

REAL ESTATE

Condos desperate as dues dry up

■ With unpaid association fees mounting, some South Florida condo associations are turning to bankruptcy, a largely untested strategy that could pose even more financial risk.

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At least seven Florida condo associations have filed for bankruptcy since the real estate market took a nose dive — and there may be more on the way.

For a growing number of strapped condo associations, bankruptcy could be the last defense against their hallways going dark and their spigots running dry.

In one of the most recent Chapter 11 filings, the creditors of Maison Grande in Miami Beach are planning to meet Tuesday to discuss the bankruptcy.

A rare occurrence in better days, such filings now are seen as a last-ditch bid by associations to shield themselves from bill collectors and find a way out of mounting financial problems.

While an association is in bankruptcy, utilities can't cut off the power or turn off the water, problems that have already surfaced at some South Florida condos.

"Without question it's being talked about and asked about," said Robert White, a managing director for KW Property Management in Coral Gables, "especially in some of these associations that have delinquencies that exceed 30 percent. They're looking for options about how to solve the problem."

Maison Grande, a complex of 502 luxury condos in Miami Beach at 6039 Collins Ave., filed for Chapter 11 protection in June after Dorten developers sued the association for about \$658,000 in back payments on a recreational lease for the pool and parking areas.

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Condo associations are in the red

• CONDOS, FROM 1A

Chapter 11 bankruptcy offers private companies protection from creditors while they reorganize their debts, restructure contracts and find new sources of revenue.

Forty-four units are in foreclosure at the Maison Grande, and about 165 owners are two months or more past due on association payments.

Also last month, Legacy Park town home association in the Central Florida city of Davenport filed for Chapter 11. Among its biggest creditors: Comcast, which says the association owes \$105,305 for a past-due cable bill.

With the weak economy, many condo associations — which are classified as not-for-profit corporations — find bills are piling up as units enter foreclosure and homeowners stop paying association fees, putting enormous financial strain on residents left holding the bill.

A RISKY ALTERNATIVE

Still, filing for bankruptcy is a costly endeavor — and may not be a cure. It's unclear whether any Florida association has successfully reorganized in bankruptcy in recent years.

Bankruptcy attorney Thomas Lehman with Tew Car-

denas in Miami said he wasn't sure how bankruptcy could benefit associations, because their only assets are the property's common areas and, possibly, their ability to assess individual unit owners.

Corporations need an exit strategy when filing Chapter 11, Lehman said. He added it wasn't clear how an association having trouble covering basic monthly services could reorganize. They also have nothing to sell off, except common areas such as the lobby and rec room.

"They're better off trying to negotiate with vendors to come up with an out-of-court restructuring plan," Lehman said.

Last month a Miami bankruptcy court dismissed a bankruptcy petition by View West Condo in Kendall essentially because its creditor, Z Roofing, won a state case upholding its lien and forcing a special assessment on unit owners to pay a balance of more than \$100,000 for repairs.

"The thing about a condo association is that often times their main asset is really only its accounts receivable from unit owners paying maintenance fees or assessments," said Carla Barrow, an attorney who represented Z Roofing in the matter. The company also won

approval from a state court to foreclose on individual unit owners who failed to pay their share of the assessment.

Filing of the petition did little to protect the association, Barrow said, because it still owed the roofing company for the work, as well as \$50,000 in legal fees and court costs — not to mention fees owed to its own attorney.

PUNISHING THE PAYERS

While a condo association's ability to repay creditors by levying special assessments could be a stumbling block, Lisa Magill, an attorney with condo firm Becker & Poliakoff, said a high rate of fee delinquencies could make that less of an issue.

"If you have nonpayers, and those who are paying don't have the ability to pay more and you have a significant number of owners that have abandoned the property, your ability to levy assessments is limited," Magill said. There comes a point when paying owners may also throw in the towel and stop payments if their assessments rise too much.

Despite the potential pitfalls, Magill said there are benefits to be gained by filing.

Bankruptcy protection allows debtors to renegotiate onerous leases, like the one sad-

ding Maison Grande. It could also delay, and even prevent, creditors from seizing assets and garnishing bank accounts.

Utilities and other vendors would have to get court permission to drop services, said Robert Kaye, a partner with Kaye & Bender law firm in Fort Lauderdale, which represents close to 700 homeowner associations.

After several months of investigating the matter, residents of St. Andrews condo in Miramar decided against filing bankruptcy earlier this year, even though nearly half its unit owners at the time were in foreclosure and the association had fallen behind on several bills.

William Quigley, who served on his association's budget advisory committee, said the association determined that filing for bankruptcy would cost more money than it would save. They were told, he said, it would cost about \$30,000 to pay lawyers just to file the petition, not to mention costs going forward.

"Now you are going to have to assess the community to file rather than working out what you owe to your vendors," Quigley said.

In the end, the association decided to level with vendors and find ways to begin slowly paying off past due balances.