

Court Ruling Could Help Condo Associations Go After Investor-owners Who Don't Pay Fees

Cracking down on deadbeats Miami judge's order sets key precedent

By Daniel Vasquez

To beat the bad economy, many South Florida investor-owners of homes and condominiums are collecting rent from tenants but skipping out on their own association fees.

Doing so sets off a vicious financial cycle. Associations must slash services and raise fees for owners who do pay to make up lost revenue from investors not paying their fair share. But a recent South Florida court decision makes it far easier for community associations to get their hands on that money, particularly when it involves multiple deadbeat investors.

A Miami-Dade County judge in March ruled that associations can file a single "blanket" receivership order to go after multiple unit owners and their rent payments to cover past due fees. Associations are not only able to siphon rent payments to cover overdue fees, but in some cases up to a year's worth of payments in advance. And already associations are lining up to take advantage.

"It's the last option for associations in dire straits because of this problem," said Javier "Jay" Lopez, property manager of The Oaks at Miami Gardens, which won the first order to divert rent money from investors in foreclosure to the association.

Until now, receivership laws that rely on court-approved professionals to act as bill collectors were used on a one-unit-at-a-time basis. But they were rarely tapped by associations because they were costly to file — upward of \$2,500 in filing and attorney fees.

The Oaks' attorneys, however, argued the laws should also be used on a "blanket" basis, which means associations pay once to file a court motion

that covers all units in a development currently in foreclosure and those that fall into trouble later.

"In this upside-down market, some investors are trying to recoup as much money as they can for as long as they can," said David Arnold, a founding partner with Association Law Group, which represents The Oaks and approximately 200 associations across Florida. "To do that, they stop paying their mortgage and maintenance fees while collecting rent. They bleed associations for as long as they can."

Of 61 units in The Oaks association, about half are in foreclosure and owned by rentcollecting investors. Some have not made a payment to the association in two years. Typically, they pocket about \$1,200 a month from each tenant but fail to pay about \$250 a month in association. In turn, the association has had to raise fees for those owners who do pay. The Oaks should have been collecting \$11,000 in maintenance fees each month, but scraped by on about \$3,000 per month.

The results have been devastating.

"At some points this association has been in arrears with every vendor and has been within a day or two of having the electricity and water shut off," Lopez said. "The garbage has been cut twice."

Since the blanket receivership order, Lopez said four investors in foreclosure have started paying.

These receivership laws are only being used to collect rent from tenants whose landlords have stopped paying maintenance fees while under foreclosure by the association. And the association itself does not go into



David Arnold, Esq.

receivership; individual owners do.

Arnold said the phenomenon was not as widespread as it is today when the real estate market was strong and investors were making big profits.

"Today this is applicable to nearly every association in Florida," Arnold said. "And the financial impact is tremendous on every association when just one or two unit owners are doing this."

Other associations are following The Oaks' legal lead. "We have 10 filings on the behalf of other associations in the hopper now," Arnold said.

That includes The Villas at Tuscany Condominium Association in Sunrise, which has 234 units. "About 24 are in foreclosure and another 30 are delinquent, and a majority of those are owned by investors who we know are collecting rent but not paying us and leaving us to struggle," said association secretary Kristen Torrado. "That's why we have to look at this receivership option."