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# SOLOMON'S LAW

## HOA and Condominium Associations in Cash Crisis



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Many homeowners and condominium associations throughout South Florida are experiencing a cash crisis as a result of owners failing to pay their required maintenance assessments. Without this necessary income, the associations bills pile up quickly leaving important services such as insurance, lawn care, management, and maintenance unpaid for, with some vendors unwilling to provide further services. Severe cases can leave associations without enough money to maintain basic necessities such as fire and safety equipment, security gates, and even water and garbage services. To make matters worse, some lenders are

refusing to issue loans on the units within these communities and condominiums due to the severe delinquency rates of the associations, essentially putting a freeze on the marketability of such units. Much of the problem can be attributed to investors, many of whom own multiple units in the same community or condominium, not paying their assessments (some of whom receive income from tenants living in their units but still refuse to pay their assessments).

An association's best course of action is to find a competent, diligent and aggressive attorney. Legal incompetence (including not utilizing effective legal strategies for the current market), an attorney's inability to communicate with the board and manager of the association, and/or the failure of an attorney to proceed aggressively and diligently on behalf of the association, can cause unnecessary delays and additional financial suffering. For instance, some attorneys advise their clients to follow the passive approach of not filing liens against delinquent units and not proceeding with association foreclosures, thinking that lenders will eventually foreclose their defaulted borrowers and pay the association its money. The reality is that in today's market, lenders are stalling their foreclosures until they find buyers first, so the process can take an unreasonably long period of time. Meanwhile, if the first mortgage holder does finally take title to the unit through its foreclosure, it is then entitled by law to a sizeable write off of the prior owner's past due amounts, resulting in significant bad debt to the association. This bad debt is then absorbed by the association and eventually paid for by the responsible owners who are paying their assessments.

To succeed in the current market, associations need an aggressive attorney who files liens against the delinquent unit owners quickly and, in applicable cases, files foreclosure complaints (lawsuits) against the delinquent unit owners to collect the amounts due to the association. There is also a new blanket receivership approach where, by law, associations can petition the court to appoint a single receiver to collect the rents from all tenants living in units that are under foreclosure by the association or which come under foreclosure in the future (which prohibits investors from collecting income from tenants while failing to pay their assessments). Aggressively applied legal pressure against the owner and/or their lender is especially necessary in this type of depressed real estate market and will undoubtedly bring in a lot more money to the association in a much faster time than simply waiting for the lender to come through.