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Condo associations in eye of foreclosure storm

BY SCOTT ANDRON

At the Fountains of Tamarac, the condo association has no insurance, a couple of unit owners are cutting the community's grass themselves, and 90 percent of the unit owners aren't paying their maintenance fees.

Even two banks, both of whom acquired their condos out of foreclosure, haven't paid their dues.

Condo President Cesar Gonzalez views the start of hurricane season with dread.

"We're hurting really bad," he said. "I don't know if I can handle the stress."

The Fountains of Tamarac is an extreme example of a growing problem in South Florida: As the economy slumps and home prices fall, a growing number of home and condo owners are not paying their community fees. That's creating enormous problems for their neighbors, who must either pick up the slack by paying higher fees or else live with reduced services.

Lewis Freeman, a Miami lawyer and accountant who works with financially distressed properties, said this problem is going to get worse.

"I think it's like hurricane warnings," Freeman said. "They tell you to get ready a couple months before. Get batteries and water. This is going to absolutely be a catastrophe."

In some cases, overextended homeowners can't keep up with mortgage and maintenance payments. In other cases, the issue is investor-owned properties in which the owner finds the unit worth less than the amount owed, so he just walks away from it. Both scenarios are contributing to record foreclosures.

How widespread are such problems?

According to a recent Internet survey of 487 Florida condo and homeowner associations by the Hollywood-based law firm of Becker & Poliakoff:

- 51 percent said that mortgage foreclosures were creating a revenue shortfall and a burden on the association's finances.
- 37 percent said they have raised maintenance fees to cover the shortfall.
- 43 percent said they have units that have been unoccupied for at least six months because of mortgage foreclosures.

And that's a small sampling. There are 7,149 condo associations in Miami-Dade and Broward counties alone, according to the Florida Department of Business and Professional Regulation.

Kelly Ladwig, treasurer of the Townhouses of Plantation, said her board recently doubled maintenance fees after taking over the association from the developer, who converted it from rentals to condominiums.

And even with the higher fees, the community may yet have problems because so many people -- possibly as many as 50 percent -- haven't been paying.

"A lot of people bought here as investors, and they were not able to sell. We now have a high foreclosure rate/nonpayment rate," said Ladwig, whose day job is as a financial analyst for a commercial real estate firm. "That's directly affecting the financials."

Even if unit owners can find a buyer, Ladwig said, some banks are looking at the association's books and refusing to make the loans.

This could also block condo owners who try to refinance their loans.

What's worse is the problem can snowball: The higher maintenance fees can push even more unit owners into financial trouble, leading to even more foreclosures.

"This is like an avalanche," said Jan Bergemann, president of the Cyber Citizens for Justice, a statewide group of condo owners. "More and more people don't pay their dues, forcing other people to pay the cost. I don't know the solution."

In some communities, the association has cut back services, sometimes dramatically. For a while, no one was cutting the grass at the Fountains of Tamarac, until a board member and another resident started doing it, Gonzalez said. The association still doesn't have enough money to insure the property.

At the Club at Brickell Bay, residents say they have seen everything from nonworking elevators to broken equipment in the gym to cutbacks in cable service. Here again, the problem is a large number of unit owners not paying their dues that cover these services.

It's a problem Lori Rice said she has tackled aggressively since taking over as property manager in December. Now, she says, about 60 percent of unit owners are up to date on their condo fees, and she is working on getting that number higher.

For instance, she says she now has 200 unit owners paying their maintenance automatically from their bank accounts, up from 13 last year. She has been seeking payment from the banks -- who own 57 of the 643 units. And she has renegotiated the cable contract and brought the association up to date on other bills.

That has enabled her to fix problems and make needed improvements, like painting the hallways.

"All the elevators are working for the first time in over a year," Rice said. "I'm cleaning up a mountain of messes here, but I'm seeing the light at the end of the tunnel."

Donna Berger, an attorney with the Fort Lauderdale law firm of Katzman Garfinkel, said she advises associations to budget for a certain amount of bad debt. She suggests that board members review the number of delinquencies they've seen in the last few months, and plan on having at least that percentage in the months to come. Katzman Garfinkel represents about 1,000 condo and homeowner associations.

If a unit owner keeps refusing to pay condo fees, associations have the power to foreclose on the property -- even if the owner is paying the mortgage. The goal of a foreclosure is to recover the money owed by selling the property.

The trouble is, even if the association starts the foreclosure, the bank still gets paid first. If the owner owed more than the property is worth, the association could be out of luck. And under Florida law, the bank can't be forced to pay more than six months of condo fees or 1 percent of the mortgage amount, whichever is less -- until the bank takes title.

Meanwhile, banks are overwhelmed with foreclosures right now, and the six-month cap gives them little incentive to hurry up.

Bergemann, from the Cyber Citizens group, said he thinks lawyers are too quick to go to foreclosure, which can cost thousands of dollars per case for associations. He suggests board members first try to work out a deal with delinquent unit owners.

That may not work, however, especially if the unit owner was an investor who has walked away from the property.

In those cases, "let the bank foreclose," Bergemann said. "It saves the association from paying the attorneys."

The trouble with foreclosures comes at a particularly difficult time for condo associations, many of whom were financially weakened by repairs from Hurricane Wilma in 2005.

Between the state's skyrocketing insurance costs, the costs of Wilma cleanup and now the foreclosure crisis, Florida's condo associations are facing a "perfect storm," said Danille Carroll, the state condo ombudsman.

Lewis, the lawyer and accountant, agreed. He said his firm, which serves, for example, as bankruptcy trustees, will likely profit.

"Nobody ever saw this coming," he said. "You look at what's going to happen with these things: utter chaos."

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