



Condo board tries new tactic to collect delinquent fees

BY MONICA HATCHER

Condo owners behind on maintenance fees, beware: Condo boards are becoming more aggressive in collecting delinquent fees. One board even wants to try an untested strategy -- forcing renters into empty units to pay off deadbeat accounts.

The board at the Jade Residences at Brickell Bay, a luxury condo of 341 units, is asking a Miami-Dade judge for permission to rent vacant units belonging to owners who aren't facing foreclosure but are behind on fees, which pay for the basic needs of the building such as water, power, insurance or even a new roof.

As the collection crises for condo boards deepens, the forced-rental program is the latest example of associations becoming pushier -- and more creative -- in their attempts to wring revenue from delinquent homeowners and idle units.

There's no guarantee a judge will buy the notion of forced rentals, though. On its face it seems to step on owners' property rights.

"It would be breaking and entering," said Ben Solomon, an attorney who helps condo associations in collection efforts and thinks forced rentals are a bad idea. "It would be short-sighted to try

to get a little extra income and be sued by a debtor for illegally entering, renting out or otherwise using their unit."

That view doesn't deter Guillermo Mancebo, a lawyer with Siegfried, Rivera, Lerner, De La Torre & Sobel in Coral Gables, who represents Jade. He said owners who don't pay their fees put everyone's property at risk because gaping budget holes lead to disruptions of critical services.

Jade, he said, is running a \$100,000 deficit every month because about 50 units are vacant and behind on fees. In the second quarter, the average selling price for a condo at Jade was nearly \$604,000. Monthly association fees at such luxury buildings often exceed \$1,000.

'CRISIS'

"A lot of the judges now are understanding the crisis condo associations are facing in the collection of maintenance fees," said Mancebo.

Current renters in Jade already turn over rent payments to the association when their landlords fall behind, dictated by a lease addendum landlords must sign before renting their condos.

But Mancebo says Jade and other condos need help with units that are lying fallow.

In Jade's petition, Mancebo is asking

the court to appoint a blanket receiver to manage the forced rental program. He's also asking the court to include units not yet in foreclosure by the association.

FAIRLY NEW REMEDY

That's a new and controversial twist on blanket receivership, which is itself a relatively new collection remedy being used by condo associations. Under a blanket receivership, a court appoints an independent custodian to collect rents from all units whose owners are behind.

But the law says the units under a blanket receivership must be subject to foreclosure by the condo association, according to Solomon, whose firm, Association Law Group, is credited with first devising the blanket receivership principle.

In a court order last week, however, Miami-Dade Circuit Court Judge Gisela Cardonne Ely allowed a blanket receiver for Residences at the Falls condo to collect rents on units not in foreclosure by the association.

Mancebo said the order was a major development because it would save the Residences at the Falls tens of thousands of dollars in legal fees to file foreclosures against delinquent units. It could similarly save other cash-poor associations.

QUESTIONS

Solomon said the development was "terrible" because the orders clearly are contrary to the law and put associations at risk of being sued. But there are questions about whether the association or the receiver might be liable.

"I can't blame a lawyer for trying to get the best rights for the association, but if they are not rights afforded by the law, the court order can be reversed," Solomon said. He added judges were granting the blanket orders giving relief to condo associations based on what they think is correct rather than what the law allows.

Chris Gallo, a resident at the troubled Buckley Towers condo in North Miami Beach, was undecided on the question of forced rentals but said one thing was for sure: "When you sign onto a condo, you promise to pay the fees, and when you don't, you're putting the association in a place where they can't get the revenue to run the place properly."



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