facing \$45,000 in total delinquencies at the 1,150-home development in Plantation.

In two cases, the board took title to run-down homes after the owners stopped paying fees, said Nathan A. Tarler, secretary-treasurer. The lenders still have mortgages on the two properties but have yet to initiate foreclosure proceedings.

To get the lenders to take back the homes and assume responsibility for renovating them and paying past-due fees, the association filed for reverse foreclosure. A Broward judge last week denied one of the requests, but another judge could rule differently at a later date, said Robert Kaye, Jacaranda's lawyer.

Despite delays and uncertainty, Jacaranda residents say they're thrilled that the association is trying to address the situation. The two homes have mold problems and need new roofs.

"Whether you live next door or not, it impacts all of our values," homeowner Lynn Albertelli said.

The condo reform legislation, SB 1196, allows associations to demand rent from tenants if the owners are delinquent. If the tenants don't pay, the boards can evict them with court approval.

The law also gives homeowners associations the right to restrict common-area uses and suspend voting privileges for owners who are 90 days delinquent. Critics argue that parts of the bill are poorly worded and leave too much open to interpretation.

The Verano at [Delray Beach](#) Condominium Association Inc. is gaining possession of five units and evicting those tenants, said Steve Cohen, a receiver hired by the association. It also may take control of an additional 20 vacant units.

Many of the individual unit owners owe more on their condos than they're worth and aren't paying association dues even though they're still collecting rent from tenants. That resulted in a shortfall for the board of about \$10,000 a month, Cohen said.

In two months on the job, he said his firm, Community Concepts, has boosted Verano's collectibles by about 20 percent. The situation at the 242-unit development will improve even more once the association takes possession of the units and is able to renovate and lease them to new tenants.

"What we want to do is improve the quality of life of the condo for all the residents," Cohen said.

Sharon Dodge, board president of Venetia Condominium Association in Miami, said her 382-unit development on Biscayne Bay was plagued by squatters and non-paying unit owners.

"Lots of people were taking a free ride," Dodge said. "When some stopped paying, others said, 'Why should I pay?'"

Outraged, the board fought back, Dodge said. It moved to foreclose on 140 units, which prompted some owners to pay past-due fees. The association still has title to 23 of the condos and is renting those.

At one point, the Venetia homeowners association was \$3 million in debt, but it has since reduced that figure to about \$900,000, she said.

"We're really in good shape," Dodge said. "And we did it strictly by being tough."

Paul Owers can be reached at powers@SunSentinel.com or 561-243-6529.

Lisa J. Huriash can be reached at lhuriash@SunSentinel.com or 954-572-2008.

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