



Condominium Law Q&A

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Columnist Note: The following was sent to me by a member of a municipal health board:

We have an on-going problem with a condominium in our city. Nine of the 12 units are in foreclosure, and monthly maintenance payments are not being paid. Therefore, there was no money to pay for garbage collection, and the city removed the dumpster. Two owners live there and have been taking their garbage with them and dumping it in other dumpsters. The tenants are evidently paying their rent but the unit owners are not paying their condo fees. The water has been shut off for periods of time. What can be done about this situation?
H.S. Deerfield Beach

Answer – I, too, am frustrated by the lack of appreciation by our elected officials, from the White House to the State House and every governmental entity in between, of the extent of the economic crisis plaguing our state and nation's shared ownership communities (SOC), and the potential, if left unabated, of turning whole communities into blighted neighborhoods, which will effect the economic viability of the entire city. To put this into perspective, there are slightly more than 85,000 governmental entities in the United States. There are over 300,000 community associations responsible for the operation of SOCs housing 24.5 million families, 60 million individuals. These community associations assess 41 billion dollars each year in order to maintain the shared amenities and to perform services once provided by governments;

waste management, road maintenance, security, parks, recreation, and social services. What is apparently not understood by our elected officials is that when unit owners do not pay their share of the maintenance, and foreclosing banks are not compelled to take title to units on which they hold the mortgage, or contribute toward the maintenance of the amenities which serve as the collateral for their loans, the burden falls upon the unit owners who are already paying their share, accelerating the pace of the economic downturn. How serious are the problems and why have the Florida Courts not been able to help? The following is the introductory comment from the Final Report and Recommendations on Residential Mortgage Foreclosure cases appointed by the Florida Supreme Court, which itself, is looking for answers to the crisis:

Picture this: the biggest road out of town. Now imagine it is rush hour. In a thunderstorm. Add that it is also a hurricane evacuation. A lane is closed due to construction delayed by budget impacts. Imagine the traffic jam.

The clearest description of the impact of the foreclosure crisis and the following recession on Florida's courts can be summarized by that picture. Imagine every car is a case. The General Jurisdiction Courts of our state have a certain amount of judicial infrastructure, just like there is a certain

amount of room on the road. There is a certain capacity of judges, of court staff, of clerks, of filing space, of hearing time, of courtrooms, even of hours in the day. Year in, year out, that capacity flexes with the caseload traffic to afford reasonable, prompt, efficient and fair justice.

The enormous increase in foreclosure filings have overwhelmed those resources in many circuits and represents a caseload traffic jam that the infrastructure cannot meet in a timely and efficient manner without support and traffic management. The Task Force has looked for ways to create off-ramps to get traffic off the road, in the form of managed mediation to resolve cases at the beginning instead of at the end; and in the use of expedited proceedings in cases involving vacant or abandoned property. The traffic left on the road must be coordinated to keep it moving safely and as swiftly as possible through the use of the limited case management resources available to a judicial system where every spare staff slot has already been cut. Without case managers to assist in keeping this traffic moving, the best options are standardization of procedures and form orders.

Further exacerbating the problem and threatening to derail the housing recovery are stringent lending guidelines now imposed by Fannie Mae and Freddie

Mac. In addition to refusing to approve loans in SOCs where delinquencies exceed 15%, regardless of the credit worthiness of the borrower, Freddie Mac has declared ineligible for financing any SOC in which the association is a party to current litigation, arbitration, mediation or other dispute resolutions, which involve the safety, structural soundness or habitability of the project. Fannie Mae goes a step further and declares ineligible an SOC in which the community association is a party to litigation. Exactly how are associations supposed to resolve construction defects, contract disputes, court enforcement and assessment collections? Some banks have taken to "redlining" communities, refusing to approve loans in areas of a city which the bank determines is "overbuilt" or "not secure." While I don't have all the answers, I do have a few suggestions, which thus far have fallen on deaf ears. First, banks that received TARP funds should be compelled to contribute toward the cost of maintaining the assets (shared amenities of the units), which collateralize their loans. Unit Owners, whose mortgages are restructured as part of the homeowner affordability and stability plan, should be compelled to bring their maintenance obligations current. And, small business loans, routinely made available at low interest rates in the aftermath of a natural disaster, should be available to SOCs experiencing economic stress. In 2009, the Florida Legislature failed to take action on several bills which would have provided some relief; with your help perhaps 2010 will bring a different result.

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