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Condo associations get creative in punishing delinquencies

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Fed up with the increasing number of slow-paying homeowners, condominium and homeowners associations across South Florida have become aggressive — critics say too aggressive — in their attempts to collect late fees.

Boards have unveiled a variety of strategies to pressure owners to pay up. Tactics include removing mailbox lids, which prevents postal workers from delivering mail to delinquent owners; deactivating entry keys to prevent owners from entering the community through the residents' gate; and posting lists of delinquent owners in public areas.

While some of the methods are considered illegal — such as tampering with mailboxes — some attorneys say other measures, such as restricting entry or cutting of cable services, are a gray area. And that is causing confusion among homeowners, tenants and associations.

For Daniel Cianciotto, an owner at the Canyon Lakes development of single-family homes in Boynton Beach, there is no confusion. Cianciotto owes his community association \$16,000, including about \$3,000 in attorney fees and \$3,000 in interest. He was notified that the association in December will deploy a transponder system to open the gate for residents. Delinquent owners won't be issued transponders until they are current on their fees.

Cianciotto and about 70 other delinquent residents will have to go through the guest lane and check in with a guard each time they want to enter the community.

The measure is "simply wrong and illegal," he said.

"I would totally understand if they restricted my privileges to the pool, the gym, the clubhouse, and I would abide by that," Cianciotta said. "But they haven't. What they are trying to do is prevent me from getting to and from my house. This is harassment. That's not right. I live there, and I have two little babies. If I need to get here in an emergency, I need to be able to get to my house quickly."

Cianciotto is a former member of the association's board. He resigned last year, when he fell behind in his association fees and mortgage payments, and his lender filed to foreclose. He said he considered it unethical to remain on the board.

Cianciotto said he has offered to pay the association \$650 per month until he catches up on the \$16,000 he owes, plus the \$325 HOA fees.

He said the association refused his offer.

Antonio Dicembrino, another Canyon Lakes homeowner, is also upset with the association. Dicembrino, who says he owns a mortgage company, fell behind on association payments when the residential market crashed. He said his business improved about a year ago, but hasn't been able to work out a payment plan with the association. "It's frustrating," he said.

John Tisci, the president of the association, did not return calls seeking comment. Tisci is facing foreclosure by his lender, SunTrust Mortgage, according to Palm Beach County records.

Ned Hartman, Canyon Lakes' property manager, did not return calls.

Cianciotto, who has started collecting signatures in support of a possible lawsuit against the association, said the guest entrance holds about 10 cars before traffic backs up onto Acme Dairy Road.

"With an average of two cars per house, between the 70 houses, at the end of the day you are potentially going to have about 140 cars trying to go through the guest gate," he said.

Is Canyon Lakes breaking the law or simply inconveniencing late-paying owners? It depends whom you ask.

Shane Weaver, an attorney at the Legal Aid Society of Palm Beach County, said restricting access to a resident's entrance crosses the line. "It's no different than saying you are no longer a homeowner. It seems pretty extreme. I don't see any legitimate purposes for it. They still have to come through one of the gates. Is the purpose to slow them down, make them go through extra procedures?"

Weaver said associations can legally restrict homeowners and tenants from common areas such as the pool, clubhouse, gym and tennis courts. But the law bars restrictions that "impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel."

Many associations argue they are not restricting access to the property if residents can still use the guest entrance.

It's a gray area that has yet to be challenged, said Lisa Magill, a community association attorney at Becker & Poliakoff in Fort Lauderdale.

"We are not going to have a definitive answer until we have a declaratory statement from the Department of Business and Professional Regulation or a ruling from the appellate court" when a lawsuit is filed, Magill said. The state's Department of Business and Professional Regulation oversees condo associations.

Magill said limiting delinquent owners' community access to guest entrances has been effective for some associations in spurring them to pay up. But she said she tells associations that no clear-cut law governs the issue and advises them of the potential risks.

Steve Osber, president of the Long Lake Ranches West Homeowners Association in Davie, said his neighborhood implemented the guest entrance rule earlier this year, and it cut delinquencies by half.

"There is only one lane for guests and one lane for residents, and our rule was if you don't pay your dues, you will have to wait in line to get into the community," Osber said. "And if a friend came over, or you were getting food delivery, someone from the delinquent home would have to come to get them from the gatehouse. As a result of that inconvenience, our collection on the bad debt started to turn around."

The Department of Business and Professional Regulation hasn't received any complaints about the community entry restrictions, said Alexis Lambert, the department's media secretary.

Prohibits Restricting Access

Florida Statute 718.303 prohibits associations from restricting access to a "common element necessary to gain access to the unit — like the main gate, which requires a pass code — utility services, parking spaces, or elevators," Lambert said. Where residents are told to use the guest gate, "it appears that the unit owners do have access to their units," she said.

Donna Berger, an attorney at Katzman Garfinkel & Berger in Fort Lauderdale who represents community associations, said that still leaves room for potential lawsuits.

Berger said she also has many clients who have restricted access at the main gate. "You don't want to get too

creative on these," she said. "You can't tell someone they can't park or enter the community."

The goal, she said, shouldn't be to punish the homeowners, but to encourage them to pay their fees.

Berger, who appears at numerous condominium-related events, said she has heard of associations clearly violating laws in their collection attempt.

The head of one association told her the residents were forming a "citizens barricade" to block delinquent owners from using certain areas in the community.

"To me, that sounds like a fight about to break out," she said.

Berger is also executive director of the Community Advocacy Network of Florida, which backed recently passed state bills that allow condo associations to restrict access to common areas for owners who delinquent 90 days or more.

She said the bills are "baby steps" in the effort to help cash-strapped associations collect money. She said the way the bills were written still allows room for a lot of confusion.

"We got what we wanted, but it was poorly drafted," Berger said of the legislation. She said her association and other lobbying groups intended to push for clearer, more detailed versions of the bills in the 2011 legislative session.

Meanwhile, associations should carefully evaluate their strategies to avoid crossing the line in their collection efforts, said Magill.

"Associations have got to use diligent efforts to collect assessments, but utilizing these mechanisms solely as punishment to delinquent owners is not a valuable use of your time, energy or resources."