

HOAs Detonate Foreclosed Mortgages

By: Lita Epstein

Homeowner associations struggle daily with how to pay the bills as more and more HOA fees go unpaid on housing units in or near foreclosure. That means HOA members are left holding the bag for unpaid mortgages in their communities -- and end up paying higher fees or getting fewer services.

The Association Law Group (ALG), which represents HOAs throughout Florida, has devised a new legal strategy to push banks to either foreclose or get out of the way. Prior to the "mortgage terminator" strategy developed by ALG, condos and HOAs could only sit passively and wait for the banks to act on foreclosures.

But the banks are in no rush to foreclose and take title because that means they then must pay the HOA or condo fees, Ben Solomon of ALG explained. By Florida law, banks only have to pay a maximum of 12 months or 1 percent of the mortgage in back-due fees when they take possession in a foreclosure, but after they take possession they are then responsible for all fees. For units sitting vacant for two years or more, it's cheaper for the bank not to take title. So instead, banks have been dragging their feet and not taking title on property long after the owners, who were investors in most cases, abandoned the property.

Solomon's first successful case involved a property financed by Citi-

bank. The association that was involved (which is in South Florida) foreclosed on the property for past-due HOA fees in 2007, after two years of nonpayment of fees. Citibank never acted, and the mortgage that it held prevented the association from selling the property.

Fees continued to build until the association filed the first "mortgage terminator" case in 2010. In the summer, the court confirmed this strategy, wiped out the mortgage lien and gave the association clear title to be able to sell the property and recoup its lost fees.

Solomon said that the original mortgage on the property was in the \$160,000s, but is worth only \$60,000 today. The fees totaled \$50,000 over the five years that the property sat abandoned. Now when the HOA sells the property for \$60,000 it can at least recoup its fees, which is more than it would have gotten if the bank sold it, since the bank would only have been responsible for 12 months of fees or 1 percent of the mortgage.

Solomon was told by people who worked at Citibank that the "loan had already been written off." So the bank was just sitting on it, hoping to recoup some losses if a short sale offer came in.

The mortgage terminator works as a "legal ultimatum" for the banks, Solomon explained. It's useful when there is "no equity left in the property." Using this strategy, Solomon won two

more HOA cases against Wells Fargo and Deutsche Bank. Both cases were won by default judgment because the banks did not even respond to the lawsuits. He's working on about a dozen other HOA cases right now and the banks in most cases are ignoring court filings, so these too will likely end in default judgments wiping out the mortgages.

Solomon said "associations have to file their own foreclosures" and not wait for the banks to act. Once an HOA takes title it can then force the bank to take action on the mortgage by either foreclosing and taking title or releasing the mortgage lien so the HOA can then sell or rent the property.

Nationwide nearly 30,000 associations face a delinquency rate of more than 20 percent and 30 percent of HOAs nationwide have delinquency rates exceeding 10 percent. "Associations are struggling to pay the bills," Solomon said. Some associations are even having a hard time paying for basic utilities and insurance, Solomon explained.

ALG is getting calls from attorneys representing associations in other states to find out more about the legal tactic. Solomon says it's not based solely on Florida law and can be adapted in other states. Maybe now HOAs will be able to take back control of the deteriorating properties draining property values in the hardest hit states.