

MIAMI TODAY

WEEK OF THURSDAY, SEPTEMBER 2, 2010

WWW.MIAMITODAYNEWS.COM

TODAY'S NEWS

Condo fees law drives some associations to court to collect

By YUDISLAIDY FERNANDEZ

Two months after a major, long-sought state law gave community associations more power to get delinquent property owners to pay their dues, results are mixed: some owners are paying up, but others are driving associations to pursue legal action — at a cost.

The legislation allowed associations to collect fees directly from renters of units where the owner owes fees until the total balance is paid. It also denies those owners or tenants of units with unpaid assessments of three months or more rights to use the property's common areas and facilities and removes their association voting rights.

These delinquent owners or renters still can enter and leave the building, elevators and parking, and utilities can't be shut off, said Roberto Blanch, shareholder with Coral Gables-based law firm Siegfried, Rivera, Lerner, De La Torre & Sobel, which represents more than 500 condo and homeowner associations in South Florida.

The law "is working in many condos but is not going to work in some," he explained, "because if you are a guy not paying assessments and you don't care about the rights to use common areas and you are still able to park and come into the building and use the utilities, there is no incentive."

Condo and homeowner associations around the state are struggling financially, as many units face foreclosure and delinquent owners aren't paying monthly fees. In some properties, associations have hiked assessments to make up for the loss in collections from those who stopped making payments.

Tenants who don't want to lose access to amenities like the gym and pool are taking notices more seriously and working with the association to pay them the rent directly, said John R. Fernandez, a licensed community association manager who serves as regional director for The Continental Group.

"Tenants are being more proactive now and getting themselves involved to make sure they don't lose access to the

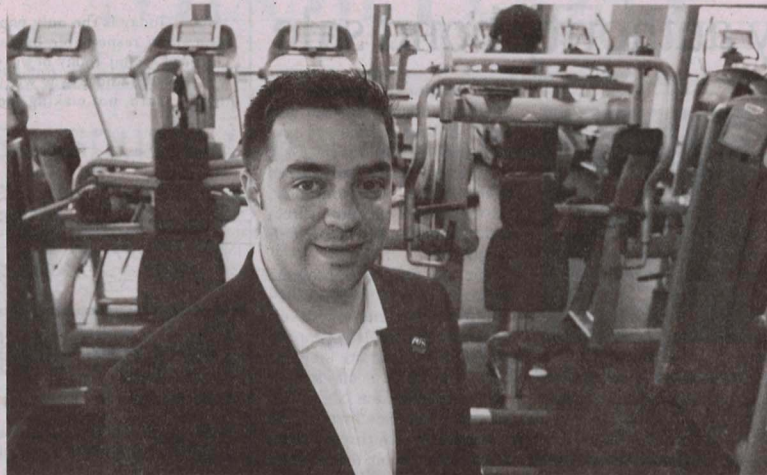


Photo by Marlene Quaroni

Tenants who don't want to lose access to the gym or pool are taking notices more seriously, says John Fernandez, a licensed community association manager and regional director for The Continental Group.

gym, spa," he said.

Mr. Fernandez oversees about 1,200 units in the company's portfolio, including Continuum South Beach, Murano at Portofino also in South Beach, Grovenor House in Coconut Grove and Epic Residences in Brickell.

"If you are paying \$3,000 to \$8,000 of rent, if you are paying all this money, you want to be able to use those amenities," he said.

Before, condo associations couldn't approach renters in units belonging to landlords behind on their fees and intercept rent payment to cover outstanding dues.

In June, Gov. Charlie Crist signed the new law, packed with measures community associations had been seeking for years, after dozens of community association-related bills had failed in the last couple of years.

The act has given associations the tools to get owners to pay their fees, which they need to collect to pay for property expenses such as landscaping services, utility costs for common areas, and maintenance of amenities like gyms and pools.

"They (the associations) make tenants' and owners' daily activity more uncomfortable. They can't get into certain areas of the building. They have to go



'Let's say you get the tenant out of the unit, you don't have the right to put in a new tenant.'

Roberto Blanch

out of their way to go from point A to point B, so they are deciding to pay," Mr. Fernandez said.

Delinquency rates vary depending on the property, he explained, but in some it ranges from 20% to 50% and even 60%.

As a first step to collect, associations are sending reminder letters followed by demand letters to get tenants to pay them the rent, but some aren't listening.

"Some unit owners tell the tenants not to pay the associa-

tion," said Mr. Blanch, who represents associations in neighborhoods like Brickell, Key Biscayne and Kendall. "It's not unheard of for tenants to get nervous when they get the letter."

Legislators included wording in the law that specifies that tenants who pay rent directly to the association to cover past-due fees are not in breach of the lease agreement, protecting them from eviction by the unit owner.

Steve Magenheimer, condo association treasurer for the 600-unit Kings Creek South in Kendall, said some tenants didn't respond to his association's first or second letter demanding pay and warning of possible eviction.

This has led the association to pursue eviction suits against two tenants, he said, a process that can cost about \$750 in legal fees — and more if it's contested.

"We could file (evictions) for all of them, but that is expensive," he said. "We want to use those examples to show others that they have to pay."

Mr. Magenheimer was part of a group of residents who took over the association's board of directors in 2005 because they were dissatisfied with former leadership. A new man-

agement company was hired and about \$2 million was invested to make needed improvements to the 15-building gated community.

At Kings Creek, he said, about 15 units are occupied by renters where owners are pocketing the rent money and not paying their fees.

"Some of these units have unpaid assessment dues of about \$14,000," he said.

Before the law was enacted, the association was looking into doing a receivership but it didn't work out, he said, making the law's passage timely because it offered a more cost-effective option.

Mr. Blanch agrees eviction can be costly for already cash-strapped associations.

"We ourselves have had to change our approach with clients because we know they are spending a lot in attorney fees to evict," he said. "What we do is provide our clients with a fixed rate."

He didn't specify the firm's fixed rates. But he said typically court fees for evictions start at \$500-plus, with complications and length of case hiking the cost. In such cases, he added, it could get into the thousands.

The other question some boards face, he said, is whether it's worth it to evict the tenant.

"You are going to have to pay for the cost to do that," he said. Also, "let's say you get the tenant out of the unit, you don't have the right to put in a new tenant."

Because the law has been in effect only two months, those who aren't making payments today could risk losing access to amenities and, in some cases, eviction once they reach the three-month mark.

It will take time to really see the effects of the measures, Mr. Magenheimer said, and whether it really helps struggling associations get delinquent owners to pay their dues in order to have the funds needed to properly run their communities.

"It's too early to tell if it's going to help," he said. "It's an additional tool. As time goes on and we become more familiar with it, we'll know."