



A unit in Miami Beach's Bath Club, above, held by Wells Fargo racked up \$32,000 in unpaid condo dues, which were recouped after a foreclosure auction.

# Condo Boards Take On Lenders

*Chasing Unpaid Dues, Associations Are Foreclosing on Units Seized by Banks*

BY NICK TIMIRAOS

As more condominium owners default on home loans, the amount of unpaid dues owed to condo associations is piling up. To collect the arrears, some condo boards have begun foreclosing on units already seized by banks.

While it is common for banks to foreclose on properties, any entity with a lien on a property can do the same. That includes condo associations, which have used the tactic to collect from owners who don't pay dues—or to oust them.

Condo boards are looking for ways to pay for utilities and maintenance costs after monthly dues stop flowing from the owners of foreclosed properties, which increasingly include banks.

Banks that hold or service mortgages on which homeowners have defaulted don't owe condo dues until the bank takes title of a property. In Florida, where judges must rule on foreclosures, it can take 18 months or longer from the time a homeowner stops making mortgage payments.

Attorneys for condo boards claim some banks are intentionally slowing the foreclosure process to keep from forking out condo dues. In Florida, lenders are on the hook for as much as six months of late condo dues once they take title.

"It's become common practice to delay foreclosure," said Eric Glazer, a condo-association lawyer in Hallandale Beach, which is

between Fort Lauderdale and Miami. "Banks are forcing the associations to take them the distance."

In December, the condo association that governs the Porto Fino Gardens in Deerfield Beach recouped \$7,000 in unpaid dues after it forced the foreclosure sale of a bank-owned unit.

Last year, a unit in Miami Beach's Bath Club held by Wells Fargo & Co. racked up \$32,000 in unpaid condo dues. The board attached a lien on a unit and filed to foreclose in December 2007. The unit sold in July at a foreclosure auction for \$438,000; the condo association took its \$32,000 and gave the balance to Wells Fargo.

Others aren't waiting for banks to foreclose: They are taking title to units from delinquent owners and renting them to tenants until a bank initiates foreclosure.

The condo board that governs the Grand Condominium in downtown Miami has taken back 20 units in the 810-unit luxury development and collects a total of \$25,000 a month in rent. The banks that hold the defaulted mortgages will eventually file to foreclose on the units. But meantime, the condo association uses the money to pay for building services. "I've had some units for over 16 months and I haven't heard one word from the bank," says Brendan Grubb, the general manager for the building.

Lenders say they are caught between condo associations that want to speed through foreclo-

sure and political pressure to slow foreclosures as mortgage-servicing firms work to modify loans. "There's no generalized delay in foreclosure on either condominiums or anything else. Unfortunately, the courts are clogged with these things," said Thomas Cardwell, general counsel for the Florida Bankers Association.

It isn't always clear who is legally responsible for paying the condo dues. During the housing boom, mortgages were widely originated by a lender and sold to a Wall Street firm, which pooled the mortgage with others to create a mortgage-backed security that was sold in pieces to investors. Mortgage-servicing companies, which typically are units of banks, are hired to collect the mortgage payments from homeowners and distribute the proceeds to the various investors.

Wells Fargo, for example, says it isn't responsible for paying dues at the Bath Club condo because it serves as the trustee for the bondholders. The servicer is responsible for making payments, according to the bank.

The servicer for the Porto Fino Gardens unit that went into foreclosure was Countrywide Financial Corp., now part of Bank of America Corp. A bank spokeswoman said the bank takes reasonable steps to pay unpaid dues but says some foreclosures arise when notices aren't addressed to the proper department.

"If court action becomes the only means of recovery, the com-

pany has to evaluate the amount of loss...against the cost of litigation to challenge the foreclosure sale based on lack of proper notice or other defenses," spokeswoman Jumana Bauwens said.

The condo association for the Carlisle on the Ocean Condominium in Surfside, just north of Miami Beach, initiated foreclosure proceedings last month against a unit that went into foreclosure two years ago. Countrywide also is the servicer. The association said it is owed more than \$18,000 on that unit, which is one of 23 bank-owned units against which the association has filed liens since late 2007.

Conditions at the Carlisle have deteriorated rapidly. More than 70% of the units have been in some stage of foreclosure. In March, the town of Surfside threatened to shut off water and garbage collection after the complex owed the city some \$70,000. It hadn't paid the sanitation bill in three years and was nearly two years late on its water bill. The city is negotiating a plan with the association that will allow it to repay the debt over 18 months.

With empty pockets, more condo associations are forced to raise homeowner dues. "We call it the downward spiral. How many of those owners are actually going to be able to pay an additional assessment?" says Kristy Phillips, a condo-association attorney in Hallandale Beach. "They're picking up the pieces for the banks."