

Real Estate Today

Blanket receiverships add an association tool

BY YUDISLAIDY FERNANDEZ

Attorneys are successfully getting judges to approve blanket receiverships for community associations struggling to collect fees.

With some condo and homeowner associations plagued as unit owners facing foreclosure stop paying monthly association fees, this court-approved process allows associations to collect directly from the delinquent owners' tenants.

David Arnold, partner at North Bay Village-based Association Law Group, says he filed the first blanket receivership in March 2009 on behalf of The Oaks at Miami Gardens Condominium Association.

Today, Mr. Arnold says he's working on 50 blanket receiverships and has 25 more pending in the tri-county area.

Once a judge gives the order, the appointed receiver intercepts the monthly rent set to go from the tenant to the non-complying unit owner to cover past-due fees. This continues until the unit is current in association payments.

The receiver gets a 10% slice of rent collected, Mr. Arnold said. Rent for these units, he said, generally is \$800 to \$1,500.

Mr. Arnold says his firm collects its attorney fees once the association gets paid the money owed.

"For us, it's been very effective," he said. "Some [associations] are collecting about \$30,000 a month through this program."

But he warns associations to be aware of lawyers inserting into orders other language specifically allowing under blanket receivership a takeover of units that aren't in foreclosure, which could lead to other legal battles.

"They [associations] should be aware of someone that comes in and promises the world, to rent all units that are not paying, whether in foreclosure or not, because that is illegal," Mr. Arnold said.

Attorney Robert Kaye, founder and managing member of Kaye & Bender, says so far he's handled two blanket receiverships, one in Miami-Dade and the other in Broward, with mixed results.

The Broward association had more success because it had more units in the collections process occupied by renters, Mr. Kaye said, while the asso-

ciation in Miami-Dade had too many empty residences with no tenants to collect rent from.

A bill under review in the Florida Legislature could authorize community associations to collect directly without a judge's consent.

HB 329, sponsored by Rep. Julio Robaina, proposes allowing associations to collect past-due fees directly from renters when a payment is 30 days late. The bill also would require the mortgagee to request an estoppel letter from the association before filing to foreclose. Another provision would impede delinquent owners from using amenities and common areas.

If the proposed legislation passes — a similar proposal died last year — Mr. Kaye says many associations are expected to try this first because there's no cost. His firm generally charges \$2,000 in attorney fees to request a blanket receivership.

Longtime community association attorney Gary Poliakoff, founding partner of Becker Poliakoff, says this process is more effective for associations that have numerous units' owners late on fees.

It's not cost-effective to pay for the receiver to pursue a couple of units, said Mr. Poliakoff, co-author of "New Neighborhoods: The Consumer's Guide to Condominium, Co-op and HOA Living."

He suggests seeking a blanket receivership on 10 units or more.

"It only works under limited situations with a large number of units," he said, adding this is why it's becoming a sought-after option for associations with a growing number of delinquent owners.

"Whenever someone tries something that seems to work, others quickly pick up on it."