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FLORIDA EDITION

BLANKET RECEIVERSHIPS HELP REVIVE FLORIDA ASSOCIATIONS



By: Ben Solomon, Esq.

In the midst of this foreclosure crisis, homeowners and condominium associations throughout the country, and particularly in Florida, are facing major financial difficulties due to unprecedented amounts of uncollected maintenance assessments. In many cases, such uncollected assessments result in bad debts to these associations. To make matters worse, some blanket receivership help revive Florida associations tenders are essentially putting a freeze on the marketability of units within these struggling communities and condominiums by refusing to issue Loans due to the severe delinquency rates of the associations. Much of the problem can be attributed to investors - many of whom own

multiple units in the same community - who are not paying their association maintenance assessments despite receiving rental income from tenants living in such units.

Prior to Last year, an association's best legal recourse against such delinquent investors was to aggressively Lien and foreclose such investors' units. However, with the backlog of cases in the courts, an association's foreclosure these days can take a year or more to complete. In the interim, delinquent investors take advantage of these delays by continuing to receive income from their tenants during this prolonged legal process, while the rest of the unit owners within the community or condominium are forced to cover the amount of assessments unpaid by such investors. Even where the association eventually forecloses its lien, in today's distressed real estate market, the association is probably receiving title to a unit that is worth far less than the mortgage(s) on the property, otherwise known as a financially "upside down unit."

The Oaks of Miami Gardens Condominium Association Inc. was just one of many associations in South Florida on the brink of financial collapse because more than half of its members were not paying their association

maintenance assessments. In early 2009, The Oaks' monthly receivable should have seen around \$11,000 per month, but it was only collecting approximately \$3,000 a month from its members. There were multiple fire code violations, the security gates around the property were damaged and The Oaks' payment on the water bill was severely delinquent. In fact, the city was threatening to shut down the entire condominium if the problems were not corrected swiftly. The Oaks needed immediate income and a new legal solution to address its severe delinquency problem.

On March 24, 2009, attorney David C. Arnold of Association Law Group filed the first ever "blanket receivership" petition with the court in the matter of The Oaks. The petition sought the appointment of a single receiver to collect rents from all tenant-occupied units under foreclosure by the association and that will come under foreclosure by the association in the future. Judge Ellen Lees field agreed with the blanket petition approach and, at a single motion hearing, entered a court order appointing the first blanket receiver. After the order was granted, each tenant and owner affected by the order received both a copy of the order along with a

demand by the receiver for the payment of rent. Within the first 30 days of the blanket receivership order being granted. The Oaks more than doubled its monthly income from \$3,000 to over 56,000 and, in the second month, The Oaks received over \$11,000, which was more than its original level of assessment income. According to the manager for The Oaks, had the association not implemented the blanket receivership program, the condominium would very likely have been condemned.

Following The Oaks decision, dozens of judges throughout Florida granted nearly identical blanket receivership orders. In July of 2009, a blanket receivership order was challenged in the matter of

Village at Dadeland Condominium Association Inc., by a flagrant debtor that owned 15 units under foreclosure by the association and continued to collect rents from most of the units while failing to pay over \$150,000 in past-due assessments to the association. Consistent with the ruling in The Oaks, such debtors' appeal was unanimously denied by the appellate court. Since the appellate court ruling, Village at Dadeland has collected over \$300,000 in past-due assessments from delinquent owners and tenants, due in large part to the effectiveness of its blanket receivership program. With such desperately needed cash, the condominium association is slowly getting back on its feet

again aid finally able to meet most of its financial obligations.

"Blanket receivership clearly helped save this condominium," stated Wayne Leventhal of The Continental Group, the management company of Village at Dadeland, which played a significant role in making the blanket receivership happen. "Without it, the association would have likely collapsed, but instead the community is now thriving and ready to embrace an improving economy."

Over the past year, blanket receiverships have become widespread throughout Florida, and a similar Legal concept has made its way into new Legislation. When the new law took effect on July 1, 2010, homeowner and condominium associations throughout Florida became able to legally demand rent payments from tenants living in units where the owner is past due in the payment of any monetary obligation due to the association. Under such new law, the tenant will be legally obligated to remit such rent payments directly to the association until the applicable owner's account is satisfied in full, or else the association may evict such tenants if they fail to pay. These and other legal remedies will finally help stop investor-owners from receiving rental income while they remain delinquent in their payment obligations due to the association.



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The goal of this publication is to teach community association board members and managers the basic concepts of association management.

We stress the importance of effective communication between the board of directors that have an awesome fiduciary responsibility with their professional managers and vendors such as community association lawyers, insurance professionals, accountants and others who deal directly with community associations.

We explain how to measure value, not just low price. Remember - governance is the key.

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