



Ruling may help homeowner associations

Written by Freddy • Filed Under Community

Any Historic City News reader that has either owned a condominium, or a home in a community with a mandatory homeowner association, understands the importance of paying the monthly maintenance assessment on time.

That maintenance fee represents the total costs required to pay for things like insurance on the common areas — as well as their upkeep and repair, landscaping, utility bills, pool maintenance, management and other professional fees. The actual bills are totaled and divided by the owner's share of interest in the common elements in the community and approved, every year, by the Board of Directors at an annual meeting of the homeowners.

Like most things in life, everything is fine until something goes wrong. In the declining real estate market in St. Johns County, we see homes that sold as recently as five years ago for \$250,000, today being sold, in foreclosure, for as little as \$175,000 — or less. Around the state, things are no better; in Miami-Dade there are more than 115,000 open foreclosure cases with 7,000 more being filed each month.

So, what happens to owners in homeowner associations if one or more of the owners can no longer afford to keep their home? The mortgage lender takes the property back in foreclosure, right? The answer is yes, with a caveat.

When the bank takes title to the house, they assume all of the owner's obligations going forward — including the obligation for the apportioned share of the maintenance fees. Now, this becomes an additional burden and monthly expense to the bank.

In the meantime, the association is trying to pay its vendors their monthly charges and when financially distressed owners stop paying their mortgage — they tend to stop paying their monthly maintenance fees. You would be surprised how quickly a financially healthy homeowner association can go broke — keep in mind, the association operates as a non-profit entity. It serves largely as a conduit for individual owners to pay their portion of bills incurred in common with all of the other owners.

So, the caveat I reserve is not WILL the mortgage lender take the property back but rather WHEN they will do it. Because of a recent ruling in south Florida, mortgage lenders may have seen the days of delaying the foreclosure process to avoid financial responsibility

for these distressed residential properties coming to an end.

Florida law says that mortgage lender's liability is capped. They are only required to pay 12 months in past-due homeowner association fees or the lesser of six months or 1 percent of the mortgage, in the case of condominiums. Once they take title, they're liable for maintenance and attorney fees plus taxes.

With all their "upside-down" mortgages, mortgage lenders don't want to take on that additional liability until they find a buyer. So, they're simply not pursuing the cases they've filed.

That stalling is crippling many homeowner associations.

In a process known as a "reverse foreclosure," a Miami-Dade Circuit Court judge has forced a bank to take title to a property from a homeowners association.

"It's new, and it addresses what we think is a huge problem in Florida," according to published reports from attorney Ben Solomon who represented the South Miami-Dade homeowners association in the case.



When the owner stopped paying their monthly maintenance fee, the association foreclosed on the home, however, because of the bank's lien, they could not sell it. The bank had foreclosed but hadn't pursued the case for a



period of 2 1/2 years, leaving the association stuck with a home — and no one paying dues.

Solomon said his firm is telling the judge that as the defendants in the bank's foreclosure proceedings; they want a summary judgment — against themselves. Next, they request an immediate sale date; waiving their rights to a waiting period. Reportedly, Solomon's firm has filed another 82 similar "reverse foreclosure" requests in courts around the state.

The association in this case has 3,000 homes and owns title to about a dozen of them through foreclosures, Solomon said. The reverse foreclosure can only be filed after a homeowner is out of the picture and the home is legally the property of the homeowner association.

"That waiting period protects the consumer, but banks are taking advantage of the judicial backlog, and then in many cases they are canceling the sale date and resetting it", according to Solomon. "What we did was tell the judge, we don't need more time."

HSBC Bank USA, which acted as trustee in the case, declined to comment.

Circuit Judge Jerald Bagley granted the homeowners association motion, and the title was awarded to the bank the same day.

"We're not saying they need to complete a foreclosure more quickly than normal," Solomon said. "But there's no good reason why that lender has taken 2 1/2 years to foreclose on this particular unit."

Attorneys familiar with foreclosure cases said the tactic was innovative.

Bill Raphan of the state condo ombudsman's office in Fort Lauderdale said, "We get so many calls about these kinds of problems, anything that would provide some kind of relief for these associations that are in such dire straits would be welcome."