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Condo Meltdown

Desperate times call for desperate measures for condo associations

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By: Paola Iuspa-Abbott

As bills mounted and revenue shrank, the board of Miami Beach's luxury Bentley Bay condo knew it had to take drastic action.

Facing a spike in delinquencies and the need to pay the bills, the Bentley's condo association opted to take a hard line with lenders that took over units there — many from investors who went into foreclosure.

In one instance, the condo association took legal action against a lender that it said was dragging out the foreclosure process to avoid paying maintenance fees.

Condos like Bentley Bay are increasingly resorting to such desperate measures to collect enough money to keep their buildings operating. It's also proof that even upscale condos in areas considered insulated to a market downturn are feeling the pinch.

As more units go into foreclosure, communities — especially newly built or converted projects — are struggling with rising nonpayment of association fees. Beleaguered board members are ratcheting up legal pressure on lenders who've launched foreclosure action against units but are slow to take title to the properties — a move that helps lenders delay taking on responsibility for condo fees.

Unit 212 at the Bentley was mired in a drawn-out foreclosure process, and fees were mounting. The cash-strapped condo association finally asked Miami-Dade Circuit Judge Daryl Trawick, who was overseeing the foreclosure case, to force U.S. Bank to take title to the unit or immediately start paying maintenance fees.

In his June 1 order, Trawick gave U.S. Bank, the trustee for Citigroup Mortgage Loan, two choices: Don't foreclose and start paying maintenance fees on a unit it doesn't actually own, or foreclose and pay thousands of dollars in past-due fees.

Even with the first option, U.S. Bank would have to eventually pay the past due fees if it later foreclosed.

When a lender forecloses on a condo unit, it is responsible for six months in past-due maintenance fees or 1 percent of the mortgage. Lenders are also responsible to pay maintenance fees for as long as they own a unit.

The maintenance fees on Unit 212 are more than \$1,000 a month — \$807 in regular maintenance fees and \$208 for a special assessment. Unit 212 had been behind in payments since September.

Condo boards are also moving to force lenders who aren't paying the condo dues to auction off properties they've taken back. Other boards are putting delinquent owners on a fast track to collection.

One option apparently not on the table for condo boards: bankruptcy, since it's intended to help organizations that are swamped with debt, not those suffering from large revenue shortfalls.

Newer condos and conversion projects are suffering the most because speculators flocked to those buildings during the housing boom. But now that the market has imploded, many can't afford their mortgage and condo due payments. Those buildings are also more likely to have borrowers who used exotic mortgages and adjustable mortgages that have helped push more homeowners into foreclosure.

Older communities are hurting, too, because owners refinanced at the time of easy credit, and now they can't afford higher condo fees and adjustable mortgages that are resetting higher.

It becomes a vicious cycle, too, as condo associations pass special assessments to make up for late payments, only to send more owners over the brink.

When banks begin foreclosure proceedings against condo owners, the units often end up in a financial limbo. U.S. Bank filed a lis pendens — a notice of pending foreclosure — on the unit in September 2007, according to Miami-Dade property records. By May, the association was owed \$8,557 in condo fees, and U.S. Bank still hadn't taken over the unit.

That's when the U.S. Bank was ordered to start paying. Despite the ruling, the bank has yet to take action, according to I. Barry Blaxberg, who represents the Bentley Bay. He said the condo plans to ask the court to enter a judgment against the bank to collect the debt.

Blaxberg, of Blaxberg Grayson Kukoff & Strauss in Miami, began taking slow-acting lenders to court six months ago and has seven similar cases pending among different condo associations, he said.

"It shows the evolution of what is going on in the condo world," he said. "Necessity is the mother of all inventions."

Historically, lenders have taken about four months to seize condos from nonpaying owners. But as the foreclosure crisis worsens, lenders are taking up to a year to take title of a property, real estate experts said.

Colin Hendrick, president of Surfside's Carlisle On the Ocean, a former apartment building converted to condos in 2004, is also going after delinquent lenders. About 30 of the 115 units in Carlisle are owned by banks or in the process of being taken over, he said.

Last month, the association began foreclosing on five condos owned by delinquent lenders, said attorney Ralph Ruocco, with Glazer & Associates in Hallandale Beach. The lenders — who are often trustees for the bondholders who invested in a securitized mortgage pool — include Wells Fargo, Regions Bank and HSBC Mortgage Services, according to public records. His firm represents the Carlisle.

Glazer & Association last month successfully forced the sale of a bank-owned condo at the luxury Residences at the Bath Club in Miami Beach. The sale helped the Bath Club's condo association collect more than \$32,000 in overdue fees from Wells Fargo, as trustee for an investment pool that owned the mortgage on that unit.

The condo at the Bath Club sold for \$1.45 million during the height of the condo boom. At last month's foreclosure auction, the unit sold for \$438,100.

Ruocco predicts more lenders will lose properties to auctions because they didn't make maintenance payments on time. He blames it on disorganization rather than a lender's strategy to avoid paying fees.

"Their organization is horrible," he said. "Their left hand doesn't seem to know what the right hand is doing. Banks' representatives call me to ask me who the prior owner of a unit was because they are trying to figure out who internally is responsible for talking with me."

Hendrick hired Ruocco's firm more than a year ago, when the Carlisle was \$300,000 in debt. At that time, only 30 owners were paying the maintenance fees, Hendrick said.

"It was so bad, we had no idea how we were going to pay the electrical bill," he said.

To cope with the shortfall, the Carlisle board has reduced the hours of its maintenance staff, renegotiated contracts with service providers, charged each unit about \$3,000 in special assessments and increased the condo dues, which average about \$500 a month per unit. The board is still dealing with a deficit of more than \$12,000 a month.

At the 358-unit Shaker Village condo in Tamarac, more than 80 owners are late with their monthly payments. Many refinanced during the height of the condo market and are now struggling with mortgage payments and the maintenance fees of \$370 a month, according to Bernice Klayman, president of Shaker Village association.

Hoping to pressure delinquent owners, the board is giving owners 45 days to pay up or else. The board is no longer willing to wait three months before it moves to put a lien on a unit, Klayman said.

"We had no choice but to become more aggressive," she said. "It is unfair to the people who are paying."

Klayman said the board is open to payment plans when owners want to pay but are having financial troubles.

Monte Kane, a certified public accountant and adviser to condo associations, said condo boards need to work with each delinquent owner and draft payment plans that will work for them, before moving to foreclose.

"Meet with the owner, try to understand their problems and have a discussion on whether a payment plan can be conceived," said Kane, managing director of Kane & Co. in Miami.

Condo attorney **Donna Berger**, with **Katzman Garfinkel** in Fort Lauderdale, said she represents associations where nearly 80 percent of the units have fallen behind. In one instance, a unit owner lent money to the association to help pay the bills, she said.



Berger

"Desperate times call for desperate measures," Berger said.

Tom Roses, president of the Continental Group, one of Florida's largest property management companies, said his firm is trying to come up with ways to help its condo boards speed the collection process. Continental is giving attorneys for boards real-time access to association books to quickly identify the owners who are late in their payments and began the collection process immediately, Roses said.

"We're [also] looking into bridge loans as a future option for our clients, but at this point, the idea is very much in its infancy," he said.

One tactic attorneys say won't help most cash-strapped associations is Chapter 11 bankruptcy, which is intended to keep creditors at bay until a company restructures its finances.

"If it's an income problem, not an expense problem, then Chapter 11 won't work," said bankruptcy lawyer Arthur Rice, with Rice Pugatch Robinson & Schiller in Fort Lauderdale.

Bankruptcy works for associations that were victim of a one-time event and need to restructure their debt as they recover financially. Chapter 11 won't help an association keep the lights on and the insurance current if fees are drying up, several bankruptcy lawyers said.

Under rare circumstances, some associations do turn to Chapter 11 bankruptcy protection.

View West Condominium Association in Kendall filed for Chapter 11 in February to buy time to collect a special assessment to pay a roofing company that worked on its roof, according to court documents. It also gives the association time to resolve a dispute over the contractor's work performance.

Douglas Snyder, View West's attorney, said the filing was not related to high delinquencies.

"If something can get fixed with Chapter 11, then bankruptcy is an option," Snyder said. "But if people aren't paying the maintenance, then Chapter 11 won't cure the problem."

Paola Iuspa-Abbott can be reached at (305) 347-6657.

Bentley Bay photo by A.M. Holt