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Desperate condo, homeowner associations thrown a lifeline

BY RACHAEL LEE COLEMAN
rcoleman@MiamiHerald.com

JOE RIMKUS JR. / MIAMI HERALD STAFF

At the Olive Glen Condominiums in Pompano Beach, Don Clobes, association president, inspects the living room of an abandoned unit.

Revenue-starved condominium and homeowners associations struggling to keep the taps running and the lawns mowed have found a novel way to squeeze money from units that don't pay what they owe.

It's called a reverse foreclosure, a tool that can force banks to pay association maintenance fees when unit owners don't.

It's a way for associations to halt the decline that begins when one owner quits paying maintenance fees, followed by another, then another, forcing a reduction in general maintenance, driving down property values even more, and leaving a community riddled with vacancies and vandalism.

Also, it's a way for associations to stick it to banks -- who they are convinced have been sticking it to them since the real estate meltdown began.

Banks, for their part, deny any dishonorable intent and say they are just protecting their interests, as any prudent business would do.

Here's how a reverse foreclosure works: When a home or condominium owner stops paying the mortgage, the bank files a notice of foreclosure to safeguard its stake. After that, some banks deliberately delay the process of taking back the property.

They take their time because, if it's like most South Florida properties, the delinquent unit is worth less than the outstanding mortgage. In the lingo of the trade, such units are ``upside-down.''

Banks are in no rush to have upside-down properties on their books.

Delaying foreclosure can be a nightmare for homeowner and condo associations. When people stop paying the mortgage, they invariably stop paying their maintenance fees. As long as a foreclosure is in limbo -- and the process can take years if a bank wants to slow things down, associations say -- unpaid maintenance fees pile up.

Under a reverse foreclosure, the association files its own foreclosure notice and takes title, which is its right after the homeowner stops paying maintenance fees. The association can't sell because of the bank's lien. But it can renounce its claim on the property in court and ask the judge to give the title back to the bank.

Then the bank has to pay the fees.

It's a hardball tactic, but condo and homeowner associations say they have been forced to resort to it because the Legislature, beholden to lenders and their lobbyists, refuses to make the banks take over the units and cover the unpaid bills.

Although reverse foreclosure is a new concept, it could become very popular very quickly. In a recent survey, 60 percent of Florida condo and homeowner associations reported that half of their units were two months behind in paying maintenance fees.

When unpaid fees become an epidemic, associations sometimes have to charge ``special assessments'' to owners in good standing to make up for lost revenue and cover the cost of utilities, upkeep and insurance.

Special assessments cause fierce neighbor-vs.-neighbor resentment, and can trigger a domino effect -- even more units sliding into default.

``These legal strategies are a direct response to the fact that the laws haven't changed,'' said Ben Solomon, an attorney with Association Law Group. In January, he engineered the state's first reverse foreclosure, on behalf of Keys Gate, a master-planned community in Homestead.

Although a reverse foreclosure sticks a bank with a property it doesn't want, Florida law gives the lender a break on the outstanding bill. Under existing statutes, banks cannot be forced to pay more than 12 months of past-due homeowner association fees or 1 percent of the overall mortgage amount, whichever is less. In the case of condos, the cap is six months.

The remainder, tens of thousands of dollars in some instances, is written off as bad debt by the association.

Because of the cap, said Solomon, ``there is no incentive for banks to foreclose'' in a timely fashion.

The Keys Gate Community Association, which represents 3,100 families, foreclosed on a four-bedroom home in April 2007 after its owner stopped paying monthly maintenance fees. The lender, HSBC Bank USA, filed its own notice to foreclose two months later, but didn't follow through, sticking the association with an empty house and, ultimately, $5,320 in unpaid fees tallied over two and a half years.

Fed up, the association cooked up the reverse foreclosure gambit.

On Jan. 12, Miami-Dade Circuit Judge Jerald Bagley bestowed his blessing, making the bank liable not only for association fees, but legal fees, court costs and taxes.

Because of the cap, the association had to eat $3,819 of the $5,320 tab.

HSBC's attorneys did not return calls for comment.

Keys Gate is now moving to reverse foreclose on 13 other delinquent homes.

Howard Lax, a Bloomfield Hills, Mich., attorney who represents banks, mortgage companies and real estate brokers, said it is understandable that lenders are in no hurry to take back delinquent units, only to have to turn around and sell them amid a market that has crashed.

``If the bank can't sell what they already have on the market, it makes little sense to put more on the market,'' he said.

Added Alex Sanchez, president and CEO of the Florida Bankers Association: ``We get hit from every side. Some people say we're foreclosing too fast; others say we're foreclosing too slow. Bankers want to keep Florida families in their homes. Foreclosure is a last remedy.''

In the meantime, Donna Berger, managing partner of the firm Katzman, Garfinkel, Rosenbaum and executive director of the Community Advocacy Network, recommends that associations recoup their losses by renting out units they take by foreclosure.

``If you already own it, control it,'' Berger said. ``You don't need to pay lawyers.''

Miami Beach City Commissioner Jerry Libbin, who is fighting for legislation that strips away the banks' protections, called the court decree in the Keys Gate case ``an important legal ruling for condo owners who are saddled with huge special assessments because greedy banks refused to take financial responsibility for their reckless lending.''

A number of new bills proposed for this legislative session could, in fact, offer associations some relief. One would turn the six-month cap on condo back-payments into a 12-month cap. Another would wipe out caps entirely.

``In the meantime, we're trying to aggressively work within existing laws,'' said Solomon. ``There's no time to spare and we can't afford to wait.''