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Homeowner Associations in Need of Cash Sue Lenders to Force Foreclosures

Ben Solomon, an attorney with Association Law Group, left, and Jane Losson, a board member of the Vintage East Condominium Association, stand for a photograph in Miami Beach, Florida. Photographer: Mark Elias/ Bloomberg

Ben Solomon, an attorney with Association Law Group stands for a photograph while Jane Losson, a board member of the Vintage East Condominium Association, talks on the phone in the kitchen of repossessed unit in Miami Beach, Florida. Photographer: Mark Elias/ Bloomberg

Members of the Vintage East Condominium Association in Miami Beach got tired of waiting for JPMorgan Chase & Co. (JPM) to foreclose on unit 9, so they sued the bank in February to take control of the property.

In June, more than four years after the owner stopped making payments, a judge ruled that JPMorgan lost its claim to the $144,000 mortgage. The apartment is now on the market for $87,500, and the association may stave off insolvency with proceeds from the sale and a new owner who pays monthly dues, said Jane Losson, a board member at the complex. Four of the 11 other owners at the property are also behind on dues.

"I find it an outrage that the bank had decided to do nothing and the other owners got stuck," Losson, who's had her Vintage East condo since 2004, said in a telephone interview. "If we get this unit sold, we'll have a little money."

Financially troubled condo associations are taking banks to court as foreclosure delays enable delinquent homeowners to stay in their buildings for years, often without paying dues that keep boards running. The groups start by pressuring lenders to speed up home seizures and take over payment of the monthly fees. In extreme situations, like the Vintage East case, associations may force banks to give up rights to the property.

"The lenders are stalling foreclosures," Ben Solomon, the Miami Beach attorney for the Vintage East association, said in a telephone interview. "Our complaints say the banks abandoned their interest and either need to accept responsibility for the title or walk away."

'Mortgage Terminator'

Solomon, whose Association Law Group represented homeowner boards in 16 Florida counties with 15,000 delinquent owners, also won what he calls "mortgage terminator" lawsuits in claims against Bank of America Corp. (BAC), Citigroup Inc. (C), Deutsche Bank AG (DB) and Wells Fargo & Co. (WFC), according to court records.

About 60 million people, or one in five Americans, live in residences with condo or homeowner associations, according to the Community Associations Institute, a trade group in Falls Church, Virginia. States with some of the highest foreclosure rates -- Florida, Nevada, California and Arizona -- are also among those with the biggest share of populations in homeowner associations, said Frank Rathbun, spokesman for the 30,000- member trade group. The associations maintain residents' common interests such as parking lots, roofs, landscaping and trash removal.

"About 50 percent of our members said the housing crisis and economic downturn have had a severe or serious impact on their association," Rathbun said in a telephone interview.

Pushing Banks

About one in three Californians live in that state's 45,000 condo and homeowner associations, said Kelly Richardson, an attorney who specializes in homeowner association law.

"Banks have been slow catching up to reality," Richardson, with the firm of Richardson Harman Ober PC in Pasadena, said in a telephone interview. "When pushed, they'll step up to the plate, but you have to push them."

In Nevada -- the state with the highest rate of foreclosure filings, according to RealtyTrac Inc. -- delinquent homeowners owe associations about $150 million in back dues, said Steven Parker, president of Red Rock Financial Services, which collects debts for associations in Nevada and five other states.

"It's probably at least $1 billion for the whole country," Parker, whose company is a unit of FirstService Corp. (FSV), said in a telephone interview from Las Vegas. "Prior to foreclosure, we get almost nothing from banks. After the foreclosure, probably 30 percent of what we're collecting is from banks."

Drop in Foreclosures

U.S. foreclosure filings -- notices of default, auction or seizure -- fell to their lowest level in almost four years in July, as lenders and government agencies increased efforts to keep delinquent borrowers in their homes and paperwork delays slowed repossessions, RealtyTrac reported Aug. 11.

Filings have plunged for 10 straight months after state attorneys general began probing a practice known as "robo- signing," in which lenders and servicers pushed through default documents without verifying their accuracy. The decline has been steepest in Florida and other so-called judicial states that require courts to approve foreclosures.

The bank delays have left homes in the delinquency process longer. U.S. homeowners facing foreclosure averaged 587 days without making a mortgage payment in June, up from 251 days in January 2008, according to Lender Processing Services Inc. (LPS), a real estate information company in Jacksonville, Florida.

Florida Delinquencies

In Florida, where 14 percent of homes with a mortgage have a foreclosure notice, the average delinquent borrower hadn't made a payment for 719 days, or almost two years, LPS data show.

As of June 30, 18.68 percent of home loans in Florida were more than three months delinquent or in foreclosure, the most of any state and more than double the U.S. average of 7.85 percent, the Mortgage Bankers Association reported this week.

"Florida's numbers continue to drive national numbers," Jay Brinkmann, chief economist of the Washington-based trade group, said at an Aug. 22 news conference.

Banks often hold off on a foreclosure as long as they can to avoid paying dues, property taxes and occupancy costs, said John Rickel, chief executive officer of Association Dues Assurance Corp., a St. Clair Shores, Michigan, company that collects fees for community associations in 20 states.

"We probably have 100 to 300 banks that we're trying to collect from right at the moment," Rickel said in a telephone interview. "We're always 100 percent successful in collecting against banks because they do have the funds available."

Limiting Collections

Associations' rights vary based on state law. In Nevada, the groups have "super priority," which means they can collect up to nine months of back dues plus costs when a residence sells, even after a foreclosure. In other states, such as Arizona, homeowner associations can sue to garnish wages of delinquent residents, even if they have lost the property.

Florida law limits homeowner associations from collecting more than 12 months of back dues or 1 percent of the outstanding mortgage, whichever is less, after a foreclosure. That cap often doesn't apply to banks, said Frank Silcox, president of LM Funding LLC, a Tampa, Florida-based company that advances cash to condo associations in exchange for the lien rights on past- due accounts.

"Our attorneys look for a reason the foreclosing bank isn't entitled to the minimum," Silcox said in a telephone interview. "Nine out of 10 times, we get the bank to pay."

In one Miami Beach condo case, LM Funding collected $52,000 -- counting late fees, 18 percent interest and collection costs -- instead of about $3,000 the bank would have paid under the state limit, he said.

$148,000 in Dues

About 40 percent of LM Funding's collections come from banks, with the balance from individual homeowners and through short sales, when the lender agrees to sell a property for less than the mortgage balance, Silcox said.

Bonnie Jordan, manager of the Bermuda Dunes Condo Residence Association in Orlando, said LM Funding advanced her $150,000 and recovered an additional $148,000 in back dues, helping the 336-unit development pay its bills after owners of 115 units went into foreclosure.

"We had $375,000 in bad debt," said Jordan, whose complex charges monthly fees of $250 to $357. "LM Funding is recouping every dime for us."

While banks present a potentially lucrative source of delinquent dues, they're also a challenging target because they use legal tactics to prolong the foreclosure process, said Ellen Hirsch de Haan, an attorney with Becker & Poliakoff PA in Clearwater, Florida, who represents homeowner associations.

Canceling Hearings

"The banks are setting and then canceling hearings before the final judgment is eventually entered," she said in an e-mail, "then setting and canceling the sale date, then failing to record the certificate of title, thereby postponing the actual transfer of title to the bank for months, or even years."

Bank of America, with 1.1 million mortgages at least 90 days delinquent, addresses non-performing loans as fast as possible while complying with the law, Jumana Bauwens, a spokeswoman for the Charlotte, North Carolina-based bank, wrote in an e-mail. Bank of America loans in which borrowers were at least three months late were valued at $32.5 billion as of March 31, up from $26.97 billion a year earlier, according to Federal Deposit Insurance Corp. data compiled by Bloomberg.

“After exhausting all home-retention efforts, it is in the best interest of servicers and investors to move the foreclosure process along while abiding by Florida laws,” Bauwens said in the e-mail. “On average, homeowners are delinquent 18 months prior to a foreclosure sale. In judicial states like Florida, the process is longer.”

Bank Trustees

To compel banks to act, Solomon’s lawsuits start by suing the homeowner for unpaid dues as a way of seeking title to the property. Then he files a claim against the bank, contending the non-performing loan restricts the association’s right to sell the property because the mortgage is worth more than the home.

The bank defendant is usually a trustee for the loan that was sold into a mortgage-backed security, a legal structure that can leave the party responsible for a mortgage unclear.

Citigroup and Deutsche Bank declined to challenge lawsuits brought by Solomon because both banks were trustees, not the servicers of the delinquent loans, bank representatives said.

In March 2010, Citigroup lost a lawsuit over a Miami Beach condo with a $136,000 mortgage, according to court filings. Danielle Romero-Apsilos, a spokeswoman for the New York-based bank, declined to comment, saying Citigroup wasn’t the servicer.

Deutsche Bank

Deutsche Bank in September forfeited its right to a unit with a $149,300 mortgage to the Palm Aire Gardens Condominium Association Inc. in Pompano Beach, Florida.

“Litton Loan Servicing, the loan servicer for the loan, and not Deutsche Bank as trustee, was responsible for all foreclosure activity relating to the loan,” John Gallagher, a Deutsche Bank spokesman in New York, said in an e-mail.

Donna Marie Jendritza, a spokeswoman for Litton in Houston, declined to comment on the lawsuit, citing privacy restrictions. Litton, which Goldman Sachs Group Inc. is selling to Ocwen Financial Corp., wasn’t named in the complaint or other court documents.

“We sue whoever holds the mortgage,” Solomon said. “The bottom line is the bank had a loan and the mortgage got terminated.”

No Defense

Palm Aire Gardens also won title to a unit with a $184,410 mortgage after Wells Fargo failed to mount a defense because it no longer owned the loan, a transfer that wasn’t reflected in property records, said Tom Goyda, a spokesman. The bank would have defended the mortgage if it hadn’t sold the loan, he said.

The San Francisco-based bank had $9.6 billion in mortgages more than 90 days delinquent and $11.4 billion in non-performing mortgages on one- to four-family homes as of June 30, Goyda said.

JPMorgan, the lender in the Vintage East case, had $2.5 billion in second-quarter costs tied to faulty mortgages and foreclosures, it reported July 14.

“There have been so many flaws in mortgages that it’s been an unmitigated disaster,” Chief Executive Officer Jamie Dimon said in a conference call that day. “We just really need to clean it up for the sake of everybody. And everybody is going to sue everybody else, and it’s going to go on for a long time.”

Vintage East

Thomas Kelly, a spokesman for JPMorgan in Chicago, declined to comment on the Vintage East lawsuit or other cases in which the bank lost properties to homeowner associations.

The bank’s mortgage at Vintage East was on a studio apartment with $24,000 in unpaid back dues, said Losson, the board member. Other residents of the Art Deco complex, built in 1937 two blocks from the beach, loaned the association money to pay for roof and building repairs and wrote personal checks to cover insurance payments, she said.

“We’re still in precarious condition, but we can see our way out now,” said Losson, who estimated the condo association was owed $60,000 in delinquent dues. “We went up against JPMorgan Chase and we won. It’s a good story. There’s a way out of the morass.”