

## Tactic helps associations get title to vacated units

By Daniel Vasquez

After winning a lawsuit against Wells Fargo that claimed the bank purposely delayed foreclosure proceedings on a condominium unit for more than a year, a Pompano Beach condo association has been awarded title to the unit without owing a dime on the original \$184,400 mortgage.

The case, brought by the Palm Aire Gardens Condominium Association, is being seen as a precedent that could pave the way for other condo associations facing similar foreclosure delays.

"Banks are delaying foreclosures and abusing the process and our association is struggling financially because of it, that's why we filed our lawsuit," said Palm Aire Gardens President Oscar Garcia. "Now we own the property free and clear of the mortgage, which gives us options to sell it or rent it."

Palm Aire's legal strategy is being dubbed "The Mortgage Terminator" by the Association Law Group, the South Florida firm that represents the condo complex and hundreds of others across the state.

"Many of our association clients are already starting to use it," said attorney Ben Solomon, of Association Law Group. "The only criteria is that the association has title to the unit through its own foreclosure process and the mortgage holder has not initiated foreclosure yet."



Attorney Ben Solomon used a new legal strategy to allow Palm Aire Gardens to take full ownership of a property in foreclosure.  
(Susan Stocker, Sun Sentinel / October 3, 2010)

As a result of the Broward County Court judgment in its favor, Palm Aire legally owns the two-bedroom, two-bath unit at the center of the case and is free to sell it, recover about \$14,000 in the past maintenance and pocket any profit after paying attorney fees and property taxes.

Many condo and homeowners associations across Florida suffer financial losses caused by owners who stop paying mortgage and maintenance fees and then vacate the property after being foreclosed upon by the association or bank. In Florida, condo and homeowners associations and banks are allowed to file separate foreclosure actions on a property for unpaid maintenance and mortgages.

When that happens, associations are out past-due fees and current fees, since no homeowner pays monthly maintenance fees. And associations often can't sell such units, because they are typically worth much less than the original mortgage but still have a lien for the original loan amount hovering over it.

In many cases, say lenders, the foreclosure process can take up to two years due to court backlogs, and because some lenders prefer trying to work out a deal with the original mortgage owner in lieu of foreclosure.

"Some people accuse us of taking too long, some accuse us of going too fast," said Alex Sanchez, spokesman for the Florida

Bankers Association. "But the answer is no, Florida banks are not stalling foreclosures to avoid paying condos and homeowners associations unpaid maintenance dues.

"Anyone who says that does not understand the banking industry nor the banking regulatory environment."

Sanchez said in many cases the prolonged foreclosure is due to the bank trying to help owners who find themselves in a financial bind due to the bad economy. "If you want to accuse us of taking our time to work with Florida families to keep them in their homes, then [we're] guilty as charged."

Sanchez added that he was not familiar with the Association Law Group's legal strategy and could not comment.

Solomon said his firm understands and appreciates any lender trying to forego foreclosure and work out a payment plan with a homeowner behind in mortgage payments, as long as the homeowner is still living in the condo or home. But he said his firm's Mortgage Terminator lawsuits are aimed only at lenders who forestall on units or homes that have already been vacated by the owners and are now owned by the association via its owner foreclosure filing. "There is nothing to work out with the borrower in these cases because the owner does not own or live in the unit anymore," Solomon said. "There is nothing to work out, the owner has abandoned the property."

In the Palm Aire Gardens case, the owner purchased the condo

unit in January 2006, signing a mortgage contract for \$184,400. By April, 2009, the owner had fallen behind in maintenance fees by 11 months, owing about \$5,500 in regular and special assessments. At that time the association, as allowed by Florida law, filed a foreclosure lawsuit, winning a judgment in Broward County Court and taking title of it in January of this year. By then the owner owed more than \$9,000 in unpaid maintenance fees. The lawsuit led to a foreclosure judgment based on the unpaid maintenance fees against the property in Broward County Circuit Court.

Had the bank filed a foreclosure against the original owner and completed the process, it would have owed about \$5,800 for its share of unpaid maintenance fees on the unit as required by state law. In Florida, banks are liable for up to 12 months of unpaid maintenance fees or 1 percent of the original loan amount, whichever is less. On Aug. 13, Broward courts issued a judgment in favor of Palm Aire Gardens, granting it full title without being on the hook for the mortgage.

"The bank has a right to go after the owner for the original amount," Solomon said, "But it cannot sue the association for that loan amount."

Wells Fargo did not respond to requests for comment.

The current value of the Palm Aire Gardens unit is about \$32,500 — about \$150,000 less than what is owed on the original mortgage.

"But because of our lawsuit we can either choose to sell now

and recover what money we can," said Garcia, the Palm Aire Gardens president, "or just to keep it, rent it out for now and sell in better market down the road."

Solomon said his firm aimed to help the association financially by forcing the lender, Wells Fargo, to either foreclose on the loan and pay its share of unpaid maintenance fees or, instead, agree to release its mortgage and walk away. According to three court judgments already won by Association Law Group, including another issued last week on the behalf of Palm Aire Gardens, the bank cannot later try to collect on the original loan amount from the association.

Enter the Mortgage Terminator: The Association Law Group came up with its new legal strategy. "The desired result is that the mortgage holder can either release its mortgage and walk away from the property, which is what we have already achieved in both Miami-Dade and Broward counties," Solomon said, "or cause the lender to initiate their foreclosure and take title becoming the new owner of the property."

Another case: Solomon said his law firm filed a similar lawsuit against Citibank several months ago on the behalf of 7149 Bay Drive Condominium Association.

In that case the lender did not contest the lawsuit in court, leading to a similar judgment in Miami-Dade Circuit Court that awarded title to the association without the legal "encumbrance" of the original mortgage.