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THE RODENT: WHO SAYS OLDER WAYS WERE BETTER?

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HOUSING BUST CREATES POLLUTION

Environmentalists say the housing and construction bust that has pockmarked the nation's landscape with half-built projects is filling rivers and streams with one of the most expensive forms of water pollution sediment. **A7**

CONDO MELTDOWN Miami Beach unit had been in limbo for two years

ASSOCIATION USES OBSCURE LAW TO TAKE OVER UNIT



A.M. HOLT

Attorney Ben Solomon used a tenet of law that dates to the Magna Carta.

by **Susannah Nesmith, Special to the DBR.** A law firm has used an obscure tenet of common law to force a lender to hand over a troubled condo unit to the owners' association.

A small Miami Beach condo building said Citigroup was making it impossible for the property to change hands by holding the mortgage, even though it wasn't being paid.

Eight of the building's 18 units are in foreclosure and not paying

the maintenance fees.

For more than two years, the association held title to the unit, but because of the outstanding mortgage, the association couldn't sell it to recover the debt. And as long as the bank didn't foreclose on the unit and take possession of it, the fees continued to go unpaid.

When faced with a lawsuit, Citibank opted to erase the \$166,000 mortgage, effectively giving the association the unit.

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FORECLOSURE

MORTGAGE CRISIS Archaic law allows condo to be sold

STRATEGY FORCES LENDER TO HAND OVER DELINQUENT UNIT

by **Susannah A. Nesmith**
Special to the Review

A law firm has reached back to the 13th century for what it's touting as a new strategy to help condo associations stuck with delinquent units fight lenders.

Attorney Ben Solomon used an obscure tenet of common law that dates to the Magna Carta — specifically that lender Citibank's mortgage created an unreasonable restraint on alienation of the property. Put simply, Citibank was making it impossible for the property to change hands by holding the mortgage, even though it wasn't being paid.

In the case the 7149 Bay Drive Condominium Association had already foreclosed on a two-bedroom condo to recover unpaid maintenance fees. Eight of the building's units are in foreclosure and not paying the maintenance fees.

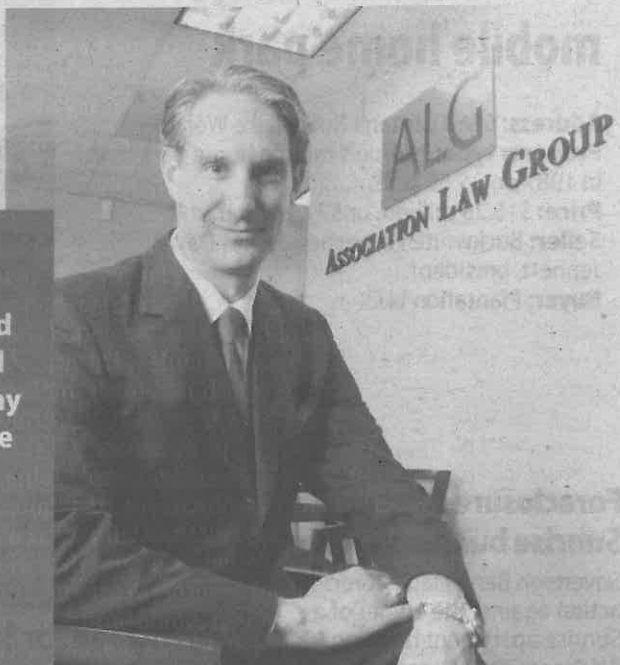
"We're just kind of struggling to keep the building running, just keep the insurance paid and the water on," said property manager Jason Schoenholtz, of Regatta Real Estate Management.

Citibank's lien is superior to the association's lien and that had tied up the title. The association expected the bank to go ahead and foreclose, which would have meant the bank would have been liable for six months of back fees and all fees going forward.

For more than two years, the association for an 18-

“If [Citibank] had litigated it, they would have been forced to pay six or 12 months' of the overdue assessments, the association's attorney fees and the assessments going forward.”

**BEN SOLOMON,
ASSOCIATION LAW
GROUP**



A.M. HOLT

unit building at 7149 Bay Drive in Miami Beach held title to the unit, but because of the outstanding mortgage, the association couldn't sell it to recover the debt. And as long as the bank didn't foreclose on the unit and take possession of it, the fees continued to go unpaid.

When faced with a lawsuit, Citibank opted to erase the \$166,000 mortgage, effectively giving the association the unit.

"I'm sure they were hoping they'd get a short sale offer or at some point later sell it," said Solomon, of the Association Law Group in North Bay Village. "We filed suit to quiet the title and we fully expected them to liti-

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LAW: Association was stuck with unit \$25,000 behind in assessments

gate it.”

A Citibank representative declined to comment, but given the fact that the unit was valued at only about \$45,000, Solomon figures it simply wasn't worth it to the bank to litigate the case, or to own the condo.

“The unit was damaged — it couldn't be rented,” he said. “Our thought was not that they were going to release the mortgage. If they had litigated it, they would have been forced to pay six or 12 months' of the overdue assessments, the association's attorney fees and the assessments going forward.”

He said the association won't actually be making much of a profit on the deal, since there are about \$25,000 in overdue assessments on the unit, plus the association will be responsible for the back taxes due.

Schoenholtz said he is waiting for the tax bill, but expects it to be about \$8,000.

Alarr Kluger, a commercial litigator who has represented financial in-



Kluger

stitutions and associations in foreclosure cases, called the strategy “imaginative.”

“The bank basically said they didn't want the brain damage,” said Kluger, of Kluger Kaplan Silverman Katzen & Levine.

He wasn't so sure of the legal theory, however.

“From a pure legal theory, it works but the law doesn't require them to foreclose,” he said. “It's under water, but that's not the bank's fault.”

He theorized that Solomon hit “the price sweet spot,” the point at which the difference between the outstanding loan and real market value was too great for the bank to ever expect to recover it.

Michael Y. Cannon, a real estate analyst and executive director of Integra Realty

Resources in Miami, said the strategy may be viable at the low end of the real estate market.

“If there's true equity and true value, I

BY THE NUMBERS

\$166,000

Amount of condo mortgage that Citibank forgave

\$45,000

Estimated value of the condo

\$25,000

Approximate amount of unpaid condo fees; About \$8,000 in taxes are also owed.

condos to the associations.

Neil Rubin, a real estate attorney, called it “a great strategy” in the increasingly common cases where associations are stuck with units that are years behind in their assessments.

“Large lenders are in a much better position to absorb the loss of a non-conforming loan,” he said.

“In many cases they've already written them off. They don't want to take the property back. But the associations are choking.”

He pointed out that in some buildings only 10 percent or 20 percent of the units are occupied, leaving the few remaining unit owners to cover the cost of keeping up the entire building.

“This is very innovative and very progressive,” he said of Solomon's suit. “They're getting the courts to realize that what the banks are doing is crushing the associations.”

The members of the condo association are “absolutely elated” Schoenholtz said, noting they're filing similar actions to force the lenders' hands in all the other delinquent units in the building.



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