

# Condo associations force banks to act

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JACKSONVILLE — When a property owner stopped paying his mortgage at the San Juline condominium building in Riverside, the bank filed a lien to foreclose, but stopped short of actually selling the unit at public auction.

The San Juline Condominium Association Inc. also filed a lien against the property owner for unpaid association fees, and waited for the bank to take back the property and pay off the debt to the association.

After months of waiting, association President Linda Morgan felt she could wait no longer. The association board asked the judge to allow it to move forward with a public auction so the association could take title since the bank seemed unable, or unwilling, to do so.

"It's not fair to the people who are paying," Morgan said of the situation. "I think the banks have treated condo associations unfairly. They don't want these units, they're not foreclosing, and they're letting them sit."

Property associations in Northeast Florida, more and more, are using foreclosures to collect unpaid association dues, and experimenting with other legal ways to force banks to stop stalling on foreclosures, real estate lawyers said.

The San Juline condo did sell at public auction in August 2010, 17 months after the condo association filed its lien, but it wasn't the condo association that took back the property.

Another bidder took the certificate of title on the property with a winning bid of \$25,000, which was more than twice the \$9,060.30 due to the association.

The association was made whole, including payment of unpaid dues, late fees, interest and legal fees.

Ed Ronsman, an attorney at Jackson Law Group LLM PA in St. Augustine, represented the San Juline Condominium Association as well as other associations trying get unpaid association dues that are tied up in mortgage foreclosure cases.



JAMES CRICHTON

San Juline condo association President Linda Morgan in one of the units.

Ronsman said banks often stall on foreclosures because they don't want to have the properties on their books, especially properties with association fees that the bank would have to pay.

Charles Jimerson, of Jacksonville-based Jimerson Wilson PA, said banks sometimes make a strategic business decision to wait on foreclosing.

"At the end of the day, they don't want an unmarketable asset that's upside down that they aren't going to be able to sell," Jimerson said.

Associations ordinarily take a second, or junior, position on property liens, meaning that they don't get reimbursed for unpaid dues after the bank gets its money back from a public auction sale. Florida statutes say banks are only responsible for 1 percent of the original mortgage amount or 12 months of unpaid assessments due before taking title,

whichever is less. The longer the foreclosure takes, the less an association will collect.

Instead of waiting for the banks, a growing number of associations are testing new waters by choosing to foreclose before the bank.

Justin Portlock, the supervisor of the foreclosure division at the Duval County Clerk of the Court's Office, estimates that the number of cases involving property associations foreclosing on the property owner has increased about 10 percent in the past 18 months.

In some cases, Portlock said, associations are taking properties; in others, investors are taking the properties with the understanding that the bank will eventually take ownership, but in the meantime they can rent out the property to make money. In a few cases, Portlock said, winning bidders do not understand that they are only purchasing the certificate of title and that the bank can still take ownership.

There are examples all over Northeast Florida of property associations taking title to property. The Boxwood at Baymeadows Condominium Association Inc. has received foreclosure judgments for the foreclosure auction on five units, and has taken title on

one unit, according to public records. The Hammock Grove Condominium Association Inc. has received judgments on five units in that community off Kernan Boulevard, and also has title to one unit. The Fountains Association Inc. in Ponte Vedra has foreclosed and taken title to five units, one of which the bank has since taken over.

Some associations are trying different tactics to resolve their cases. The 5th District Court of Appeals in Daytona Beach ruled in December, for instance, that a private lender must reschedule a public auction for a parcel of commercial land that received a final judgment of \$30.7 million in 2008. The Matanzas Shores Owners Association, which has unpaid dues totaling close to \$1 million, demanded that an auction date be set so that the property could be sold and it could be paid its assessments. The lender, however, contended that "as the judgment holder, it has the right to control when, if at all, a foreclosure sale takes place," according to public records. The appellate court ultimately ruled that the trial courts could set the foreclosure sale over the objection of the lender.

Ronsman, who was the attorney on that case, said the ruling set a precedent that other attorneys representing property associations may be able to use in future cases when lenders refuse to move forward.

Jimerson said attorneys representing property associations in other parts of the state are trying another tactic, called a reserve foreclosure. In this method, the association forecloses on the unit and then files suit against the first mortgage holder, requiring the bank to either foreclose on its mortgage or relinquish its rights to the property. Because the bank is the only other party involved, the action forces the bank to take ownership and pay the unpaid dues, or waive its rights to the property altogether, granting, in some cases, the property to the association.



Ronsman



Jimerson