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## Lawmakers look for ways to aid condo associations

BY MONICA HATCHER

Harvey Berman, president of Royal Oaks condominium in the California Club area of Miami-Dade County, takes a lot of flack from dues-paying residents in his building who are peeved about other owners in foreclosure and behind on their association fees.

"A man has been in a unit for 17 months and hasn't paid a nickel for anything and that is not right," Berman said, "Nobody should be allowed to live on a piece of property for free, especially in a condo where the condo pays the water, cable, laundry, lawn maintenance, the pool, the garbage."

Still, Berman admits the problem in the 180-unit complex is not as bad as in many other South Florida condo communities where nonpaying units are swamping budgets and forcing associations to cut back on services and hike maintenance fees. But, he says, preventing that takes enormous effort.

The system that allows lenders to avoid paying maintenance fees is broken, says Berman, and needs fixing when Florida legislators meet for their annual session, which starts Tuesday in Tallahassee.

Central to the solution, condo owners say, is finding a way to get lenders to contribute to the costly maintenance of buildings by not dragging out foreclosures and by assuming fee payments like other homeowners.

State Rep. Julio Robaina, a Miami Republican who has hosted a series of town hall meetings on the issue, said his top priority would be ensuring associations are made whole by banks before the foreclosure process is finished and huge delinquencies have accumulated.

Other lawmakers are also proposing legislation to address the problem.

"Constituents have brought me clear evidence that banks are purposely delaying the foreclosure proceedings, thus hurting the associations," Robaina said.

However, Tom Cardwell, general counsel for the Florida Bankers Association, said he has seen no evidence of such delays. Lenders, he said, are working in a court system bogged down by filings in which homeowners often mount time-consuming defenses.

Lenders, he added, are taking pains to work with homeowners to keep them in their properties and heeding calls for foreclosure moratoriums from both state and federal governments.

The issue is indeed tricky.

Strapped for cash, condo boards complain current state law actually encourages banks to stall taking title to units -- even vacant units -- because a statutory cap limits the amount of past-due fees they must pay to six months of arrears or 1 percent of the original mortgage amount.

Sharon Dodge, president of The Venetia in Miami, said several units had racked up as much as

\$30,000 in unpaid fees. Others, she said, may owe as much as \$50,000 by the time the banks take ownership.

Yet, under the current law, the maximum her association can recover from lenders for each is \$4,200. While the process drags on, homeowners often continue living in the units, using the building's facilities and amenities for free. To make budget and cover expenses, paying unit owners have to foot the difference, often at great expense and at their financial peril.

"The story is really that condominiums, which are really the vertical small towns of Florida, are being horribly victimized by laws that protect the banks," Dodge said, "They are ill-suited laws for the present crisis. In fact, they totally exacerbate the situation and they will destroy many, many associations."

## **THE SPIRAL**

The problem has reached a crisis point already for many associations that are struggling to cover basic utilities, such as water and electricity. Raising fees for paying unit owners to cover shortfalls can have unintended consequences of pushing more residents into delinquency because they cannot afford the higher payments.

Lenders also shy away from funding loans in financially shaky buildings, preventing sales that would help put them on more stable footing. In January, mortgage giant Fannie Mae said it would no longer fund loans in buildings where more than 15 percent of the units were 30 days or more past due.

At The Venetia, Dodge said lenders themselves are responsible for many of the nonpaying units -- even after a foreclosure is finished and they own the units outright. As a result, her association has resorted to foreclosing on bank-owned units, further costing residents. Associations have the legal right to force the sale of a property through foreclosure proceedings to recover unpaid maintenance fees.

While there is no complete count of condominium foreclosure filings, at the end of 2008, lenders owned more than 3,725 units in 2,000 projects built after 2007 in Miami-Dade County, according to an analysis by CondoReports.com. The company does not track buildings with fewer than 50 units and does not compile data for Broward County.

Though most lenders begin paying once they own the property, Berman also said he has had to initiate foreclosures against lenders -- most recently Bank of America.

Robaina's bill, which was still being drafted late last week, would increase lender liability for past due payments for possibly up to two years while providing incentives for those who pay arrears when they initiate a foreclosure. He also said the measure would provide a mechanism allowing associations to collect unpaid fees from renters whose landlords become delinquent.

Berman said it wasn't uncommon for landlords to continue collecting rent from tenants even after they had entered foreclosure and stopped paying fees.

## **MORE LIABILITY**

A second proposal by Sen. Mike Fasano, R- New Port Richey would extend lender liability to the lesser of 12 months of past due fees and special assessments or 20 percent of the mortgage amount. If

lenders fail to make the payment to the association within 30 days of taking title, they would lose the protection of the cap. Rep. Jim Frishe, a St. Petersburg Republican, is the house sponsor.

Cardwell, general counsel for the Florida Bankers Association, said changes to the current law could force lenders to hike interest rates on Florida condo loans or stop writing condo mortgages all together. Lenders, he said, were not likely to risk losing an additional 20 percent of a loan's value, on top of losses already incurred through foreclosure.

"These bills could severely damage the ability to obtain financing on condos and because of that would do much more damage to condos and condo associations than they would do good," Cardwell said. Sen. Jeremy Ring, a Parkland Democrat, echoed those sentiments when describing why his bill simply requires lenders to take title on investor-owned units within 12 months of filing foreclosure, with no penalty.

"I want to be very careful here," he said. ``This is not a simple issue and if not done properly can have consequences that are much more permanent."

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