

THE REAL DEAL

NEW YORK, NY

MAGAZINE

MONDAY, MAY 24, 2010

“MORTGAGE TERMINATION” COULD BE NEW TACTIC FOR CONDO ASSOCIATIONS

By Alexander Britell

When the owner failed to pay her condo assessments on Unit 14 at Miami Beach’s 7149 Bay Drive, it looked like the apartment was on its way to being another textbook foreclosure.

And it was, until Citibank decided to release its mortgage on the unit, allowing the condo association to move forward with selling the property without having to worry about a complicated short sale on a severely underwater mortgage.

In what is being termed “mortgage termination,” in the case of Unit 14, the strategy involved bringing a quiet title action to force banks that stall on condo foreclosures to either prosecute their foreclosures, or release their mortgages on the units.

“The problem [for lenders] is the liabilities they assume by taking title in past due amount of assessment,” said attorney Ben Solomon, who represented the association in the case. “The amount of assessments, legal fees, interest, costs, taxes, is just too big compared to market value in the short sale market we’re in here in South Florida.”

This problem, Solomon said, is the reason banks are tending to delay in foreclosures on condo units, as opposed to single homes, where there are generally not issues with maintenance fees or condo associations.

“It deals with banks stalling their foreclosures to extreme levels,” Solomon said. “What we do is represent homeowners and condominium associations that need to be aggressive in the pursuit of past due assessments and maintenance assessments.”

When unit owners default on their assessments, associations bring foreclosure actions, but underwater mortgages on the units mean no buyers emerge, and the associations are stuck with title to the units. Because of the headaches for banks in foreclosing on underwater condo units, many banks have simply been initiating foreclosure proceedings and then hesitating to prosecute them.

According to the initial complaint, two units comparable to Unit 14 sold in 2007 for just 44,750. At the time of the complaint, the mortgage on the property was in excess of \$166,000.

This means associations don’t get the fees they need to run their buildings because there’s no one to pay them.

Real estate attorney Neil Rubin of Rubin & Bickman in Miami Beach said the “mortgage termination” strategy could become a widespread option for troubled condo associations struggling to maintain their complexes.

“I think it’s essential for the associations,” he said. “Associations are facing



Attorney Ben Solomon believes he has found a solution for troubled condo associations

extraordinary financial pressure, as there is such a large number of delinquencies. Unlike institutional lenders who have the resources available, the associations, which have very limited budgets, are unable to borrow because they’re typically not credit worthy, and their only means of operations are dues they collect from those who are paying.”

Rubin said banks are very quick to file foreclosures, but are not diligent in concluding the cases against condo units.

“I think it behooves all condominium association board members, condo presidents, to look into this, because this really may be an option for these associations.”