



New ruling boosts condo associations

The 3rd District Court of Appeals affirmed the ability of condo associations to use blanket receivership programs to collect rents from the tenants of owners delinquent on maintenance fees, a significant tool for struggling condos.

BY MONICA HATCHER

Condo associations were handed a significant weapon late last week in the battle to collect rent directly from tenants whose units owners have stopped paying maintenance fees.

In a significant development in condo law and a boon to struggling associations, a Florida appeals court has upheld a ruling allowing a court-appointed representative to collect rents from all tenants living in units subject to foreclosure by associations in so-called blanket or master receiverships.

The ruling, attorneys said, validates more than 20 other such receiverships approved over the past four months by circuit courts in Miami-Dade and Broward counties, and clears the way for more condos to use the legal tool to significantly boost collections. When the condo market crashed, many speculators were caught flat-footed in units they could not afford and could not flip. Instead, many rented them out. Now, grossly underwater, many have stopped paying their mortgages and their associations fees. Some continue to collect rent payments from their tenants -- to the immense frustration of condo associations buckling under debt and unpaid bills.

Florida's condo law already provides some relief. It gives associations the right to ask the court to appoint an independent custodian, or receiver, to collect rents from tenants in foreclosed units.

Until recently, though, it was widely assumed the law required associations to file a separate request for each unit. For associations struggling to survive, the legal fees and court costs associated with multiple petitions made the process impractical and unaffordable, especially in complexes with hundreds of delinquent owners.

In March, though, Miami circuit court judge Ellen Leesfield approved one

of the first requests for a blanket receivership, allowing a single, master receiver to collect rents for all units in foreclosure at The Oaks, a teetering condo community in Miami Gardens. The order also allowed the receiver to collect on units that may enter foreclosure in the future.

The new cost-effective approach is allowing more and more associations to use blanket receiverships.

"It is saving associations," said Seth Heller, a receiver for seven different condo projects in Miami-Dade, including The Oaks.

Ben Solomon, an attorney with Association Law Group, which sought the blanket receivership for the community, said the strategy effectively pulled The Oaks from the brink of collapse.

The condo association, he said, was running \$8,000 shortfall each month, collecting only \$3,000 of \$11,000 needed to run the complex.

"After the receivership was ordered, they doubled their income to over \$6,000 within 30 days. By the second month, they were getting back more than \$11,000," Solomon said. Some associations do have the ability to col-

lect rents if there is a provision in their governing documents that allows it. For associations without it, normally a majority of residents would have to vote to approve a change their documents.

That would be a long shot, since most investor-owners would likely vote it down. In many condos, investor-owners outnumber owners who actually live in their units. Even for condos with the ability to collect rent, there is little they can do if tenants or unit owners circumvent the rule.

A blanket receivership program, on the other hand, can be enforced by the court. Heller said condo associations should take heart with the appeals court ruling, since it means they can confidently move forward with receivership programs.

"It affirms that judges recognize that people following the rules are being penalized and that it's just not fair and there is no other adequate means for collections besides this," Heller said.

Solomon pointed out that blanket receiverships apply only to units occupied by tenants, not owners, and only those units that have already come under foreclosure for nonpayment by the association, not a lender.



The Oaks at Miami Gardens