

Counselor's Community Chronicle

201 ALHAMBRA CIRCLE, SUITE 1102 ■ CORAL GABLES, FL 33134
TEL: 305-442-3334 ■ TOLLFREE: 800-737-1390 ■ WWW.SIEGFRIEDLAW.COM



Varied Legal Interpretations in Applying New Condominium Association Law to Collect Rent from Tenants of Delinquent Owners

By
Caridad
Rusconi



The new Florida condominium association law that went into effect last July has dramatically improved the ability of condominium associations and homeowners associations in South Florida

and throughout the state to collect delinquent fees and assessments from unit owners. While the law has been an important step in the right direction, it has spurred many questions and contradictory interpretations by lawyers who focus on community associations about some of its specific provisions and language.



The varying interpretations about the law's provisions to allow associations to collect the rent directly from the tenants of delinquent unit owners have been the

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Recent Appellate Court Ruling Allows Condo Association to Reset Bank's Foreclosure Sale

By
Nicholas
D. Siegfried



The foreclosure epidemic has caused significant financial difficulties for South Florida homeowners and condominium associations, and many of the strains are caused by unnecessary and troublesome delays from foreclosing lenders. As a result, the Florida Supreme Court has adopted amendments to the rules of civil procedure relating to mortgage foreclosures based on the findings of a report by the Task Force on Residential Mortgage Foreclosure Cases, which was issued under a directive by the Court. In

December, the Fifth District Court of Appeals reaffirmed that Florida courts are going to stringently enforce these amendments and policies based on the Foreclosure Task Force, as it upheld a condominium association's right to secure a court order for a post-judgment judicial sale.

In the appeal, the lender contended that the trial court was not authorized to order a post-judgment judicial sale of the property or had abused

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Community Associations Should Explore Their Options in Accepting Short Sales

By Peter L. Meltzer and Vincent B. Flor



As the foreclosure crisis begins to unwind, short sales have proven to be one of the most popular types of foreclosure avoidance measures for banks and homeowners in South Florida. For community associations, these transactions in which the bank agrees to accept less than what it is owed can bring new buyers for properties whose existing owners have typically not been paying their maintenance fees and assessments. There are many reasons for community associations to accept short sale proposals when they arise, but the attorneys who focus on working with South Florida condominium and homeowners associations at our firm are advising and working with many associations to explore possibilities for counteroffers with higher payments for past-due fees to the association.

When a short-sale transaction is negotiated between a lender and their borrower/homeowner, the community association, which is also a lienholder on the residence for past-due assessments, will usually be asked to approve the transaction. The association is typically offered to accept just a fraction of what it is owed,



since banks understand that the association will be highly incentivized to replace the delinquent property owner with a new buyer who will presumably begin paying monthly assessments accruing after they become the new owner. If the association does not accept the offer and approve the deal, then the transaction will probably not be finalized and the bank must continue with its foreclosure proceedings against the property.

However, for community associations which believe that they would be better

served by risking the delay that the foreclosure process presents rather than accepting an offer that they believe is too low, a counteroffer for a greater amount that they would be willing to accept for the short-sale transaction can and should be made. In many cases, the bank, seller, buyer and brokers are also very eager to see the sale finalized, and they may be willing to

make additional financial concessions to the association in order to get the deal done. The key for the association is to understand and work within their level of risk tolerance for the sale being scrapped and the unit going through the foreclosure process.

Our community association lawyers are now working very closely with many South Florida condominium and homeowners associations to help them understand and assess their options in making counteroffers in short-sale transactions. ■

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most troublesome for many associations, and this overview should help to clarify some of the confusion.

The new law stipulates that associations have the right to collect the "future monetary obligations" from tenants who are renting from owners who are delinquent in paying any obligations to the association. Some lawyers have interpreted this to mean that the associations can only collect the rental fees as they apply to that corresponding month or quarter's association fees for the delinquent unit owner, not to the owner's past-due fees and assessments. Other lawyers, including those at our firm, have

interpreted it to mean that the associations can collect the rental fees for the sums that the delinquent owners are already in arrears, in addition to the current month and quarter's fees and assessments.

We have taken this interpretation because the amendment to the existing statute under the new law was clearly intended to provide associations with the ability to satisfy the delinquent fees for leased units. We believe the wording of this provision referring to future obligations is a reference to the future monthly rental fees that tenants are to pay under the terms of their lease, not the future

obligations of the unit owner to the association that are yet to be paid.

Condominium associations and homeowners associations in South Florida and throughout the state should understand that the new law provides them with significant new powers to collect fees from delinquent unit owners as well as foreclosing lenders. It is vital that they work closely with experienced attorneys in condominium association and homeowners association matters who are able to help them to use all of the legal remedies that the law allows to keep their finances in the black. ■

Big Changes Create Big Opportunities for Bulk Buyers

By
Oscar R.
Rivera



News reports of bulk buyers acquiring blocks of unsold units at local condo developments have become a weekly fixture in the local business pages, and the underlying financials of these deals point toward a continued healthy future for bulk buyers in the months and years to come. For many South Florida condominium associations that are slowly recovering from the foreclosure crisis, these bulk buyers can represent a major financial boon for troubled properties as they acquire units and start paying assessments.

The bulk deals have been spurred by depressed values, the foreclosure crisis and several significant changes in Florida law. Last year, the state legislature implemented a change under the Distressed Condominium Relief Act to temporarily suspend for two years many of the daunting and financially worrisome legal liabilities that bulk buyers normally incur when they acquire more than seven units in a property and resell them to individual buyers.

This temporary change in the law essentially shields bulk buyers from any legal liability and responsibility for construction defects, budget issues, turnover obligations and other statutory responsibilities of the original developer.

The real estate and community association attorneys at our firm are working closely



with investors who are acquiring large blocks of units as well as with the condominium associations that are now dealing with bulk buyers, which in some cases have acquired

the majority of the units in a community. We are also working with many individuals who are acquiring a unit from a bulk buyer. Both the community associations and the individual buyers must recognize that they no longer have the same protections under the law in transactions involving bulk buyers, so they must work with experienced attorneys in order to seek and secure these protections by using new contractual stipulations.

There are significant opportunities for bulk buyers as well as lenders and community associations as a result of this new law, but to take advantage of them it is imperative to work with a qualified attorney who is highly experienced in these matters and the recent legislative changes. ■

Florida's New Board Member Certification Requirements for Condominium Board Members

One of the important changes to the Florida condominium association laws that was enacted last year is the new certification requirement for condominium board members. Our firm recently conducted board member certification seminars in Miami-Dade, Broward and Palm Beach counties, and we received a great deal of questions about the new requirements prior to and during these events. Here is a helpful summary of the new certification requirements for board members:

Within 90 days after being elected or appointed to a condominium board, each newly elected or appointed director must certify in writing to the secretary of the association that they have read the association's declaration of condominium, articles of incorporation, bylaws, and policies. Additionally, this written certification should confirm that they will work to uphold

such documents and policies to the best of their ability, and will faithfully discharge their fiduciary responsibility to the association's members. Alternatively, a newly elected or appointed director may submit a certificate of completion after attending a board member certification course that has been approved by the state.

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A director who fails to file the written certification or educational certificate within this 90-day period is suspended from serving on the board until they comply with this requirement. Finally, the association must retain a director's written certification or educational certificate for inspection by the

members for 5 years after a director's election. However, the failure to have the certifications or certificates on file does not affect the validity of any action by the board.

It is also important to note that these new certification requirements only apply to condominium associations and not to cooperative or homeowners associations.

In the coming months, the condominium association lawyers at our firm will continue to offer board member certification seminars to condominium association directors and property managers, as well as several other seminars and courses that also qualify for continuing education CAM credits for property managers. Contact us toll free at 1-800-737-1390 or via e-mail at info@siegfriedlaw.com to inquire about the possibility of scheduling a seminar for your organization. ■

Court Ruling Allows Condo Association to Reset Bank's Foreclosure Sale

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its discretion in ordering the sale, which came as a result of the court's approval of a motion by the attorneys for the condominium association. The lender argued that as the judgment holder, it had the right to control when, if at all, a foreclosure sale takes place, and as the junior lien holder, the association could not demand that a foreclosure sale date be set.

In its decision, the appellate judges ruled that the trial court's order comports with the Florida statutes and the policies proposed by the Foreclosure Task Force and adopted by the Florida Supreme Court in its amendments in early 2010. The ruling notes that the amendments include a list of reasons for the cancellation of

a scheduled judicial sale, and the stipulation that if a sale is canceled, the plaintiff then moves to have it rescheduled. The ruling concludes: "In other words, the supreme court, in adopting the [Form 1.996(b) entitled "Motion to Cancel and Reschedule Foreclosure Sale"], apparently did not contemplate that a judicial sale would be left in limbo."

The condominium association lawyers at our firm and throughout the state are going to be able to reference this decision to argue that community associations which are junior lien holders to foreclosing lenders are able to have the trial court set a sale date when the lender refuses to do so. We will continue to



monitor and write about important court decisions for Florida community associations, and we encourage those who are interested in this information to subscribe to our blog at www.floridahoalawyerblog.com. ■

Firm News

Seminars Available for South Florida Community Associations, Property Managers

Our firm has been conducting informative seminars for South Florida businesses and organizations since our inception in 1977, and the seminars that we are now making available as a complimentary public service for local community associations and property managers have proven to be among the most popular and helpful that we have ever conducted. We are now scheduling these and other seminars at properties throughout South Florida, and opportunities for additional presentations for local communities and property managers during the next several months are still available:

Condominium Board Member Certification – The state of Florida now requires that condominium board members become certified by attending an approved course or submitting written certification to the association secretary. Our newest seminar has been approved as a board member certification course, and it has recently been qualified for 2 hours of continuing education CAM credits for property managers.



Foreclosure Issues – Our seminar entitled "To Foreclose or Not to Foreclose, That is the Question" has helped scores of South Florida community associations to understand the issues that are at the heart of the foreclosure epidemic and how they can work to avoid some of the pitfalls

in the process.

Collection Strategies – Delinquent unit owners are causing severe financial disruptions at South Florida properties, and our seminar focusing on collections covers some very helpful and cost-effective measures that community associations can utilize to maximize the results of their collections efforts.

Service Animals – Our seminar focusing on the laws and regulations involving service animals for the disabled in Florida communities enables associations to move forward with confidence in developing and implementing their policies pertaining to these animals.



All of these seminars qualify for continuing education CAM credits for property managers, and they also help community association members and directors to gain a greater understanding of important issues in order to better serve their communities. We have a number of these seminars already scheduled for 2011, and we are pleased to offer them to additional South Florida communities and property managers in the months to come. To inquire about the possibility of arranging for one of our complimentary seminars, contact us toll-free at 1-800-737-1390 or via e-mail at info@siegfriedlaw.com. ■