



FRONT PAGE

CENTRAL FLORIDA

NORTH FLORIDA

SOUTH FLORIDA

SOUTHWEST FLORIDA

TAMPA BAY

PROPERTY FINANCE

MARKET REPORTS

GREEN REPORT

TRANSACTIONS

REINVENTING
THE WEBSITE

FREE WEB HOSTING

PLUS:
WEBSITE DESIGN
INTERNET MARKETING
E-MAIL MARKETING

'Vengeance foreclosures' unwise for condo boards

By: **Frank Silcox, LM Funding LLC**

There was a time in the not-too-distant past when a condominium association meeting involved discussions of a dirty swimming pool, a satellite dish on a balcony, and the maintenance schedule for repairing pot-holes in the driveway.

While those topics are certainly on agendas these days, it's more likely that the conversations center on the growing number of delinquent residents - the ones who aren't paying their assessments. Emotions rise and tempers flair as the reliable owners realize that in order to maintain services they will have to shoulder the burden for the ones who aren't paying.

At that point, one of the board members leans across the table and says, "Let's just foreclose on them." This is met with heads nodding in agreement as emotions take over during this contentious meeting.

We call this a "vengeance foreclosure." And while it may make some board members and residents happy, this action usually just deepens the financial crisis most condominium associations in Florida are experiencing. The bottom line is that unless a unit has substantial equity or a rich but recalcitrant owner, it is always best to allow the banks to foreclose and allow them to assume the financial obligations related to this legal action.

The association stands a much better chance of recouping more back-owed assessments and writing off less assessments when the bank forecloses. This assumes there is proper legal work and association representative negotiating with banks and not "giving in" to bank claims of owing the lesser of 1% of their mortgage or the last 12 months of assessments to the association, as per state statutes.

Our clients average more than 92% recovery of all owed assessments (before and after bank foreclosures), and only one in nine bank foreclosures result in the association recovering the minimum 1% of mortgage or last 12 months of assessments.

Let's take a look at some of the factors leading us to the conclusion that "vengeance foreclosures" are irresponsible and put an association at further financial risk.

- The cost to foreclose typically ranges from \$1,500 to \$2,500 in attorney fees.
- The foreclosure process can take from six months to a year or longer. During that time, assessments accrue and the association will be responsible for payment.
- When an association forecloses, it trades its lien on the property for the title. Here's the math for a hypothetical scenario in which the balance due was \$5,000 when the foreclosure process began. Add \$2,000 in legal fees and an additional \$2,000 in accrued fees, and the association is surrendering a lien that would otherwise total \$9,000.
- Once the association owns the unit, it is likely that renovation will be required so that it becomes rentable. This could range from paint and new carpet to replacement of appliances, counters, etc. - all coming at a cost.
- An association is a non-profit entity that will now be a landlord seeking profit from a rental property. It will be responsible for paying taxes on this income, thereby further reducing money recovered.
- There are costs associated with marketing property, which the association will have to assume. The current property management firm manages the condominium, not individual units. The usual fee for this is approximately 10% of the monthly rent.
- The association will have to maintain insurance on the unit and will be responsible for paying the property taxes. If the taxes aren't paid, a tax lien will be attached and the unit could possibly be sold in a tax deed sale. In other words, another person could take the title away from the association after significant cash has been spent on the unit.
- Finally, the association will have to pay the monthly assessments. The unpaid assessments are the reason emotions ruled and the association pursued the foreclosure action in the first place. Realistically, residents could end up in the same situation as before - paying assessments to make up the difference for those not paying. The major difference here is that the delinquent owner is actually the association. Just think how that would go over at the next meeting.

These are just some of the factors that should encourage condominium boards to act with restraint and not let emotions rule during these difficult times. It is much better to let the banks foreclose because, at the end of the day, the association is assured of collecting some assessments and may even collect all past due assessments in the event of a short sale, loan modification, or the bank fails to properly complete its foreclosure.

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