



HOA's forcing "reverse foreclosures"

Dave Pelligrinelli

Homeowners associations have been suffering financially because of the increasing time between delinquency and bank foreclosure. During this period, HOA's rarely collect any payments from the property owner, and the lender is not required to remit to the operating account. The association continues to incur expenses to operate and maintain the community. In many states, there is a cap on the amount the HOA can recoup from the lender after foreclosure.

Often criticized by residents for overreaching restrictions, some homeowners associations are working for their members by using a reverse foreclosure technique to limit their losses. In effect they are forcing the bank to execute the foreclosure against the delinquent borrower. "ALG's reverse foreclosure procedure will finally help associations force banks to take title to financially upside down units much faster than ever before," ALG attorney Ben Solomon said in a news release.

"As part of the reverse foreclosure, Keys Gate waived its rights to the property and, as the

current unit owner, waived its right to public sale. The motion was granted and the clerk of court issued a certificate of title the same day, transferring ownership of the property to the bank. The certificate of title then triggered HSBC Bank's requirement to pay its share of past due assessments, legal fees, court costs and all assessments going forward.

"This new legal strategy saved Keys Gate a minimum of eight months or more of bad debt write-offs because the association did not have to wait for the bank to get a foreclosure judgment, schedule a foreclosure sale and sell the property at public auction," the law firm said in the news release.

The practice of banks holding up foreclosure proceedings is not uncommon and has a huge financial impact on associations that must write off month after month of bad debt until the home is taken off its hands."

Attorneys who represent HOA's are encouraged by the courts ruling, and the creative technique of reverse foreclosure. Bill Raphan of the state condo ombudsman's office in Fort Lauderdale said, "We get so many calls about

these kinds of problems, anything that would provide some kind of relief for these associations that are in such dire straits would be welcome." With all their "upside-down" mortgages, mortgage lenders don't want to take on that additional liability until they find a buyer. So, they're simply not pursuing the cases they've filed. That stalling is crippling many homeowner associations. Mortgage lenders may have seen the days of delaying the foreclosure process to avoid financial responsibility for these distressed residential properties coming to an end."

Several legislative efforts to reduce the financial strain on HOA's have not been successful to date. One bill would have required the bank to complete their foreclosure in a year after filing or have to pay all the unpaid assessments. Another bill would have provided that if banks do not pay the cap amounts of 12 or six months or 1 percent within 30 days of taking title, they would be liable for all assessments that came due before they acquired title. Neither bill saw the light of day for a vote by the legislature.