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Condo associations gain, but new law no magic pill

BY MARILYN BOWDEN

New laws designed to give condo associations some clout in dealing with unit owners in arrears on fees and assessments are helping a bit, experts say, but are not always easy to enforce.

The laws empower condo associations to suspend a delinquent owner's right to vote, to revoke the right to use most common facilities and to collect rents from their tenants, said Roberto Blanch, a partner with the law firm Siegfried Rivera.

"Many associations have benefitted from implementing these remedies," he said. "But it isn't the magic pill everyone had hoped for."



Many associations benefit from the law, says Roberto Blanch, especially those with many amenities. Photos by Maxine Urdan

Given the ability to pay their mortgages or building assessments, but not both, Mr. Blanch said, "a lot of owners make a judgment call that they won't pay the assessments.

"The association would pretty much be left waiting while the foreclosure is going on and in most cases, they're having to write off a substantial amount of those assessments."

While owners may not care much about losing voting privileges, he said, being denied access to the gym, pool or card room has had an impact on collections in some condos "but not in condos where there are not significant amenities or a security guard to enforce the law."

Dennis Eisinger, a partner with **Eisinger, Brown, Lewis et al.**, said keeping owners more than 90 days delinquent from using amenities is tough.

"It can get confrontational," he said. "We're advising associations to send a letter threatening this but to avoid getting into confrontations. So it is not the best remedy, but it could be a deterrent to some degree."

At Carbonnell, a condo on Brickell Key, this strategy has been the most effective one, said Property Manager Kattia Ettus of Continental Group. Access to amenities is electronically controlled via key fobs, she said, which makes enforcement easier.

After sending delinquent owners letters that access would be suspended, she said, their key fobs were deactivated, and "that caused embarrassment, especially when it involved free valet parking for visitors. We were able to re solve a couple of situations.

"It's tough because we have a good relationship with our tenants, and we had to have tough conversations with them: pay up or we will foreclose on you. But we have a fiduciary and legal duty towards the association."

Four units are now on a payment plan, Ms. Ettus said, and the association has halted foreclosure proceedings. "We did move forward and foreclose on four units, three of which are now rented."

Problematic units at Carbonnell now owe \$45,000-\$50,000, she said.

Mr. Eisinger said the ability to collect rents directly from tenants of owners delinquent for more than 90 days has worked out well for his clients.

"We equip them with form letters," he said, "and the monies have been flowing in. About 70% of tenants are complying, which makes a significant dent in delinquencies.

"Some were initially concerned that there would be retribution from their landlords, but the law protects them from that."

Previously, Mr. Blanch said, associations could collect these rents only if the condo documents were amended, and many couldn't get the votes to do that, "but now by law everybody has this right, and in many condos it's been helping out."

Another legislative change makes a lender who takes title to a unit through foreclosure responsible for the lesser of 1% of the original loan amount or the last 12 months'-worth of fees and assessments, he said; previously it was 1% or six months.

But many lenders don't pay up, he said, preferring to pay late fees, interest, attorney's fees and costs after the unit is sold leaving the association holding the bag.

Mr. Eisinger said he expects litigation over this issue; "banks will say that the mortgage pre dated the effective date of the statute."

In the current self-imposed freeze by many lenders on completing foreclosures, "the red headed stepchild is community associations," he said. "The homeowner gets to stay in property and every month that goes by is another assessment that the association doesn't get."