

Condo Associations Put 'Hammer' Down on Renters

New law gives HOAs the power to collect from tenants, or boot them out

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In coastal communities like this one, Singer Island, the 'condo bill' is much talked-about.

Bolstering the power and reach of Florida's condominium associations, a new state law allows the groups to collect rent from tenants.

Senate Bill 1196, signed into law Tuesday by Gov. Charlie Crist, empowers condo associations to collect rent money directly

from tenants in units of delinquent owners.

The bill, sponsored by Sen. Jeremy Ring, D-Margate, and Rep. Ellyn Bogdanoff, R-Fort Lauderdale, was sought by associations plagued by rampant vacancies and dwindling cash flows.

"It's a doomsday scenario when you have unit owners who aren't paying their mortgages or fees, but are getting rental income," said David Muller, an attorney specializing in community association law at Becker & Poliakoff in Sarasota.

Donna DiMaggio Berger, a managing partner at the Fort Lauderdale law firm of Katzman Garfinkel & Berger, said the expanded authority under the new law gives associations a much-needed hammer.

"If the tenant fails to pay the monetary obligations demanded by the association, the association may

stand in the shoes of the landlord and sue for eviction under Chapter 83 of the Florida Statutes," Berger said.

Furthermore, she added, "The tenant does not have any rights to vote in an association election or to inspect the books and records of the association by virtue of paying the monetary obligations demanded by the association."

Critics of the legislation say it goes too far by superimposing associations into private-party contractual agreements and slaps undue financial obligations on renters.

What's more, they say such far-reaching power could end up backfiring by making associations liable for property damages, personal injuries, etc.

Berger, who helped write portions of the omnibus bill, acknowledges that the renter legislation walks a fine legal line.

"It gives rights, but not all the responsibilities (to associations)," she said. "The last thing you'd want is for the association to be on hook for liability."

"There are enforceability challenges," she admits.

Muller said associations should be on solid ground as long as they follow the new law.

"It's statutory now. By following the procedures in the bill, (associations) will always have that to fall back on," he said.

"At the end of the day, when (association) budgets aren't funded, they have to assess everyone. This will avoid higher assessments."

Berger cites court decisions upholding associations' right to get aggressively into the rent-collection business.

"Some have gotten court orders to collect rent, even if a unit is not in foreclosure. As long as you can demonstrate a need, you can go right after that rent. Some have done so without even a demand letter," she related.

The key for condo associations, Berger said, is to get a court-appointed receiver or at least have a full-service property-management company.

"Can you imagine trying to collect on 40 delinquent properties?" she asked.

Though not authorized in this year's bill, some associations have directed receivers to recruit renters to fill vacated or foreclosed units.

Given the parade of condo "clean-up" bills that move through the Legislature each year, increasingly aggressive tactics are possible as long as Florida's foreclosure rates remain high.

For associations, Berger advised, "The ability to take away someone's home is quite a big hammer. Each HOA board will have to ask itself whether it is just to use such a big hammer."

Tenants, meanwhile, will want to be extra mindful of the financial status of their units' owners before signing a lease agreement.

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