



Associations Face Financial Stress

By:Les Shaver

September 10, 2009 – The Maison-Grande Condominium in Miami Beach, Fla., kept getting fines from the local government for various code violations. Its garage, carpets, air conditioning system, sprinkler system, and roof all required attention, but the association said it couldn't address any of these issues because it owed more than \$110,000 a month to the building's former developer, Coral Gables, Fla.-based Dorten and Robert Siegel. So, in June the condo association declared Chapter 11 bankruptcy.

Though other associations may not have the burdensome monthly lease payments that the Maison-Grande had, the association certainly isn't alone. As more and more [condo](#) owners and developers across the country fall into bankruptcy, their associations are suffering right along with them. And Robert Kaye, a partner at Ft. Lauderdale, Fla.-law firm Kaye & Bender, which represents community associations, thinks this trend will only accelerate, especially in Florida.

“A lot of associations have talked about [filing Chapter 11], and I have a client that is likely to do it in the next couple of weeks,” Kaye says. “They have a number of units that are upside-down and they have no money. So they're in a position where bankruptcy seems to be their only option at this point against a very aggressive judgment creditor.”

The association Kaye represents has problems systemic to many community associations in the bubble markets: Too many units have owners who aren't paying their dues. “We have properties where 35 percent to 40 percent of the owners aren't contributing,” says Gary Poliakoff, founding principal of Becker & Poliakoff, a Ft. Lauderdale, Fla.-based law firm that represents condo associations.

It's not just the maxed-out subprime borrowers or fleeing [investors](#) that aren't paying their dues. The [lenders](#) are coming up short as well. Many banks aren't putting their condo units into [foreclosure](#), and the foreclosure process is moving so slowly that the units remain in limbo.

“Banks have become very careful about putting units into foreclosure,” says Alan Kaye, multifamily director with Coldwell Banker Commercial in Boca Raton, Fla. “Once they [foreclose](#) on a unit, they're obligated to pay condo fees. If they keep the unit in default, they're not obligated to pay those charges.”

That means no one is paying the bills due on those units. “A lot of communities are finding that their biggest problem is having a large chunk of units in foreclosure. But they're not proceeding to the courts,” Kaye says. “Nobody is paying on those units. Those units are in limbo.”

Still, there has been some proposed legislation to make the lenders pay the association dues on units they control, but that hasn't gone far. Kaye, however, holds out hope. "For the upcoming session, there's a proposed change to make lenders more responsible—to move cases and make payments to the association come in faster," he says.

Kaye believes the Maison-Grande case could eventually serve as a litmus test. If the court grants the association some relief, there could be even more filings in the future. "There are probably other condos around here where the [bankruptcy helps](#)

them with their situation," Kaye says. "They're probably looking very closely at what went on [at the Maison Grande]."

If these associations don't get relief through the courts or legislation, they could face additional losses of services. "If there're a lot of foreclosures, and the association can't afford to keep the elevators operating, the elevator will be shut off," says Jay Jacobson, a partner with Wood Partners, an apartment developer based in Atlanta.

Lawyer Poliakoff fears that the loss of some of these services could cause greater damage in the long run. "If the electricity is cut off down here, it doesn't take long for mold to start growing," he says.