

# DBR DAILY BUSINESS REVIEW

## Most Effective Lawyers 2011 Real Estate: Attorney prods resistant banks

### Ben Solomon, Association Law Group

If it were a book, the case of Association Law Group's Ben Solomon might be titled, "The Reinvention of a Real Estate Attorney."

During the boom years, the North Bay Village lawyer represented major players in the development world. They were heady times, Solomon acknowledged.

"In the heyday, we had 80 developer clients," Solomon said. "Now, it's more like eight."

Solomon is one of three senior partners of his firm.

And while plenty of firms have seen some lean times, Association Law Group is thriving its warren-like offices hum with activity because it has reconfigured a business strategy to meet the needs of the market.

Specifically, it caters to the legal needs of condo and homeowner associations, a one-time plain vanilla area of law whose world was turned upside down by the foreclosure crisis.

"We've tripled the size of the firm in the last year," Solomon said. His firm represents 500 associations and employs roughly 90 people.

HOAs have taken a number of body blows from the foreclosure crisis. For one thing, when a unit owner stops paying maintenance fees, it hits the bottom line immediately.

"We've had associations where more than 50 percent of the units are delinquent," Solomon said. That means tough choices like closing the pool, or not doing regular maintenance. Or, there's the unsavory option of special assessments for the owners who are current.

HOAs can foreclose on owners for

the delinquent fees. They can even take title that way.

But it isn't always helpful. For one thing, the existing mortgage goes with it. And the primary mortgage lender particularly in today's market may not be willing to relinquish its claim. So the association is caught in a limbo: Unable to rent, take possession or sell vacant units.



**Ben Solomon, Esq.**  
**Association Law Group**

"If we don't push the bank they will sit on the unit," said Solomon. "It takes an aggressive lawyer to make things happen."

And so was born the Association Law Group's Mortgage Terminator program. No, it isn't a sequel to an Arnold Schwarzenegger movie. Rather, it's where the association or in this case, Solomon's firm gives the mortgage lender an ultimatum: Take title to such defaulted units immediately "or else we will have the court grant a judgment terminating their mortgages on such units."

The legal theory backing Solomon's strategy is that the bank is unreasonably restricting the association as the new owner (since it foreclosed) to sell the property, since the old mortgage would go with it. Solomon also argues the lender has abandoned the mortgage, and thus forfeited its interest in the property by refusing to foreclose.

His first target certainly had resources to fight back. "We sued Citibank," he said. The unit in question was in a condo building at 7149 Bay Drive in Miami Beach. It had an estimated value of \$60,000 but a mortgage of about \$166,000.

"It was really just taking a stab at it, to be honest. I wasn't sure what would happen."

To his surprise: "Citi said, 'Keep it.'" It allowed the condo association to sell the unit for \$75,000.

Association Law Group allows clients to defer payment until the units are sold, although it does charge interest on the deferred amounts.

Does it work? The success rate is 100 percent, Solomon says, and he continues to use the strategy to great success.

Lately, Solomon has been fielding calls from lawyers around the country regarding his mortgage terminator strategy. And while he personally thinks the foreclosure crisis is nowhere near over, pushing banks to act is one way to limit the collateral damage, he said.

"A lot of groups don't realize the association has a direct foreclosure right, or they think the bank will take care of it," Solomon said. "But if you're dealing with a bank whose remedy is to stall, you're going to get the short end of the stick."