

Associations Fight Back By Collecting Receivership Rents

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Many homeowners and condominium associations throughout Florida are struggling financially because investors within their communities and condominiums have stopped paying their share of maintenance assessments. In many cases such investors own more than one unit within the same community or condominium and receive rental income from tenants living in such units, but still refuse to pay any maintenance assessments whatsoever to their association(s). Until now, an association's best legal recourse against such delinquent investors was to lien and foreclose their units. However, with the current court backlog of cases, an association's foreclosure can now take anywhere from nine months to a year (or more) to complete. Meanwhile, the delinquent investors continue to receive rental income from their tenants during this prolonged legal process, and the rest of the unit owners within the community or condominium are forced to cover the amounts of assessments unpaid by these investors (which can then push responsible owners into delinquency and even foreclosure). Finally, a number of associations are fighting back against these irresponsible investors with an innovative legal remedy called "blanket receivership," which allows a homeowners or condominium association to petition the circuit court for the appointment of a receiver to collect rents from tenants living in all units that are (or become) the subject of a foreclosure action by the association.

The Oaks of Miami Gardens Condominium Association, Inc. ("The Oaks") was just one of many associations in South Florida on the brink of collapse because more than half of its members were not paying their asso-

ciation maintenance assessments and were under lender foreclosure. The Oaks' monthly receivable should have been 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 down, and The Oaks' payment on the water bill was severely delinquent. In fact, the City was threatening to condemn 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.

In March of this year, The Oaks' attorney, David C. Arnold of Association Law Group ("ALG"), filed a blanket receivership petition with the circuit court seeking the appointment of a single receiver to collect the rents from all of the current units under foreclosure by the association and all of the units that come under foreclosure by the association in the future. After the order was granted, each tenant and investor 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 thirty days of the blanket receivership order being granted by the court, The Oaks more than doubled its monthly income from \$3,000 to over \$6,000 through collecting receivership rents and, in the second month, The Oaks received over \$11,000, more than its original level of assessment income.

Following the decision in The Oaks, numerous circuit court judges have granted nearly identical blanket receivership orders for dozens of associations throughout Florida. Additionally, the issue was recently brought



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before the 3rd District Court of Appeal by a flagrant debtor owning fifteen units under foreclosure by the association, but who continued to collect rents from all fifteen units while failing to pay over \$150,000 in past due assessments to the association. Consistent with the ruling in The Oaks, such debtor's appeal was unanimously denied by the appellate court. The debtor was then required by the court to pay back all of the rent that he had collected in violation of the association's blanket receivership order and actually ended up agreeing to surrender ownership of the units to the association in order to finally resolve the matter.

Blanket receivership orders finally offer a cost effective legal solution for associations to stop investors from receiving rental income while failing to pay their maintenance assessments. Speak with your attorney about this and other innovative legal strategies and approaches that should be implemented by your association in order to be successful in today's upside down real estate market.

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