

## Some deadbeat landlords must forfeit rents to condo associations

Charleston Place community has made cutbacks to due to the lack of incoming HOA fees.



Staff photo by SCOTT ISKOWITZ

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TAMPA - Each month, Judd Tyler, the president of his townhome association, discovers his community doesn't have enough money to pay all of its bills.

So the townhome board took action. It is among the first in the area to obtain a court order to force delinquent landlords to turn over rent payments to them.

"The problem is these investors have given up hope on keeping their unit," Tyler said of Charleston Place Townhomes, near the Westchase area. "They just wait to lose the home in foreclosure. Meanwhile, their tenant is using all of these amenities, and the rest of us have to pay for it."

The court order, signed late last month, grants what's called a blanket receivership. It requires many of the tenants to pay their rent to a court-approved, third-party receiver instead of the landlord. In fact, it's against the law for the landlord to collect rent until all past-due fees and legal costs are paid.

The blanket receivership method is catching on, and at least 25 other associations in Florida are using them. Legal experts expect many more to follow suit. In some cases, associations are owed hundreds of thousands of dollars.

"When a good idea begins to work, others tend to follow," said Peter Dunbar, a Tallahassee lawyer and former Bay area legislator.

At Charleston Place, more than half of the 84 unit owners not paying the \$300 monthly fee. The money is supposed to pay for amenities, such as cable, water, electricity and lawn maintenance.

To recoup costs, associations typically raise fees on owners who pay, or they foreclose on units of those who don't. But because the court system is flooded with foreclosures, many associations choose not to pursue it. Those that do have to wait – sometimes a year or longer – to collect the money.

The blanket receivership method is spreading through the legal community, although it is unclear how many associations have asked for or received such an order. Ben Solomon, an attorney with Association Law Group in south Florida, said his firm came up with the new legal tool by "reinterpreting" existing statutes.

"Most lawyers weren't aware of this because in a better market, people with equity would always pay their assessments to avoid foreclosure," said Solomon, who represents Charleston Place. "But people don't care anymore because they owe more than the home is worth."

With the blanket receivership method, a homeowner's association can file one petition to cover every unit with past-due assessments, as long as the association has already filed for foreclosure.

"It's affordable for the condo association because one petition covers all the units that qualify," Solomon said. "Every time the association files another foreclosure, it's eligible for receivership."

Solomon said his firm wasn't sure how judges would interpret their petitions and have been pleased so far.

Landlords, however, are furious to learn about the court order. One even tried to have the decision overturned. But the 3rd District Court of Appeals in Miami upheld the receivership decision earlier this month.

In that case, a landlord at a Miami condo association was earning more than \$15,000 a month in income from renters on 15 units but not paying any association dues. This continued for two years before a judge approved the blanket receivership.

The landlord ignored the decision and collected \$11,700 in rents. In order to avoid being held in criminal contempt of court, the landlord eventually agreed to a court order that required him to turn over the rent money and surrender ownership of all 15 units to the association.

"This outcome shows the strength and enforceability of our blanket receivership order," said Michael Furshman, of Title Company of Florida, LLC, the court-appointed receiver in the case. "Hopefully this case will send a strong signal to others that they must comply."

Dunbar said he expects more associations to try the blanket receivership method. He doesn't, however, expect single-family home communities to choose the approach. "Well, they certainly could," he said. "But it's not as big of a problem in subdivisions. In a townhome or condo community all the maintenance is the responsibility of the association. And those fees could be \$300 to \$500 a month instead of \$500 a year, like in some neighborhoods."

So, how are tenants taking the news?

Tyler said he and other board members have gone door-to-door to explain the process. "For the most part, the renters are happy about the receivership," Tyler said. "They live here and want the community to look nice. A lot of them didn't even realize their landlords weren't paying the fees."