

Community association sues delinquent owners

Lawsuit brings cash beyond state foreclosure limits

By Daniel Vasquez

South Florida condominium and homeowners communities that have foreclosed on delinquent owners have been stymied by a state law limiting what boards can get from a bank for past-due assessments to 12 months or 1 percent of the original mortgage.

But a recent civil lawsuit by the Keys Gate Community Association in Homestead has broken new legal ground by garnisheeing wages and freezing bank accounts to collect what the bank did not cover from an investor owner who first fell in arrears three years ago. The court strategy is similar to those used when a bank forecloses on a home, gets some of its money at the foreclosure sale auction and then pursues the original borrower for the difference of what is owed to the bank under the note.

It also sets a precedent for other communities struggling to deal with financial losses from delinquent owners and investors. The bottom-line reality for associations is that when delinquent owners do not pay their share, boards have to respond by either cutting services or charging a higher assessment to those owners who pay.

“What our firm has done is take a legal strategy that banks have used for years, namely pursuing deficiency judgments against prior owners for unpaid amounts, and apply the same for application to HOAs and condominiums,” said Ben Solomon of the South Florida law firm Association Law Group, which represents Keys Gate and hundreds of associations statewide.

The community recovered about \$8,300 from the delinquent owners of two units — and \$1,769 from the bank — in past-due maintenance for Keys Gate, a community of more than 3,000 homes, townhouses and condos. Association Law Group waived its legal fees to help out the owners because of their financial hardship, Solomon said.

Nonetheless, the process took its toll on the investor owners, who said they have suffered from the downturn in the real estate market.

“I have to admit I did owe that money, but the way they proceeded to get it, they grab you by the neck,” said Mary Rengifo, one of the two owners targeted by the suit. She and her husband purchased two more units two years later, one as an additional rental property and another that is now their primary home.



Ben Solomon, Esq.,
Association Law Group

“I was hit very hard by the situation, in six or seven years I have lost everything I own,” said Rengifo, who runs a nonprofit organization that serves victims of domestic violence. She said she bought the first condo for \$250,000 and that the property was worth a little more than \$80,000 in June 2008 when she first fell behind in the \$300 monthly maintenance payments.

“In the end we couldn’t rent them, we couldn’t sell them,” Rengifo said. “Even the house I live in now is upside down.”

Rengifo said she was treated fairly by Keys Gate board members and un-

derstands that the association must collect maintenance fees and pay its bills. She also said she still feels comfortable living in the neighborhood.

“We are not trying to hurt anybody, but we do need to collect the money so we can keep providing services for our community,” said Kim Green, president of the Keys Gate association. Those services include 24-hour security, cable TV, landscaping and general maintenance.

Once the association decided to sue the Rengifos for the \$4,390 they owed on their first unit, it only took three months to start getting payments, which started to come in this February.

The Keys Gate board filed for foreclosure against the Rengifo’s first unit in February 2009, after the couple fell behind in payments by 9 months. U.S. Bank finalized its foreclosure and took title of the unit in November 2009. The association filed what is called a deficiency claim, which allows a court to garnishee wages and bank accounts, in December 2010. After that happened, the couple agreed to pay \$2,300 up front and worked out a payment plan for the remaining \$2,000.

The Rengifos sought a short sale on the second investment condo, on which they owed \$3,900 in past-due maintenance. Before the sale could go through, the bank demanded they pay that portion off, too, which they did.

Association Law Group dubs the deficiency claim strategy “Total Recovery” and credits the get-tough approach for making the association financially whole again in regard to the Rengifos’ long-standing debts of about \$7,300.

“In a way I think the association did their best, they provide services that must be paid for,” she said. “I feel that I got rid of the problem and now I have to move forward.”