FEATURE

| SATURDAY, MAY 1, 2010

The Condo Conundrum

By MAUREEN NEVIN DUFFY | **MORE ARTICLES BY AUTHOR(S)**

Lenders reluctance to pay overdue condo fees is merely postponing a new wave of U.S. foreclosures.

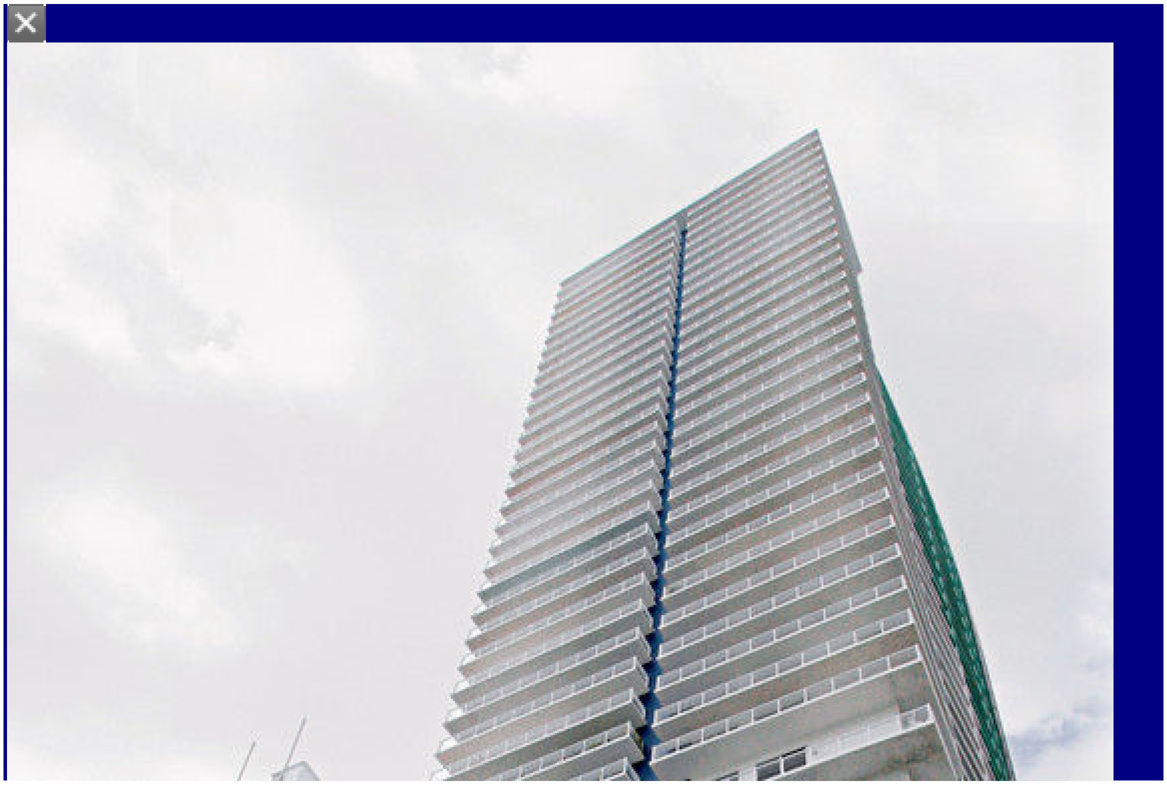
- Article
- Comments (3)

IF A CONDOMINIUM OWNER is behind on his mortgage, he usually isn't paying his condo association dues either. And that, oddly, could be helping to prevent the already roaring rate of U.S. condominium foreclosures from becoming even worse.

Condominium preforeclosure actions -- the legal maneuvers that must be completed before a property can be seized -- rose 37% last year, to 188,617, from 2008's level, compared with 32% for all homes, according to RealtyTrac, a research firm. But completed condo foreclosures fell 9%, to 66,506, while completed foreclosures for all types of U.S. dwellings were up 7%. In this year's first quarter, preforeclosure filings came in at 41,435, versus 58,455 in the comparable 2009 stretch. And the number of units foreclosed on rose to 18,334, from 17,448. But the gap between the preforeclosure filings and completed foreclosures remains sizable.

Joe Skipper/Reuters

During the boom, speculators bid up prices of Miami condos. Many later were foreclosed on.



IN PART, THIS REFLECTS AN overwhelmed court system, federal pressure to get lenders to work with borrowers and the willingness of those lenders to allow short sales -- those made at a price lower than what's owed on a condo loan -- to keep from adding to the number of deadbeat properties on their books. But lenders' reluctance to pick up condo-association fees also plays a role.

These fees, which can range from $1,200 to more than $12,000 a year, depending on factors such as a property's location, original sales price and amenities, pay for the upkeep of buildings and grounds. If one owner doesn't pay, his neighbors must ante up if they want to keep maintenance and repairs at the budgeted level.

In the most troubled markets -- think Florida, California, Nevada, Arizona and parts of the Midwest -- some condos are three years in arrears on association fees.

When a bank takes ownership, it risks having to pay those fees, plus any that accrue until it resells the unit. Fourteen U.S. states now have "super lien" laws mandating that a lender pay at least part of the owed dues when it seizes a property. Ohio legislators are even fighting to make association liens in their state superior to first mortgages. In states where there's no law mandating payment, condominium associations must sue the lenders to recoup any dues shortfall, and they're not always successful.

For lenders, the simplest way to delay -- or avoid -- paying the dues is by postponing foreclosure until a buyer turns up who's willing to shell out the accrued dues if the property is priced low enough. But in the current market, especially in the worst-hit areas, that can take a very long time.

Says Andrew Fortin, a vice president of the Community Association Institute, a national organization that represents 30,000 single-family-home and condo associations: "A lot of banks just aren't foreclosing, but leaving people to live in their property two years without making payments to their associations or on their mortgages."

Pompano Beach, Fla., lawyer Peter Wallis, who often represents condo associations, says this is understandable because the lenders "aren't really getting hurt" any more than they would be otherwise by delaying foreclosures, but that the associations are "getting mauled."

Lenders are reluctant to discuss the issue; none would comment for this article. However, Anthony DiMarco, executive vice president of government affairs for the Florida Bankers Association, says: "Bankers don't want to foreclose. They'd rather keep people in their homes." DiMarco blames backlogged foreclosure cases -- which he says total a staggering half-million in the Sunshine State alone -- for the delays. He downplays any reluctance to pick up association dues as a factor, although Florida is among the states with a super-lien law.

The dues problem has grown as condo prices have plummeted from their 2003-2006 bubble levels and as condo mortgages have become tougher to land, especially in developments with a large number of foreclosures. (Fannie Mae and the Federal Housing Administration won't deal with loans made for purchases in communities with 15% of units 30 days behind in association dues.)

While the rate of decline for condo prices seems to be slowing, it hasn't bottomed. In March, the median U.S. condo sale fetched $170,600, 0.7% below the level a year earlier, according to the National Association of Realtors. In March 2005, while the housing bubble was intact, the nationwide median was $223,900, almost 24% higher. And prices in some condo-glutted areas have fallen much more. In Las Vegas, a low-end condo in an undesirable area might fetch just $10,000 at auction, while it could cost a bank more just to foreclose on it. That's another inducement for mortgage holders to tarry, in the hope that prices will rise as the economy heals.

ALL THIS MIGHT BE HOLDING down the foreclosure rate for all U.S. homes, which nonetheless hit a record in March, when one in every 351 housing units was subject to a foreclosure filing, according to RealtyTrac. But lenders can't delay foreclosures indefinitely. Says Rick Sharga, RealtyTrac's senior vice president: "We could be looking at the calm before the storm in foreclosures. Since this cycle started in 2006, we've seen the credit histories of some five million homeowners effectively trashed, taking an entire tranche of potential next-home buyers off the market."

The association-fee problem is just one more challenge that market will have to overcome.

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