

Homeowner associations step up foreclosure filings

By Donna Gehrke-White
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PATRICK FARRELL / MIAMI HERALD STAFF
Don Urquhart is with the homeowners association at the Quadomain Condominiums in Hollywood, which has foreclosed on some residents who haven't paid fees.

As Don Urquhart says, no one wants to throw a neighbor out of his home. But that is what Urquhart says he and other community association leaders have been forced to do.

When dozens of owners quit paying maintenance fees at Quadomain Condominium in Hollywood, Urquhart and other leaders stepped in and starting filing foreclosure notices.

"It's not fair for your neighbor to pick up your share," says Urquhart.

Move over, banks.

It's not only lenders who are clogging the courts with foreclosures. Leaders at condo and homeowners associations say they have been forced to foreclose; many have then rented out the property. They need cash to pay for maintaining common areas and providing services.

For years, many community associations rarely foreclosed. But that changed when the real estate crisis swept throughout South Florida more than three years ago and the rate of unpaid maintenance fees grew dramatically.

"No one was prepared for this – we all hoped this would be a brief problem," Urquhart says. But, he adds, "We had to absolutely change our policy. In 2008 we found ourselves with over 40 foreclosures."

Now he and other association leaders routinely start foreclosure proceedings if owners don't arrange to pay delinquent dues. Urquhart and other association leaders, however, say they will work with owners who try to catch up.

"We will extend them time. It's been a win-win," Urquhart says. "We have avoided legal costs and they got back on their feet."

Association leaders, though, have to remain tough against those who won't try to pay, he adds. The reason is simple: Someone has to pay to keep the lights on, the grass mowed.

Urquhart's association has already imposed a special assessment on the owners who have been paying – to cover for those who aren't.

Now some associations are even trying to beat banks to the courthouse to foreclose first on properties owned by deadbeat owners. The upside: They can get months – if not a year or two – of rent before the banks formally foreclose.

"We have successfully helped associations take title to units and they have done quite well renting them out," says Donna Berger, an attorney who is executive director of Community Advocacy Network.

But there is a risk. The association may lose some legal fees if the bank acts quickly. Lenders' claims take precedence over associations'. However, "the courts have become more sympathetic" to the plight of community associations; banks now are being ordered to pay association's legal fees, says attorney Robert Kaye.

State law allows community associations to rent foreclosed properties, even if the community's documents prohibit owners from leasing units to tenants, Berger says.

"That's good news," says Urquhart whose association has a no-rent clause, at least for new owners.

But he says even if associations don't rent out the properties, foreclosing helps recoup money, because a threat to take property will get lenders moving to start their own proceedings. Once the banks have foreclosed and take over title, they are legally required to pay association fees.

A state law that took effect July 1 also requires foreclosing lenders to pay a year's worth of unpaid maintenance bills or 1 percent of the original mortgage debt – whichever is less.

Even with the new law, many communities still lose thousands of dollars of unpaid maintenance fees. But at least they get something, says former state Rep. Julio Robaina, R-South Miami, who worked on legislation to help community associations.

"In some cases banks were stalling on the foreclosing," Robaina says. "They didn't want to take on any more bad mortgages to add to their bottom line."

Some non-paying homeowners have ended up staying in homes for years – neither paying mortgages, nor association fees, adds attorney Eric Glazer. In some cases, homeowners demanded to see the paperwork, which banks did not have. That further tied up the foreclosure proceedings, Glazer says. Last fall, several banks suspended proceedings because of confusion over paperwork. Now they are back at it again. But foreclosure can still be a slow process.

Banks may not take title on a foreclosed property for more than two years, Kaye said. "I don't see why it takes banks so long," he says.

"We are telling associations we can't wait for the banks to finish," adds Glazer.

Normally, grassroots activist Jan Bergemann of Cyber Citizens for Justice would urge mercy for the non-paying. He says he still does – for the unemployed or those facing unexpected financial woes. But Bergemann said he has no patience for housing investors who helped create the housing bubble. They need to pay to maintain the property just like other owners, he says.

Indeed, many condo and homeowner's associations have been left without income to provide basic services such as landscaping or pool cleaning.

"Some condo associations flat out do not have the money to even pay for water," says Kip Farris, who manages community associations in both Miami-Dade and Broward.

"This is the one thing people don't understand," says Bill Raphan, who works for the Florida Condo Ombudsman's Office in Broward. "People need to manage and maintain the association's common areas."

Associations also take drastic action because they are pressured by other owners who resent paying for those who don't, Raphan adds.

"We get at least a couple of inquiries a day" from people asking why they have to pay when others aren't, Raphan says. "We tell them that the association needs to maintain the community. They say, 'I don't care.'"

Near North Miami Beach, Buckley Towers' association now takes in rent from tenants of about 10 units after their owners stopped paying maintenance fees, says Peggy Stroker, condo association president. A law that took effect July 1 allows community associations to collect tenants' rent until the owed maintenance fees and assessments are paid off – even if the non-paying landlords still own the unit and protest.

"It has worked out great," Stroker says.

Next on her to-do list: Foreclosure to take title from the non-paying owners, she says.

Leaders in community associations say there's an added benefit to foreclosing: Many properties are better maintained by renters.

Homeowners who can't afford their mortgages or maintenance fees often don't keep up their property. They can become angry over their situation and even tear up their homes. Yards become overgrown, condo units run down. That hurts others' property values.

Previous owners at one home "pretty much destroyed it," says Nidia Repinski, president of the Countryside at Welleby town house community in Sunrise.

"Some kids went in, vandalized it," she adds. "We fixed it up on the outside."

Now the neighborhood is back to looking well-kept – and attracting people who will pay homeowners fees, she says.