

## Foreclosure fees haunt homeowner associations

by Michael Pollick

Three years into the foreclosure epidemic, desperate condominium and homeowner associations are now beginning to employ aggressive law firms and collection agencies in a new tactic aimed at recovering delinquent fees.

The debt collectors working for these associations are asking the courts to use more extreme measures. In a few cases, they have gotten judges to help them freeze and confiscate the bank account of a former owner.

Florida is gliding quietly into a new and potentially painful part of the boom-bust cycle, where stacked-up "deficiency judgments" for unpaid condo fees and unsatisfied mortgages could come back to haunt past owners. Many of them thought they had escaped further costs when they handed their home over to their lender.

When a lender sells a foreclosed home for less than the mortgage, the difference -- or "deficiency" -- is typically registered in the court proceedings as being owed by the original borrower, but it is seldom paid.

The same thing can happen with unpaid condo or homeowner fees. Either as part of the bank foreclosure or through a separate foreclosure action, the homeowner or condo association can ask the court for a deficiency judgment. In either case, even if these debt instruments gather dust for years, they remain valid and are accruing interest at the rate of 6 percent to 18 percent per year.

"We are going to be seeing a lot of this," said Shari Olefson, a Fort Lauderdale attorney and author of "Foreclosure Nation." "Florida is a recourse state, which means they

can collect what they can from the property and then they can go after the deficiency by going after the investor personally."

Lawyers for the targets of these suits already are seeing more business.

"I think there is going to be a whole cottage industry based on these judgments -- people coming into the office, saying they are now being pursued for the deficiency," said Matt Englett, a partner in the Orlando law firm of Kaufman Englett & Lynd, whose 65 lawyers spend much of their time defending homeowners from judgments.

Association Law Group, a Miami law firm, is pushing the envelope in this form of recovery.

Working for condo and homeowner associations, the firm calls its new strategy "Total Recovery."

The firm recently recouped \$4,000 in one case and is aiming for more than \$25,000 in another now pending.

"At this time, we have dozens of these Total Recovery actions in the pipeline to file and anticipate that by next year it may be more like hundreds," said firm partner Ben Solomon.

If lawyers plot their course carefully, they can make the deficiency judgment against the former owner part of the original foreclosure proceeding. That way, the firm can go back for a simple hearing before a judge, rather than a whole new court case, to obtain what is known in the legal system as a "writ of garnishment."

With a few exceptions, like personal jewelry, this judge's order can be used to confiscate almost any-

thing of value -- including wages or the cash in a checking account.

For the previous owners, who thought they were done with an "investment property" except for the bad credit rating, the garnishment can come as a rude shock.

Homestead's Mary and Luis Renfigo found out the hard way how heavy a deficiency judgment can be.

Earlier this year, Mary Renfigo got a phone call from the bank where the couple had their checking account, saying it had been legally frozen. A warning letter from the bank a few days earlier went unread.

The couple had \$2,300 in the bank, but all of it got swept up in the writ of garnishment. And that did not come close to covering what they now owed. With interest stacking up on the unpaid balance, the debt was \$4,300.

"It put us in a very difficult position," Mary Renfigo said. The couple set up their own date in court and arranged an 18-month payment plan.

But a week later, after they had finally arranged a short sale of the other rental home they owned in the same community, the association's lawyers were able to force them right to the wall.

"They said, 'We are going to put everything together, and you are going to pay in full or we won't let you short sell,'" Renfigo said. "We sold a car that weekend. That is how we paid it."

The president of the Keys Gate Association where the Renfigos live, Kim Green, did not return a call for comment.

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“Most associations out there simply absorb this bad debt,” Solomon said. “Our firm wants to be aggressive in going after every penny available to our clients, including the amount due from the prior investors.”

In addition to Association Law, other players have sprung up in the weeds left by the great residential housing boom that ended in 2006.

One is Miami-based Association Financial Services; another in Tampa is LM Funding.

The way both operate is to offer an association an upfront payment to handle the book of business, meaning the unpaid debts.

In the case of foreclosed properties, the firms then work their way through the intricacies of each unit’s finances, attempting to leverage money out of either the bank that now owns the property or the previous owner.

Florida law sets limits on how much the lender has to cough up to the association -- 12 months’ worth of payments or 1 percent of the amount of the original mortgage, whichever is less.

But the cap on payments from the lender is only valid if the lender followed every single rule in the way it sought the foreclosure and in the way the loan papers were originally drawn up, notes Ken Arnold, Associated Financial’s co-founder and chief executive.

“You’re going to do the research and see if they did everything according to the statute, by the letter,” Arnold said, adding that it works the same for former investors.

“You’re going to do an asset search. You’re going to find out what assets they have and what you’re able to go after,” he said. “The easiest thing to do -- hmm, I hate to say this -- but the bank account is the easiest. It is cash. The banks understand the process. It is a done deal.”

South Bay Plantation, a condo conversion project in Naples, had so many overdue condo payments --

part of \$900,000 in total judgments -- that it came close to filing for bankruptcy protection, says Joe Sheehan, a resident who became president of the owners’ association as part of long-running saga that started soon after the 2006 conversion.

A retired accountant, Sheehan figured he could either walk away from the deal or treat it like a hobby and in the process, help all the other true-blue owners survive financially.

Starting early this year, he and other board members interviewed four firms that do collection work for associations, including Association Law, Association Financial and LM Funding.

The way it really works when the association takes the upfront payment, in general, is that it is getting the minimum: the 1 percent based on adding up the original mortgages, Sheehan said.

The collection agency typically does turn over more money, but it keeps the interest, the late fees, and legal fees that it collects from either the banks or former investors.

Two out of the four made upfront offers to get the book of business -- \$100,000 and \$125,000.

Sheehan figured that was not enough, so he hired Association Law Group to go after the debts that involved heavy-duty legal work, while he and other board members did what they could on their own.

“Just write a letter and say, ‘Let’s resolve this.’ It is worth it for a couple of 44-cent stamps. The letters are all the same, just different amounts,” he said.

Sheehan and his fellow board members were surprised at the way some former owners came out of the woodwork to settle their debts through a negotiation, once they knew it was possible. “I was surprised at the good response we got. I would recommend trying that first.”

Whether a former investor worried about settling or an association officer worried about raising the

monthly fees on those who are paying, staying emotionally detached is the only way to proceed, Sheehan said.

“Do not get lost in this thing or it will just eat you up,” he says. “There is only so much you can do.”

Darren Soto, an Orlando attorney and state legislator, says he and his legal staff are working on more than 750 active foreclosure defenses on behalf of individual clients.

He thinks the current boomlet in collecting on behalf of associations is going to spill over into leftover mortgage debt.

“I have seen a slow trickle of attempts to collect deficiency judgments on mortgages,” said the Orlando Democrat. Eventually, “we will see a lot of banks selling these deficiency judgments to third party collection firms, and obviously those firms are going to be a lot more aggressive in collecting the money judgments.”

There is a five-year period from the end of a case judgment to establish a deficiency judgment. Then that judgment lasts for 10 years and it can be renewed for another 10 years.

“You can even sue at the end and get more time, so there is all the time in the world to collect on these things,” Soto said. “Yet there is this pervasive rumor that you can somehow walk away from your house and never have to worry about it again. And it is simply not true.”

Soto and other attorneys strongly advises those who owe money to a lender or an association to cut a deal, rather than letting the debt fester -- and grow.

“You want to do it before you get back on your feet,” Soto said.

Englett, the other Orlando attorney, concurs: “If you just ignore it, you end up making some money and the next thing you know they garnish your wages or seize your bank account.”

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