

Hi-Riser

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LENDERS COULD FOOT BILL FOR LATE FEES IF UNIT IS IN FORECLOSURE

By FALLAN PATTERSON

Three state lawmakers would like to see changes in law for condominium foreclosures, possibly putting lenders on the hook for past due assessment fees. All three are pushing for discussion at the upcoming legislative session beginning March 3.

"It's a death spiral ... spinning out of control," Miami Beach City Commissioner Jerry Libbin said. Currently, banks and lenders have the choice to pay the lesser of 1 percent of the original mortgage or the past six months of maintenance and assessment fees on a foreclosed property, of which most choose the former. A resolution that Libbin is proposing - along with attorney Ken Direktor of Becker & Poliakoff - would make lenders liable for all or most of the unit's accrued fees. State Rep. Julio Robaina, R-Miami, and Sen. Jeremy Ring, D-Parkland, each have bills to present in the upcoming session.

Robaina's bill would force lenders to pay associations for 6 to 12 months of past due fees when a foreclosure is filed, and then take a 10 percent discount off the existing six month or 1 percent requirement when the foreclosure is complete. Ring's bill would keep the current liability cap but would require banks to gain the deed within 12 months on rented or abandoned units.

Direktor said the accumulating fees could come from one of three places: the former unit owner, who is usually difficult to locate; other unit owners; or banks.

"This has a cascading effect. A smaller group of owners [pays] increasingly larger fees," he said.

Libbin, whose district includes about 41,000 condos, said he blames everyone involved for the current foreclosure crisis but said it shouldn't come down on the remaining unit owners.

"The residents today who are making their payments should be the last ones covering the debt," he said. "The little guys still ultimately hold the power, and the power is the vote."

Scott Jenkins, senior vice president and deputy director of government relations for the Florida Bankers Association, said the industry is trying to elevate the pileup of association finances, but it's taking time for the foreclosures to come through.

"There's this perception that banks are [deliberately] not foreclosing, and that's not the case," he said.

Jenkins also said he didn't want to speculate about whether such legislation would pass but that lawmakers should be careful.

"The condo lending market is very small, and we want to make sure we don't pass any laws allowing bad actors in," he said.

But Libbin said he disagrees, and that banks are waiting for the market to improve.

"In condominiums, the banks are getting bailouts from both ends," Direktor said. "Someone has to take the position of what is fair."