

STRATEGIES FOR SURVIVAL Attorneys use new laws to help associations land softly

BY PAUL BRINKMANN

South Florida attorneys who represent community associations are seeing continued stress and foreclosures, but many say condos and subdivisions are stabilizing.

The pain is far from over: In some cases, new cutbacks or restrictions on services are being implemented to deal with budget shortfalls.

The most prominent new tool to help restore fiscal health is the ability of Florida condo associations to collect rent directly from a tenant if the unit owner is behind on paying association fees. Known as the tenant demand law, it was enacted in the Distressed Condominium Relief Act of 2010.

More recently, the state required all association members either sign a statement that they have read about their obligations under state law, or attend a training session. Many law firms report that training sessions are more popular than expected.

Here are a few local attorneys' perspectives on the current state of association law and recovery among South Florida's communities.

Ken Direktor

Becker & Poliakoff

Direktor said he anticipates that developers will sell the bulk of inventory soon. He said the law allowing association to collect rent directly from occupants has been a big help.

"But a lot of units that are delinquent still have the owner living there or they're simply abandoned or stripped, so that law only goes so far," he said.

Direktor said associations have had to change their thinking about foreclosures.

"It used to be simple because everyone had equity. If there was a foreclosure, it happened quickly," he said. "Now, the association can't just sit by and wait for the bank to foreclose, especially if the owner is living there still."

Direktor noted that lawmakers have considered forcing banks to pay more delinquent association fees upon foreclosure, but banks have made veiled threats to stop financing condos in Florida if that happens.

As for the education requirement, Direktor said Becker & Poliakoff recently had a training session in West Palm Beach to which 400 people showed up.

He said one new weapon considered by some associations is to shut off cable access to delinquent units.

Ben Solomon

Association Law Group

Solomon said the new tenant collection law is helping associations make up budget shortfalls.

"Frankly, the tenant demand law has negated the need for receivers in many cases," Solomon said. "Unfortunately, a lot of receivers can become an expense and, obviously, there was concern about the integrity of some receivers, so eliminating them is a big help."

He said some associations can avoid filing foreclosures entirely just by getting the rent income.

Solomon said the responsible party funds evictions and any litigation.

"You're going to see a tremendous spike in association's owning units this year," he said. "They will become owners and have the option of converting the tenant to an owner or becoming a landlord. Usually, an association would have trouble selling it because of the first mortgage."

Solomon said some condo projects that are hurting badly, such as failed condo conversions, may revert back to rental properties.

In extreme cases, Solomon said his firm is going after former owners for the money they owe the association.

"We are pursuing a writ of garnishment for bank accounts on several cases," he said.



Ben Solomon says some associations can avoid filing foreclosures by getting rent income.

Margaret Rolando

Shutts & Bowen

Rolando noted the presence of many bulk buyer-owned condos in South Florida. She said it's not economically feasible to hold a condo unit for rental for a long period of time.

Bulk buyers are "really only being rented until the market stabilizes, and then they're selling. Their exit strategy is rent in the short term, but constantly sell. The market does seem to be stabilizing," Rolando said.

Rolando agreed that the region may see some condo terminations, but mostly in failed condo conversions that never sold well.

"It doesn't make much to think termination unless only 10 to 20 percent of the units have been sold," Rolando said.

"I'm not seeing new condo developments, at all, but I am seeing where there are sales, bulk sales. There are more people now who are interested in buying and more bidders," she said.

She said some condos that have been mostly rental are forced to spruce up their common areas

again as units sell. The best potential buyer for a unit is usually the tenant. She said there's still a need for receivers in some distressed properties.

"Are these associations healthy yet? Probably not," she said. "But they are stabilized, the elevator is repaired, the property is being maintained again."

Dennis Eisinger

Eisinger, Brown, Lewis, Frankel & Chaiet

Eisinger said the tenant demand law has improved collections in many communities. He said the right to evict has been an important factor.

"Generally, letters sent to renters to collect directly are 70 percent successful, we find," he said.

Eisinger said serving on an association has become more difficult.

"In this day and age, you better assume, if you serve on a board, that it will be more work now than four or five years ago," he said. "Collecting enough money to pay insurance and critical services is the biggest issue for many of these association. Collecting is much less time-consuming than monitoring a foreclosure."

Eisinger noted that some associations have cut residents off from common areas.

Some buildings have cut off cable access to delinquent units, but state law still has not forced cable companies to comply with cutoff requests, he said. "You can live without a lot of things, but most people cannot live without their TV."

He's afraid shutting unit owners out of common areas could require security that some associations don't have.

A good sign in foreclosure sales, Eisinger said, is more third-party bidding.

"If a third party comes in, the association gets back all of its assessments. Banks are sometimes stopping their bidding short of their judgment to encourage that," he said. "If the bank takes it, state law limits what they pay the association."

Robert Blanch

Siegfried, Rivera, Lerner, De La Torre & Sobel

Blanch said he's been encouraging associations to negotiate more when dealing with a bank on foreclosures.

"My recommendation is that the association board and management need to be educated and informed," he said. "They do have the ability to negotiate. Basically, you need to know your market. We have a lot of clients that become very savvy and informed about trends in their area."

Blanch said there is a growing stability in condo associations.

He said vendors who deal with community associations should be noticing a change in the quality of the board members.

"They're going to be meeting with more-educated boards, better-financed boards," he said. "A few years ago, many associations were foregoing certain services and contracts with vendors, even contemplating bankruptcy. Maybe they will get back to cutting their lawn three times a month now, instead of once a month."