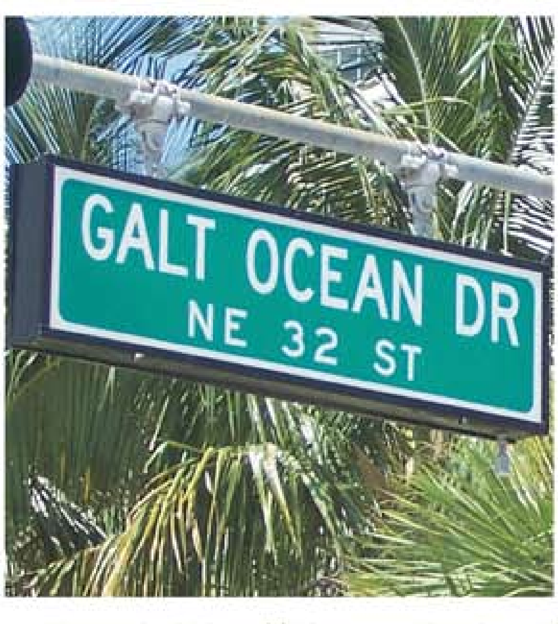
GALT MILE NEWS

JANUARY 2011

THE OFFICIAL NEWSLETTER OF THE GMCA



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THE GALT MILE NEWS

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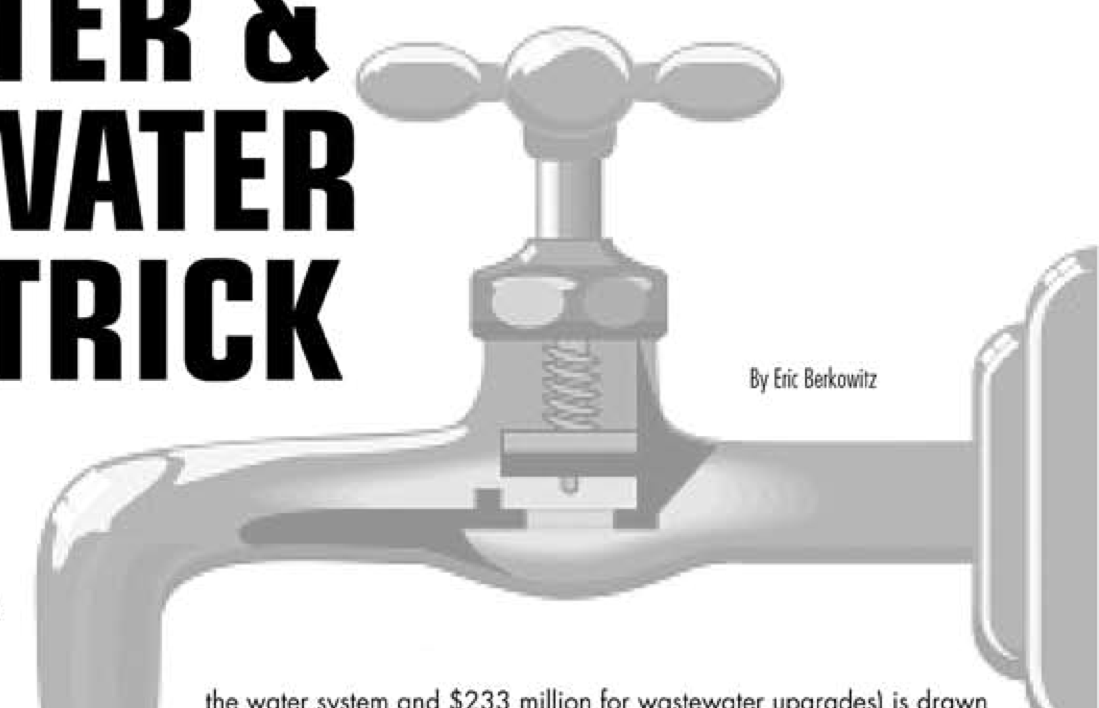
THE WATER & WASTEWATER MAGIC TRICK



By Eric Berkowitz

In July of 2009, the City of Fort Lauderdale announced a new set of water and sewer rates for municipal residents. When questioned about its impact on associations, most City officials automatically parroted a statistical assertion drawn from the City web site "The rate changes will result in an increase of approximately $3.15 per month for 72 percent of single family residential customers." Since association homeowners are obviously grouped with the other 28%, Galt Mile Managers, association Board Treasurers and Finance/Budget Committee members reasonably surmised that their share of the burden would be somewhat larger. When members of the neighborhood association's Advisory Board sought to learn how the new rates were applied to the City's water & sewer customers, they were assured that "The rates for single family homes and multi-family residences are identical."

Over the next few months, the water & sewer invoices received by associations shot through the roof. After reviewing the new rate schedule, Advisory Board members discovered provisions in the formula that unfairly burden association members with huge increases spared to single family homeowners. To further cloud matters, the new association water & sewer invoices were incongruent with the new rate schedule. When building managers called the Water Department to request assistance with reconciling unintelligible invoices, not even departmental supervisors were able to decipher the seemingly arbitrary charges. For several months, customer service requests were met with promises that "someone" would call back.

In 2002, Fort Lauderdale embarked on a mammoth improvement project called "Waterworks 2011". While the program was expected to modernize the City's water and wastewater infrastructure over a period of 10 to 20 years, a majority of the upgrades were targeted for completion by 2011, hence the snappy moniker. Organized as an enterprise fund, the project doesn't feed on tax dollars. The $557 million initially budgeted ($323 million for improvements to the water system and $233 million for wastewater upgrades) is drawn from revenues raised through bond issues in 2003, 2006 and 2008. In May 2005, the program budget was hiked to $689 million. Due to extraordinary construction cost increases in 2007; the budget was increased to $768 million.

On July 21, 2009, while city residents were preoccupied with impacts of the newly proposed municipal budget, the City Commission approved a surprise plan to boost income from water and sewer services by 20%. The huge increase wasn't required to maintain funding levels for these services. Since revenues paid into an enterprise fund can only be used for fund expenses, the new cash bucket could not be used to offset deficits elsewhere in the City budget. The anticipated income wouldn't be spent on fund expenses and couldn't be spent on anything else. Its sole purpose was to inflate a profit bubble large enough to impress investors.

For years the City waged marginally successful campaigns promoting water conservation as critically necessary for the environment and the family budget. Finally, the recession prompted consumers to carefully monitor utility meters and conserve electricity, gas and water. Since funding for the whopping Waterworks 2011 project was dependent on how attractive Fort Lauderdale's water business was to potential bond purchasers, when the City's conservation efforts began to lower consumption, municipal bond consultants warned that the drop in business would sour future investment. To engineer the blue chip profit margins required to intoxicate prospective bond investors, the City Commission enacted a strategy that financially penalized consumers for conserving water.

A series 2008 Water & Sewer Bonds Feasibility Report recommended that the City perform and implement a rate study to "stabilize" funding for Capital Improvements. Awarded the project, the St. Augustine firm of Burton and Associates completed the Final Draft Report on May 13, 2009. It was sent to environmental engineers Milian, Swain & Associates, Inc. to vet its environmental soundness and to Fidelity Financial Services to insure that it would adequately enhance enterprise fund profits. On July 9, 2010, Frank Hall of Fidelity Financial Services wrote to Director of Public Works Albert Carbon "The City of Fort Lauderdale proposed utility rate structure will be viewed favorably by the rating agencies, assuming that there are no significant operating expenses beyond the amount previously projected."

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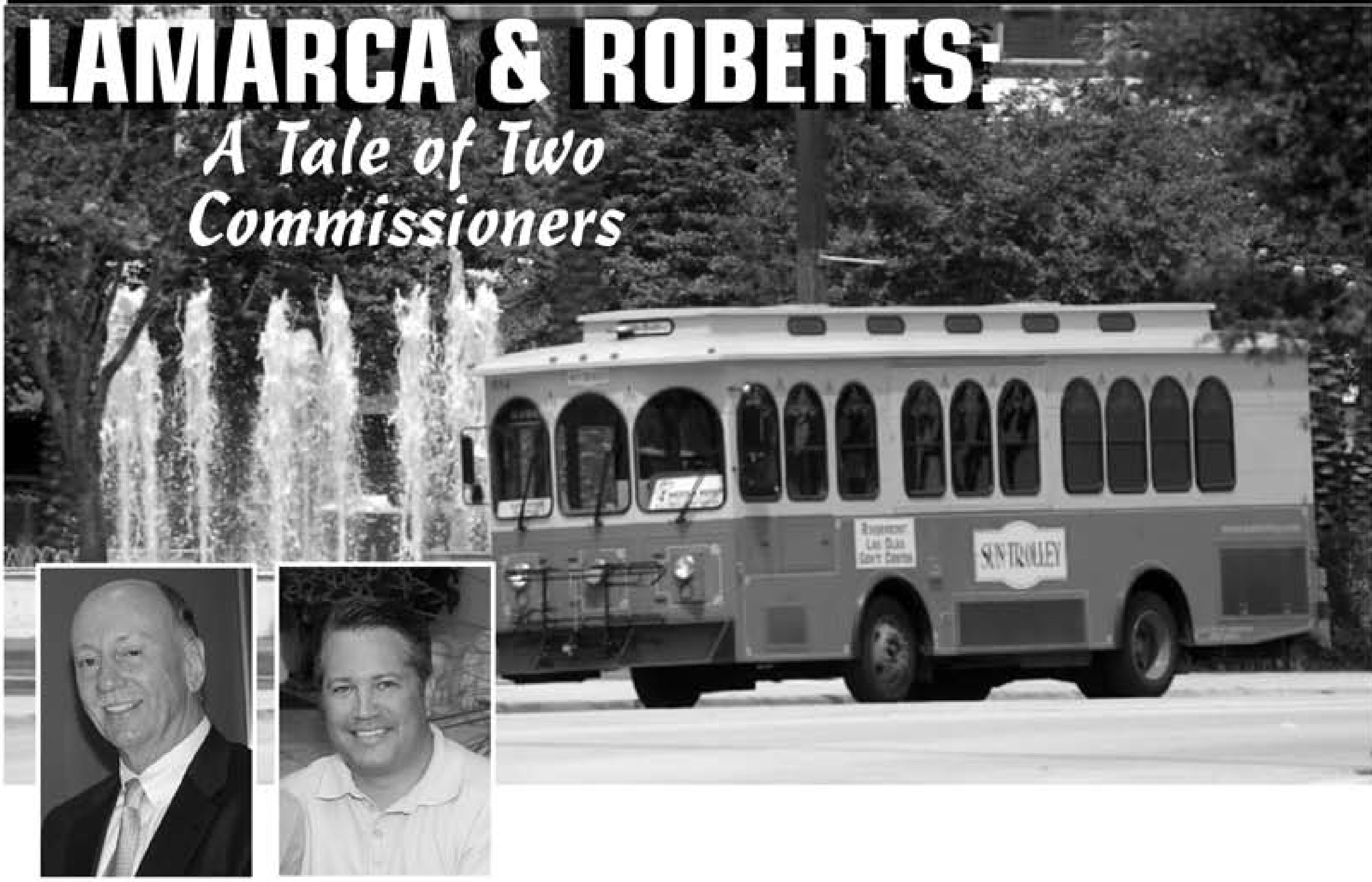
LAMARCA & ROBERTS:
A Tale of Two Commissioners



By Eric Berkowitz

At the December 16, 2010 GMCA Advisory Board meeting, the Galt Mile's two local Commissioners reviewed neighborhood concerns with association officials. Newly elected County Commissioner Charles "Chip" LaMarca, returning to the Galt Mile for the first time since making a campaign stop at the September 16th Advisory Board meeting, clarified some of his initial performance priorities as our District 4 Representative to the County Board.

City Commissioner Bruce Roberts, nursing his right arm after undergoing shoulder surgery, gave brief updates about progress toward next year's budget, neighborhood landscaping improvements, selection of a new City Manager and the Centennial Celebration before fleshing out a report about the Sun Trolley's Galt Ocean route. Commissioner Roberts was accompanied by FLPD District 1 Acting Major Michael Gregory.

After formally introducing himself as our new voice in Broward Government Center, Commissioner "Chip" LaMarca declared an unwavering commitment to security issues. He opened by exclaiming "My views about security are based on the fact that if people don't feel secure, nothing else we do will really matter." LaMarca explained that since he grew up in Fort Lauderdale, he has a unique bond with the City's communities. He also served as a City Commissioner in Lighthouse Point while operating a local construction business specializing in Turnkey Power Generation and Fuel Systems. From these varied perspectives, he observed that residents and visitors who fear for their personal safety are largely unable to appreciate the District's many assets.

Describing a longstanding relationship with Broward Sheriff Al Lamberti, LaMarca said "I have always been a friend and supporter of our Sheriff. I will see to it that Al Lamberti has whatever he needs to guarantee Public Safety. We are fortunate to have such a committed Sheriff." While a majority of the Galt Mile's security needs are met by our Security Patrol and the Fort Lauderdale Police Department, the Broward Sheriff's Office protects our northernmost members in Lauderdale-by-the-Sea (Caribé, Fountainhead and Plaza East). Although he and Lamberti share Republican credentials, LaMarca held throughout his campaign that Broward's Sheriff should not be a partisan position. He also favors a non-partisan County Commission.

Whenever he campaigned on the demoralizing toll exacted by the corruption of Broward Commissioners and School Board members, LaMarca's demeanor visibly soured. He promised Advisory Board members that he would pursue a "no tolerance" policy for public officials who abuse their office. Taking a cue from Property Appraiser Media specialist Bob Wolfe while he served on the Broward County Ethics Commission, LaMarca insisted "Let them do something else." Two weeks before throwing his hat into the Commission race, LaMarca wrote an article entitled, "It's Time to Clean It Up!" It featured a memorable corruption cure originally prescribed by Mahatma Gandhi, "You must be the change you wish to see in the world."

LaMarca announced that he is currently working with his Commission peers to tailor an environmental agenda, specifically with the Commission's primary environmental proponent Kristin Jacobs. The Commissioner easily segued to Beach Renourishment. Expressing concern about recent attempts to usurp the sand earmarked for Segment II beaches in Fort Lauderdale, LaMarca remarked "While I'm quickly learning a great deal about this project, I do know that the delays are inexcusable."

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Basing their plan on the Burton and Associates study, the Commission enacted City Ordinance C-09-21, amending the water, wastewater and stormwater rate schedule. It was initially increased by 10% (5% on August 1, 2009 and 5% on August 1, 2010). Usage rates were also reorganized, that is to say, the financial burden was redistributed over the customer base. Lastly, a list of bogus new charges was hatched. Since the new rates alone wouldn't adequately fatten the fund's bottom line, the Water Services Department would also bill customers for water they didn't use and services they didn't receive.

Since explaining that the painful boost to water & sewer charges was a gift to investors would spell political suicide for the "messenger", officials instead focused on how the financial burden would be equitably distributed. To demonstrate that fiscal battery was uniformly administered to the 250,000 water & wastewater customers in Fort Lauderdale, Port Everglades, Lauderdale-by-the-Sea, Oakland Park, Sea Ranch Lakes, Wilton Manors, parts of Davie and Tamarac and parts of unincorporated Broward County, the new fixed rates for single and multi-family homes were made identical. Unfortunately, how they are applied was not.

The rate ordinance unabashedly punishes residents living in vertical communities. Although increases to both fixed and commodity charges for water and wastewater were ostensibly applied across the board, the new formula used to assess block rates (1000 gallons per month multiplied by the number of units) is designed to financially bloodlet customers in common interest associations. An association unit owner whose monthly usage exceeds 1000 gallons will pay more than twice the amount billed to single family homeowners for the same water consumption.

For example, the block rate for a single family homeowner who uses 2000 gallons per month is $1.51. A condo owner who consumes the same 2000 gallons is billed at a block rate of $3.36 or 123% more than the single family homeowner. The disparity continues when these 2 homeowners dump their used water. The single family homeowner is charged a sewer rate of $2.68 for draining off the 2000 gallons. The comparable block rate for our condo owner is $5.93 or 122% more than the single family homeowner. When applied to the 7000 monthly gallons used by the average customer, the disparity seriously cuts into the family food budget.

The source of this skewed cost distribution seems to flow from how the City interpreted the Burton and Associates study. The study's rate schedule is based on the differing usage estimates for single family and multifamily residences. When the schedule was vetted at the July 21, 2009 Regular Commission meeting, city staff supplied Commissioners with several support documents. The one entitled "Additional Background Information" contained definitions for terminology used in the study. It states "The word 'multifamily' has an expanded use in the revised ordinance. It is replacing the words 'duplex' and 'triplex'. The word is defined as more than one dwelling unit."

The multifamily residences referred to in the ordinance were actually "duplexes" and "triplexes" in the study. By using "duplexes" and "triplexes" to calculate multifamily usage estimates, the ordinance ignores the significant difference in how "duplexes" and high rise associations with hundreds of homeowners consume water and generate drainage. For instance, while a 200-unit association lawn is somewhat larger than the average duplex property, it uses a small fraction of the water required to maintain the 100 lawns that surround 200 duplex homeowners. This discrepancy is compounded when applied to the water used to fill swimming pools (100 duplex pools vs. 1 association pool) and cool HVAC systems.

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Another unprecedented water & sewer cost that unfairly impacts association unit owners is called the "Service Availability Charge". Customers who discontinue active service incur a monthly charge for the "theoretical availability" of water and/or wastewater service to their property. Since the City incurs fixed costs to maintain a degree of service readiness for a property, they are charging residents for the opportunity to buy water as an offset to this outlay. Snowbirds that simply turn off their water are charged $6.92 a month for sewer, and $4.71 a month for water. To escape this charge, potential water consumers can no longer simply stop using water; they must remove any toilets, sinks, faucets, spigots and water meters from their property. If they decide to reinstall these fixtures, they are also charged $150 to reconnect. Implementing this thinly veiled tax is comparable to a local restaurant sending out monthly bills for the blue plate special to everyone in the neighborhood – solely because they have stomachs.

The City asserts that its rationale for this twilight zone fee is viable given the many conduit and drainage elements that carry water to and sewage from single family homes and storefront merchants. In contrast, for the 200 to 400 unit owners in a high-rise common interest community, the City must only maintain the two or three water and drainage lines that service the association building. Once the lines enter the structure, maintenance responsibility is assumed by the association and paid for by the unit owners. Nevertheless, the City bills the association for these phantom services based on the number of units, not the number of lines they must maintain. Additionally, since the water and wastewater service to our high rise buildings is always active, charging out-of-residence snowbirds an "opportunity fee" to offset a non-existent "readiness expense" for their individual units is a bald faced rip-off.

When members of the Galt Mile Community Association discussed these inequities with City Commissioner Bruce Roberts at an Advisory Board meeting, he offered to bring several water department specialists from Public Works to the next Presidents Council meeting, affording association officials an opportunity to air their concerns to a presumably authoritative resource. At the subsequent meeting, when queried about the disparity in how the block usage rates were applied to single family homes and associations, the two purported experts from Water Services seemed confused, and enigmatically declared that "the program's fixed commodity rates were the same for every homeowner." When several follow-up attempts to rephrase the question were deflected with the same irrelevant boilerplate response, a frustrated association official cynically asked if these "specialists" really didn't understand the issue. Finally, one of the bureaucrats admitted to deliberately dodging questions about the program's general inequities and offered instead to visit privately with any association and fully investigate its questionable bills.

When Commissioner Roberts noticed that their intransigent refusal to address the block rate disparity was fueling member frustration, he suggested that attendees accept their offer and "see if they can't clear up this confusion for each individual association." Absent any alternative, skeptical association officials agreed to temporarily suspend suspicions inflamed by the awkward dog and pony show until they could meet privately with the consulting staffers. In the following months, they did help several associations correct their jumbled and inaccurate water & sewer invoices. Not surprisingly, the Water Services personnel never addressed the program inequities.

Over the past year, the neighborhood association was preoccupied with successful campaigns to enact legislative relief from the sprinkler mandate, rescue the Galt Library from Broward's budget axe, kick start the stalled beach renourishment project, insure community input for FDOT's planned resurfacing of A1A and a dozen other community challenges. Of necessity, concerns about the skewed water & sewer rates were temporarily placed on hold.

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He promised to play a leading role in facilitating repairs to Broward's severely eroded beaches, stating "I understand the importance of our beautiful beaches to every County resident. I intend to reach out to our new Congressman, Mr. West, and work together to insure that our beaches are healthy."

Before addressing the Board, LaMarca discussed some of his predecessors and the recent election. He characterized the negative campaign ads as an unfortunate consequence of a heated election race, exclaiming "I don't have any hard feelings against Mr. Keechl." Identifying former Commissioner Jim Scott as one of Broward's most historically productive County Commissioners, LaMarca mentioned that, like Scott, his status as the County Commission's only Republican carries a unique responsibility.

When the County transacts State business, his fellow commissioners will have to depend on LaMarca's Republican credentials to promote County concerns in Republican Tallahassee. While Chairing the Broward County Republican Party from February 26, 2007 until his recent run for the District 4 County seat, LaMarca cultivated statewide ties that are unique to the Broward Board. Issues such as Land Use sovereignty, the County's legislative agenda and State appropriations for Broward projects will unquestionably land in LaMarca's lap. He commented "Although I will have to spend time in the State Capitol fighting for the County, my primary allegiance is to you."

Having updated the Board, LaMarca invited questions from the floor. One Board member inquired, "Ken Keechl sat on the Boards of several County organizations. Will you step into those positions or explore other opportunities?" Although he expressed an interest in the Broward Alliance, LaMarca said that he hadn't as yet been officially appointed to any of the organizations that reserve Director Posts for Commission Representatives. After listening to his Broward counterpart, City Commissioner Bruce Roberts informed LaMarca that he and Keechl shared seats on the Board of the Downtown Fort Lauderdale Transportation Management Association (DFLTMA). Explaining that they worked together to help rescue the Sun Trolley, Roberts invited LaMarca to join him in that endeavor. Confirming an avid interest in the County's transportation hubs, LaMarca assured Roberts that he would investigate TMA participation.

Taking the baton from LaMarca, District 1 City Commissioner Bruce Roberts delivered his Municipal report. Roberts told the Board that a Search Organization has been chosen to guide the selection of a new City Manager (MBN Services, Inc., a California corporation authorized to transact business in the State of Florida as Bob Murray & Associates Inc.). Briefly touching on next year's budget, he confirmed that recommendations from the Budget Advisory Board would be incorporated into the City Commission's Annual Budget requirements. He also invited members to help with the Centennial Celebration by identifying individuals who've made notable contributions to the City. Finally, he reached across the table to recognize Commodore resident Jose "Chepo" Vega for the many neighborhood landscaping improvements on which they commiserated.

Roberts described a unique survival opportunity for the Sun Trolley's fiscally embattled Galt Ocean Route. A few years ago, the Galt Ocean route was extended past its original Coral Ridge Mall turnaround site to bring patients to and from Holy Cross Hospital. Roberts said that the Hospital's Administration is very pleased with the arrangement and has since been one of the Sun Trolley's staunchest supporters. However, to insure the route's continued financial viability, the TMA was considering a new operational formula. Although designated as a local community bus service, the Sun Trolley has evolved into a courtesy wagon with destinations that primarily feature tourist appeal. Roberts hopes to roll back the Trolley's mission to carrying City residents to locations that better service their daily needs.

Roberts explained that Sun Trolley officials were speaking to Galleria merchants. The well known shopping outlet is continually exploring new methodologies for enhancing its customer base. If the ongoing negotiations pan out, a minor route restructure might mutually cure the Galt Ocean Route's erratic ridership and the Galleria's need for new shoppers.

There are currently two Sun Trolley routes that cater to the shopping interests of City Residents and visitors. The "Las Olas – Beaches" Route connects Fort Lauderdale's downtown tourist Mecca's such as the Performing Arts Center, IMAX, the Himmershee neighborhood and the Riverfront to Las Olas Boulevard and Beach Place.

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Water...Continued

While most Galt Mile condos and co-ops have since stretched association budgets to cover the phantom water & sewer charges, some have discovered innovative ways to tweak their systems, somewhat reducing the sting to unit owners. Galleon General Manager Marcy Kravit found such an opportunity in Sec. 28-79 of the City of Fort Lauderdale Code of Ordinances. A former Secretary for the Community Associations Institute (CAI) and contributing columnist for the Florida Community Association Journal, Kravit and Galleon President Donna Oppert agreed to share their money-saving strategy with neighboring associations. We are grateful to the Galleon Gals and their Board of Governors for contributing the following information.

Sub-meter Saves a Bundle

By Marcy L. Kravit, CMCA, AMS, PCAM

Since cooling tower water is not discharged into the City of Fort Lauderdale's sewer system, buildings on The Galt that have cooling towers installed may be eligible for a wastewater credit on the monthly utility bill.

According to Sec. 28-79 of the City of Fort Lauderdale Code of Ordinances, arrangements may be made to separate water consumption for cooling tower use from other water consumption by installing a separate private sub-meter. In order to be eligible for a credit on wastewater charges, the following must occur:

- The building owner/manager must first obtain written confirmation from the City of Fort Lauderdale Public Works Department.
- A City-approved water sub-meter must be purchased from the City and installed on the building's cooling tower to measure the water that does not enter the sewer system.
- A licensed plumber must perform the sub-meter installation and obtain any required plumbing or related permit(s).
- The City must determine whether a backflow preventer is required, which will be determined during inspection.
- The City's Building Department must inspect and approve the installation.
- The building owner/manager will be required to maintain the sub-meter and ensure it is in good operating condition per the manufacturer's specifications.

The building owner/manager will be responsible for the cost of the sub-meter, as well as all costs associated with installing it (e.g., plumber, permits, inspections, if back-flow preventer is required, etc.).

The current cost for a City meter is:

Meter size	Cost
1/2 inch	$39.00
1 inch	$64.10
1-1/2 inch	$163.90
2 inch	$219.00

Once the meter is installed, the building owner/manager will be responsible for reading the meter and reporting the read to the City on a monthly basis. The wastewater service charge will be billed on the difference in consumption between the new sub-meter and the domestic meter; however, the credit shall not reduce the total wastewater charge to an amount less than the fixed monthly charge.

The City will begin issuing the wastewater credit the month following the installation, approval of the water sub-meter, and receipt of sub-meter read from the owner/manager.

Please note, in June 2010, the City implemented a new billing system. As a result, the wastewater credit will not appear on the utility bill as a separate line item. Instead, the credit will be adjusted off the total amount of the bill.

For more information or to purchase a sub-meter, please contact the 24-Hour Customer Service Center at 954-828-8000 or online at www.fortlauderdale.gov/customerservice.•

Commissioner...Continued

The "Convention Connection" route connects sizable visitor concentrations in Port Everglades and the Convention Center to shopping venues like the Harbor Shops and Galleria Malls. The two weekend-only routes overlap at Beach Place.

In addition to connecting Galt Ocean Drive to Holy Cross and the Coral Ridge Mall, the Galt Ocean route stretches south on A1A to the Palms. Commissioner Roberts wants to extend the route south to the Galleria. In addition to providing 14,000 Galt Mile residents with dirt-cheap comfortable transportation to the Galleria, the route restructure would create an overlap with the "Convention Connection" Sun Trolley, consequently providing riders with access to the Harbor Shops.

Following Commissioner Roberts' report, GMCA President Pio Ieraci requested a security update from Acting Major Gregory. The congenial 23-year FLPD veteran smiled while announcing the neighborhood's encouraging crime stats. Thanks to the combined efforts of our Security Patrol and Gregory's Operations Unit leadership, only one "Part 1" crime was recorded in the Galt Mile Community since the previous month's report.

Gregory reminded the Advisory Board about a prospective seasonal increase in vehicle thefts and burglaries. The Department is recommending that local residents stow all items they might otherwise leave exposed on the car seat or floor. After identifying the usual wallets, purses, cell phones, radar detectors,CDs, DVDs, PDAs, audio and video components are easy boosts during the Holiday Season, Gregory's concern focused on the Geographic Positioning System (GPS) used by a growing number of drivers.

Continued on page 17

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SEA RANCH LAKES

Waterfront gated 5/4 pool home on the Intracoastal, large lot and ocean access. $1,600,000.

PLAZA EAST

Luxury high-rise on the sand 2/2 on low floor with amazing ocean views. Resort style building. $365,000.

SOUTHPOINT

2/2 on the 17th floor. Balcony overlooks ocean, pool, Intracoastal & city. Upgraded kitchen and bathrooms. $449,000.

PLAYA DEL SOL

2 Bedroom, 2 bath building on the sand with great ocean views. W/D, 1 assigned parking space and more. $329,900.

SILVER SHORES

True elegance and luxury in this 5/4.5 Tuscan inspired estate with amazing upgrades. Ocean access. $2,795,900.

CORAL HEIGHTS

Totally renovated 4/2 home with large fenced yard with redone pool and newer hot tub. $340,000.

L'HERMITAGE

3/4 exquisite Ascot model with direct ocean, resort and SE coastline, wrap around balcony and more. $1,629,000.

THE GALLEON CONDO

Beautiful 2/2 oceanfront condo with direct ocean views, completely renovated plus much more. $550,000.

LAS OLAS BY THE SEA

4/3 Pool home w/gourmet kitchen and over 3000 sq. ft. Steps to the beach yet close to Trendy Las Olas. $1,050,000.

BAYSHORE EMBASSY CONDO

Bright, light and airy 2/1.5, three blocks the the beach. Furnished, hurrrican windows and more. $149,900

L'HERMITAGE | SUB-PENTHOUSE

Unique 2/2.5 + den with 10' ceilings, 2 large balconies, direct ocean & furnished by famous designer. $979,000.

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FHA APPROVAL CAN BOOST UNIT VALUES

By Eric Berkowitz

When mortgage lenders were passing out loans to inanimate objects and packaging free trips to the Bahamas with every no-money-down subprime mortgage, Federal Housing Administration (FHA) financing was anathematic. It was burdened with – heaven forbid – eligibility requirements. Borrowers had to come up with a down payment, show a decent credit rating and were limited by their incomes to properties deemed "affordable".

In their breakneck race to close a bankable real estate transaction every 17.6 minutes, high-flying mortgage brokers couldn't afford to use funds with strings attached. Any terms that slowed the lending steamroller were excised from the process. The loans didn't have to be adequately collateralized by the property or acceptable to the secondary market. Customers were eligible if they were breathing.

This lending insanity ultimately resulted in a world-wide economic miasma and the current real estate havoc that we are desperately trying to muddle through. Until millions of toxic foreclosures are recycled into productive properties, the value of our homes will continue to suffer. Ironically, the FHA financing that was earlier shunned by lenders suffering from "bubble" intoxication sounds pretty good right now.

Unit owners struggling with toxic mortgages are often faced with three options, a Hail Mary refinance, selling at the market bottom or packing up and hitting the road. In addition to a condominium's debt-burdened unit owners, banks and associations forced to pick through a foreclosure mess need viable property purchasers. Qualifying as a viable homebuyer means having access to either a boatload of cash or legitimate and reasonable financing.

THE PLAYERS

Fannie Mae is the big dog of the mortgage business. Established by President Franklin Delano Roosevelt's New Deal in 1938 to provide a secondary market for post-Depression Federal Housing Administration (FHA)-insured mortgages, the Federal National Mortgage Association (Fannie Mae) replenished the supply of lendable money. In 1968, Congress amended its Charter, reshaping Fannie Mae as a stockholder-owned, privately managed corporation. To rectify its questionably legal status as a shareholder-owned monopoly, in 1970, Congress chartered another government sponsored enterprise (GSE), the Federal Home Loan Mortgage Corporation (Freddie Mac). Although they don't directly loan money to homeowners, they ensure that mortgage lenders and brokers are adequately flush with cash to service the home buying public.

As GSEs, Fannie and Freddie received substantial benefits. They were endowed with access to an astronomical line of credit from the U.S. Treasury (currently $100 billion each); exemption from state and Securities & Exchange Commission (SEC) registration requirements (although both GSEs voluntarily file their SEC 10-K and 10-Q); exemption from all state and local taxes (except property taxes); and an inherent competitive advantage, since the Government blesses their securities with the same preferred investment status as Treasury debt.

More importantly, the GSEs benefitted from an "urban legend". Being perceived as having federal backing for their debt – although they do not – has allowed Fannie and Freddie to borrow at near-Treasury rates and sell their securities at better rates than those of competing commercial firms. According to estimates by the Congressional Budget Office and the Treasury Department, this myth saves the "duopoly" about $2 billion annually.

In the 60 years following their initial inception, mission statements for the GSEs varied according to evolving economic and political environments. Congressionally saddled with two mandates that were empirically incompatible – practicing fiscal responsibility while underwriting high risk "public purposes" loans – by the 1990s the stage was set for a decade of seemingly schizophrenic lending policies. Exacerbated by unrelenting pressure to generate shareholder profits, the GSEs' loan portfolios became top-heavy with lucrative sub-prime or "toxic" loans. Free from SEC reporting requirements, Fannie and Freddie purchased ordinarily ineligible "nonconforming" high risk instruments bundled with traditional debt, thereby disguising the degree of toxicity that burdened their portfolios. Taking their cue from the liberalized complexion of GSE investment products, competing commercial lenders dispensed with traditional and time-tested risk management formulas to expedite profits.

THE CRUNCH

When tens of thousands of "no money down", "deferred interest", and "negative amortization" mortgages simultaneously imploded, Fannie Mae and Freddie Mac were diagnosed as terminal. Just as the government sponsored entities were set to self-destruct, Congress threw them a life line, exclaiming the importance of reestablishing real estate stability. The Emergency Economic Stabilization Act of 2008 (Public Law 110-343) targeted lenders and investors at the top of the credit crunch meltdown, declaring that "the nation's economic turnaround hinges on a healthy housing market and affordable home ownership." $700 billion was pumped into the Troubled Assets Relief Program (TARP) to purchase distressed assets, especially mortgage-backed securities, and inject capital into banks.

On July 30, 2008 – in preparation for the financial bailout – the Housing and Economic Recovery Act of 2008 created the Federal Housing Finance Agency (FHFA) by morphing the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the GSE mission office at the Department of Housing and Urban Development (HUD). In addition to Fannie Mae and Freddie Mac, the 12 Federal Home Loan Banks fell under the regulatory and supervisory oversight of the new agency. As of June 2008, the combined debt and obligations of these GSEs totaled $6.6 trillion, exceeding the total publicly held debt of the United States by $1.3 trillion.

On September 8, 2008, investor fears were realized when former FHFA Director James B. Lockhart III and former Treasury Secretary Henry Paulson announced a comprehensive plan to take Fannie and Freddie under "conservatorship", essentially placing the companies under temporary government control and giving the Treasury a right to pump as much as $100 billion into each company, as well as buy a 79.9% share of both Fannie and Freddie. After dumping the two GSEs' tainted leadership, Lockhart installed Herbert M. Allison Jr. of the TIAA-CREF pension fund giant to run Fannie and David M. Moffett of U.S. Bancorp as Freddie's CEO.

Continued on page 21

He ascribed their increasing popularity with crooks to portability combined with heightened marketability. A pit stop to any local pawn shop will dramatically confirm Gregory's admonition. As usual, his prescription is simple and effective. "Hide your valuables and lock your car door."

Prior to departing early for another engagement, Commissioner LaMarca assured constituents that he would be a regular participant in future meetings. Since many of LaMarca's political accomplishments were achieved "below the radar" while providing leadership to Broward's Republican Party, few constituents were adequately familiar with the new Commissioner's views and strength of commitment – including many that supported his candidacy. Upon his departure, while several Board members were impressed with LaMarca's intensity, most commended his pro-active solicitation of Community input.

Commissioner Roberts also seemed pleased by LaMarca's participation. After inviting his involvement with the DFLTMA, Roberts told LaMarca that he would enjoy working with him on Galt Mile constituent issues. All told, LaMarca scored points during a productive introductory visit, encouraging supporters and winning over skeptics. How he actualizes promises will determine whether or not the Galt Mile has a new secret weapon. As always, time will tell...•

JAN/FEB

SUN	MON	TUE	WED
9 Mommy and Me Tea Fairchild Tropical Garden 3 p.m. Info.: www.fairchildgarden.org 5th Annual Open Car & Truck Show Ed Morse Sawgrass Auto Mall 10 a.m. to 4 p.m. Info.: 954-980-2670	**10** Light Up Lauderdale (Through 1/14/11) Downtown Fort Lauderdale Info.: 954-468-1541 Citizens' Crime Alert City Hall, 7 p.m. Info.: 954-763-7863	**11** *Finding Balance in your Budget* Edward Jones Office 1719 E Commercial Blvd 6:30 to 7:30 p.m. Light supper provided Info.: Leann Barber, 954-493-8651 The Toronto Symphony Orchestra Broward Center for the Performing Arts 8 p.m. Info.: 954-462-0222	**12** The Chinese Golden Acrobats Parker Playhouse 10 a.m. & 7 p.m. Tix.: 954-462-0222 Winter Concert Series Emma Lou Olson Center, Pompano Beach 7:30 to 9:30 p.m. Info.: 954-786-4111
16 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	**17** Commissioner Bruce Roberts: Pre-Agenda Meeting Cardinal Gibbons High School, Media Room 6 p.m. Info.: 954-828-5033	**18** *Foundations of Investing* Edward Jones Office 1719 E Commercial Blvd 6:30 to 7:30 p.m. Light supper provided Info.: Leann Barber, 954-493-8651 Fort Lauderdale City Commission Meeting City Hall 6 p.m.	**19** Erev Tu B'Shevat Ft Lauderdale Planning & Zoning Meeting City Commission Chambers, 100 N Andrews 6:30 p.m. Info.: 954-828-5264
23 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166 Household Hazardous Waste Collection Event 101 N. Andrews Avenue 8 a.m. to 3 p.m. Info.: 954-828-8000	**24**	**25** *Charitable Gifting* Edward Jones Office 1719 E Commercial Blvd 6:30 to 7:30 p.m. Light supper provided Info.: Leann Barber, 954-493-8651 Ft Lauderdale Holiday Antiques Show (Through 12/29) War Memorial Info.: 954-563-6747	**26** Winter Concert Series Emma Lou Olson Center, Pompano Beach 7:30 to 9:30 p.m. Info.: 954-786-4111
30 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	**31** Commissioner Bruce Roberts: Pre-Agenda Meeting Cardinal Gibbons High School, Media Room 6 p.m. Info.: 954-828-5033	**1** 2011 GLBT Travel Expo Tour Embassy Suites Fort Lauderdale Fort Lauderdale City Commission Meeting City Hall 6 p.m.	**2** Groundhog Day
6 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166 **Sunday Jazz Brunch** Riverwalk, Downtown FL 11 a.m. to 2 p.m. Info.: 954-828-5985	**7**	**8**	**9**

FOR A COMPLETE LISTING OF EVENTS, GO TO THE CALENDAR AT WWW.GALTMILE.COM

THU	FRI	SAT
13 2nd on 2nd Thursdays Block Party 200 Block SW 2nd Street 5 to 9 p.m. Info.: 954-468-1541 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. $5/person for 3 boards	**14** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Ft Lauderdale Bus Loop 6 to 11 p.m. Info.: 954-260-6194 Fort Lauderdale Orchid Show (Through 1/16) War Memorial Auditorium Info.: 954-828-5380	**15** White Elephant Sale Coral Ridge Towers South 3333 NE 34 St. 10 a.m. to 2 p.m. Downtown Delray Beach Festival of the Arts 1111 E Atlantic Ave., 10 a.m. to 5 p.m. Info.: 954-472-3755 "If You Give A Cat A Cupcake" Miramar Cultural Center 11 a.m. & 1 p.m. Info.: 954-602-4500
20 Linkin Park BankAtlantic Center Tix.: www.ticketmaster.com BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. $5/person for 3 boards	**21** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Info.: 954-776-5092 5th Annual Int'l Chocolate Festival (Through 1/28) Fairchild Tropical Garden 9:30 a.m. to 4:30 p.m. Info.: www.fairchildgarden.org	**22** Gun and Knife Show (Through 1/23) War Memorial Auditorium Info.: 954-828-5380 48th Annual Broward Shell Show (Through 1/23) Emma Lou Olson Civic Center, Pompano 10 a.m. to 4 p.m. Info.: 305-467-4412
27 Trawler Fest Bahia Mar Yacheting Center Info.: 410-990-9086 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. $5/person for 3 boards	**28** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Barry Manilow BankAtlantic Center 8 p.m. Tix.: www.ticketmaster.com	**29** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Vatican Splendors: Art & Faith (Through 4/2011) Museum of Art Info.: www.moaflnsu.org
3 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. $5/person for 3 boards	**4** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Penn and Teller Hard Rock Live 8 p.m. Tix.: www.ticketmaster.com	**5**
10 2nd on 2nd Thursdays Block Party 200 Block SW 2nd Street 5 to 9 p.m. Info.: 954-468-1541 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. $5/person for 3 boards	**11** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	**12** 37th Annual S Florida Depression Glass Show (Through 1/13) Emma Lou Olsozzn Civic Center, Pompano Info.: 305-884-0335 Florida Renaissance Festival (Through 3/13) Quiet Waters Park 10 a.m. to Sunset, Weekends only Info.: 954-776-1642

ADDITIONAL EVENTS

JANUARY 14: Do-It-Yourself Flowers on a Budget, Hugh Taylor Birch State Park, 10 a.m., Info.: 954-561-8475
JANUARY 14 - 16: Miami City Ballet, Broward Center for the Performing Arts, Tix.: 954-462-0222
JANUARY 15: Celtic Crossroads, Parker Playhouse, 8 p.m., Tix.: 954-462-0222
JANUARY 15 - 16: Flamingo Fest, Flamingo Gardens, Info.: www.flamingogardens.org
JANUARY 18: Les Miserables: Broadway, Broward Center, Tix.: 954-462-0222
JANUARY 20: G.M.C.A. Advisory Board Meeting, Nick's Italian Restaurant, 11 a.m.
JANUARY 25: Opera Int'l with the Russian National Symphony, Miramar Cultural Center, Tix.: 954-602-4500

UPCOMING EVENTS IN OUR AREA

February 13
Romance in the Gardens
Flamingo Gardens
Info.: www.flamingogardens.org

February 14
Andrea Bocelli
BankAtlantic Center, 7:30 p.m.
Tix.: www.ticketmaster.comFebruary 14

February 15 - 27
West Side Story, Broadway
Broward Center for the Performing Arts
Tix.: 954-462-0222

February 16
Frankie Valli and the Four Season
Hard Rock Live
Tix.: ticketmaster.com

February 20
A1A Marathon
Downtown Fort Lauderdale, 6 a.m. to 12 p.m.
Info.: 561-241-3801

February 22
Take Stock in the Market
Edward Jones Office, 6:30 to 7:30 p.m.
Info.: Leann Barber, Financial Advisor: 954-493-8651

February 23
Taste of the Beach 2011
Lauderdale-by-the-Sea, 6 to 9 p.m.
Info.: 954-776-1000

A SUPREME COURT BEARING GIFTS

By Eric Berkowitz

The lending industry has refined foreclosure foot-dragging into an art. Early on, foreclosing banks realized that they could sidestep any statutory obligations to associations by not taking title to defaulted properties. Threatening Florida's legislative leadership with sharp cuts to available mortgage financing successfully thwarted lawmaker attempts to plug this elephantine loophole. When associations turned to the courts for relief, lenders traded on their superior recorded mortgage liens to control scheduling for every stage of the foreclosure process, further enabling strategic delays. Lower court pro-association decisions based on "fairness" or "equity" were reversed as appellate courts cited the absence of any statutory justification.

It gets worse. Until last year, state law entitled condominiums to a maximum of 6 months of lender assessments or an amount equal to 1% of the outstanding mortgage (whichever was less) – minimal relief for units that hadn't contributed for 2 to 4 years. Until the non-producing units were sold to viable purchasers, the other association members would be forced to continue offsetting the ongoing deficit. By deliberately delaying the sale of these units, lenders pushed many associations to the brink of receivership. With no legislative or judicial relief in sight, desperate associations joined with abused borrowers and appealed to the Florida Supreme Court for a Hail Mary. To everyone's amazement, rather than squeezing out some convoluted treatise on judicial impotence, it appears that the Supreme Court delivered!

The Third District Tanks Tadmore

In February of 2008, when the U.S. Bank National Association sought to foreclose a first mortgage on a condominium unit owned by Danny Tadmore, his Condominium Association was joined as a defendant, having also filed a lien. After a full year of watching bankers twiddle their thumbs (during which time Mr. Tadmore expired), the struggling Association filed a February 20, 2009 motion to compel the bank to move forward within a certain time frame or pay maintenance assessments on the unit.

Instead of trying to move the action along by requesting a trial date or filing a Show Cause order for the lender's year-long delay, the Association claimed that it was being unreasonably prejudiced by the Bank's "undue delay in pursuing their [sic] foreclosure action", making it "fair and equitable" for the court to order the Bank to make monthly assessment payments to the Association.

Before ruling on the motion, Judge Scott J. Silverman of the Eleventh Judicial Circuit of Florida for Miami-Dade must have popped a happy pill, fallen into a reverie and dreamed of legislating from the bench. Upon opening his eyes, he granted the Association's motion, ordering the bank to "diligently proceed within thirty (30) days or" start paying the $939.56 monthly maintenance fee to the Association.

Since banks are bound by statute to assume assessment responsibilities only after acquiring title to a property, the Third District Court of Appeal for Miami-Dade rejected the idea that equity and fairness are adequate reasons for requiring lenders to pay association fees while a foreclosure case is still pending against the unit owner.

In a December 2, 2009 Opinion, the Appeals court chastised the association for not exhausting more traditional means available to address delay, such as filing for a Show Cause order. Contending that the association was therefore not entitled to extraordinary relief, the appellate Court reversed Silverman's popular Order and sent the association back to the drawing board. In its opinion, the appellate Court observed that "in its quest to do equity, a court cannot trammel the legal rights of the parties." Alas, Silverman's brief career as a lawmaker was over.

In fact, aside from shamelessly begging some Judge for relief, there was no legal mechanism available to compel a lender to move the case along under Florida law. Also, there was no existing legal provision that could force a lender to pay statutory maintenance obligations prior to taking title.

In January of 2010, Florida Bankers Association President Alex Sanchez admitted, "We don't want the property. We're not into the property management business." Tampa foreclosure attorney Kristopher E. Fernandez agrees that banks deliberately immobilize foreclosure cases to avoid association obligations, explaining "These cases are stuck in legal limbo because banks don't want to push foreclosures. I've seen cases where nothing is done. The lenders don't want these homes back. They know they have to pay assessments once they take them back." The statutory "loophole" brazenly exploited by the lending industry has been an insurmountable obstacle – until now.

"Task Force on Residential Mortgage Foreclosure Cases"

While these frustrating court room melodramas were playing out, the Florida Supreme Court appointed a "Task Force on Residential Mortgage Foreclosure Cases" to frame the mortgage foreclosure crisis from the standpoint of mortgage holders (borrowers) and associations. Irked by repeated appellate opinions challenging the Judiciary's right to do equity, when the Court issued Administrative Order AOSC09-8 creating the Task Force on March 27, 2009, it specifically charged them to "examine existing court rules and propose new rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases."

While prohibited from making new law, the Task Force was empowered to plug long neglected statutory loopholes by amending court rules for Civil Procedure and Judicial Administration. On August 17, 2009, the 15-member Task Force released their 51-page final report. On February 11, 2010, the Florida Supreme Court amended the Florida Rules of Civil Procedure to include a majority of the Task Force recommendations.

Among the adopted proposals was a new form - 1.996(b) - created to accompany a trial tactic conceived by the Task Force to expedite foreclosures – a "Motion to Cancel and Reschedule Foreclosure Sale". To deter lenders from exploiting their status as "judgment holders" to interminably delay foreclosures, the Task Force provided a vehicle to circumvent their absolute control over the process. The Task Force explained that "many foreclosure sales set by the final judgment and handled by the clerks of court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset."

The Task Force identifies Community Associations as being twice victimized by Florida's foreclosure process, when "delinquent owners do not pay statutorily required association maintenance assessments, and mortgage holders do not pay assessments until after the foreclosure is over and title has passed, and then the delinquent amount is statutory reduced to a mere fraction of an association's expense to maintain the property." Focusing on the other unit owners, the Task Force observes "Especially inequitable is that community associations and their members are involuntary participants, never being involved or profiting from the mortgage process; nevertheless, they are statutorily and contractually required to maintain the foreclosed property."

Lamenting this unconscionable inequity, the Task Force complains "This is a windfall for mortgage holders and delinquent owners residing in the property because the remaining parcel owners who timely pay assessments are in fact paying for the property's insurance, utilities, cable television, exterior maintenance, and access to roads and other common facilities, depending on the community." To illustrate the inevitable consequences of lender delays, the report concludes with a snapshot of the victimized association's catastrophic slide toward insolvency, explaining "As associations preserve cash flow by increasing assessments on owners who timely pay, the resulting strain has lead to more defaults, threats of violence, and the expense of police attending association meetings to keep the peace, as well further decreasing property values for the entire community because the association cannot afford to maintain entrances and other common facilities."

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On December 24, 2009, The U.S. Treasury Department uncapped the credit line given to Fannie Mae and Freddie Mac for three years, essentially guaranteeing the companies' survival while eliminating uncertainty about continued government support. Having previously increased the Treasury's credit commitment from $100 billion to $200 billion for both Fannie and Freddie, the Christmas Eve confidence boost couched an $810 billion holdings limit for 2010, to be annually reduced by 10%.

When Fannie Mae's average stock price spent over 30 days last May below the $1.00 minimum share price required for listing by the New York Stock Exchange, the company announced its delisting on June 16, 2010. Despite having met the minimum requirements (by a whisker), Freddie Mac voluntarily joined its sister company in moving to the over the counter (OTC) market (AKA pink sheet trading). In a statement announcing the move, FHFA's acting director Edward DeMarco said, "A voluntary delisting at this time simply makes sense and fits with the goal of a conservatorship to preserve and conserve assets."

For the third quarter of 2010, Fannie Mae posted a net loss of $1.3 billion, which was significantly lower than $18.9 billion net loss it posted for the same period in 2009. It was the 13th consecutive quarterly loss for Fannie Mae, which requested another $2.5 billion capital infusion from the Federal Government. This pushed the total aid given to Fannie Mae up to $87.6 billion.

The government currently controls 79.9% of Fannie Mae and Freddie Mac, with 80% being the threshold for placing them on the federal books and altering conservatorship into receivership - the final pit stop before the Happy Hunting Grounds. Fannie and Freddie currently own or guarantee about half of all U.S. mortgages, or nearly 31 million home loans worth more than $5 trillion.

Over the next year, lawmakers plan to review the nation's mortgage-lending apparatus and consider a potential replacement for Fannie and Freddie. The Administration will also reveal a vision for the two GSEs' future in its FY 2011 budget proposal in February. In preparation for these prospective "alternative destinies", on October 21, 2010 the Federal Housing Finance Agency released its cost projections for carrying the GSEs. The to-date rescue costs were calculated at $135 billion and the projected costs for an overall bailout range between $142 billion and $259 billion through 2013. The widely disparate bailout projections vary according to the sect of Voodoo practiced by the various banks where the conferring economists plan to live out their post-government consulting years. (Anyone who refutes this contention might benefit from reviewing the corporate history of Goldman Sachs.)

WHAT NOW?

Until Congress revises how the national mortgage-lending system is underwritten (don't hold your breath), partnering with the FHA can provide Condominiums with a significant advantage. Associations that historically looked down their noses at FHA loans have been forced to reconsider by the economic tsunami. To increase exposure to qualified buyers, Condominiums are applying to become approved FHA/Fannie Mae eligible projects. By coughing up a few bucks for the application fees and paying for an attorney review letter, Condominiums can boost the pool of available buyers and facilitate unit sales. Enhancing the marketability of an association's units consequently increases their value.

The terms are sensible. The FHA requires a minimum down payment of only 3.5% from prospective purchasers who are reasonably creditworthy. To diminish a loan's potential for default, the FHA set affordability standards. FHA approval requires a borrower to earn 3 times the monthly mortgage and association assessment costs. As a rule, total housing costs may not exceed 31% of an applicant's income.

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New guidelines established by the FHA in 2009 require that participating condo projects be recertified and approved every two years. Lenders' projects that received approval before October 1, 2008, were supposed to be recertified by December 7th. The FHA claimed that it currently provides mortgage insurance financing to more than 40,000 condominium projects, 25,000 of which require recertification.
In short, some FHA planning troll obliged the agency to simultaneously recertify 25,000 association approvals. To avoid the impending bureaucratic train wreck, the approval deadlines were extended in accordance with the dates that properties were originally approved for funding. In a "reminder" letter to participants, the FHA admitted, "The extensions were granted to reduce the impact of processing and reviewing the number of project approvals expiring at the same time while recognizing current housing market conditions." The new recertification deadlines are as follows:

- Projects approved between 1972 and 1980 must be recertified by December 31st.
- Projects approved between 1981 and 1985 must be recertified by December 31st.
- Projects approved between 1986 and 1990 must be recertified by May 31, 2011.
- Projects approved between 1991 and 1995 must be recertified by July 31, 2011.
- Projects approved between 1996 and 2000 must be recertified by August 31, 2011.
- Projects approved between 2001 and 2005 must be recertified by September 30, 2011.
- Projects approved between 2006 and September of 2008 must be recertified by March 31, 2011.

Notwithstanding ethereal Congressional intentions for Fannie and Freddie, every Galt Mile Condominium Association should consider participating in this inexpensive source of new buyers. As expressed by an Oakland Park realtor who lives on the Galt Mile, "Every competitive bidder ups a unit's selling price by 10%." Move it – time is money.•

Having defined the problem, the Task Force prescribed their legal therapy. The plaintiff's information on the form "would provide the court with an explanation of why the foreclosure sale needs to be cancelled and request that the court reschedule the sale." While requiring the lender's attorney to whip up some bogus rationale for the cancellation is marginally useful, the new form additionally binds the plaintiff to empower the court with setting a date for the sale. By forcing the lender to relinquish control over scheduling the sale, the Florida Supreme Court expects to "keep properties out of extended limbo between final judgment and sale." It sounds like a home run – but would it work?

The Legal Litmus Test
In a case adjudicated by Florida's Fifth District Court of Appeals in Daytona Beach – LR5A-JV, etc. v. Little House LLC, et al (Case No. 5D09-3857) – where a Massachusetts limited partnership known as LR5A-JV, LP ("LR5A") was stiffed for a 2005 $17.5 million mortgage loan to Little House, LLC, and Little Lakes, LLC (the "borrowers"), lender "LR5A" won a final judgment of foreclosure in 2008. Since the Matanzas Shores Owners Association (the "Association") had also filed liens against the defaulted borrowers, the lender enjoined them as a defendant in the Flagler County action in order to foreclose their claims of lien for unpaid assessments totaling approximately $400,000. When the trial court entered a final judgment of foreclosure, it found that LR5A was due $30,651,523.93, and set a date for a judicial sale of the property.

The lender cancelled the sale under the pretext of requiring confirmation of its lien's priority over the association lien. Forced to accommodate the lender's transparently dilatory request, the Court affirmed the final judgment of foreclosure, ruling that LR5A's 2005 recorded mortgage was superior to the Association's assessment liens and instructed LR5A to foreclose their superior mortgage. The Association couldn't turn the foreclosure back into a contributing property or recover the past due assessments until after the lender scheduled a judicial sale. As such, the Association moved the trial court to set a sale date for the borrower's Flagler County property. Following a hearing on the motion, and over lender LR5A's heated objection, the court entered an order setting a date for a judicial sale.

LR5A appealed the order, contending that as judgment holder, it has the sole right to control when, and if, a foreclosure sale should take place under section 45.031, Florida Statutes (2010). They also held that the Association, as a junior lien holder, cannot demand that a foreclosure sale date be set, and the trial court erred as a matter of law in setting the date for the judicial sale.

The Association whipped out its shiny new "Motion to Cancel and Reschedule Foreclosure Sale" bag of tricks – as provided by the Florida Supreme Court. The lender would have to complete the accompanying form 1.996(b) with a viable legal rationale for further delays instead of simply asserting that its status as the priority lien holder trumps a trial court's right to schedule the sale. The Association's final argument noted that the Supreme Court's Task Force created the new motion to deter the financial toll that foreclosures take on association members. Ironically, the High Court's new form that the plaintiff had to submit came pre-packaged with the language "If this Court cancels the foreclosure sale, Plaintiff moves that it be rescheduled." Game, set and match!

Unwilling to challenge the Florida Supreme Court, the appeals court forged a breakthrough in case law by upholding the trial court's right – and legal obligation – to set the sales date. In the court's opinion, District Judge Richard B. Orfinger disparages the lender's argument for ignoring "the Association's interest in collecting lawful assessments on the subject property." He also addresses how lender foot-dragging further damages the Association, opining "As the Association points out, LR5A is not obligated under (section) 720.3085, Florida Statutes, to pay the Association's assessments, yet, the Association must still maintain the common property and facilities, which inure to the benefit of the property."
This was a legal landmark. Until now, the junior liens held by associations placed them at the mercy of lenders whose superior liens hard wired their control over every stage of the foreclosure process. Also, Florida courts had repeatedly ruled it immaterial when the "Judgment Holder's" case management knowingly damaged other lien holders. Florida association attorneys began filling legal blogs with expectations of clearing out hundreds of frozen foreclosure cases. Instead of impotently waiting for sleepwalking bankers to muddle through the snail-paced process, associations can use this new tool to bypass longstanding lender roadblocks to taking title and/or selling a property.

And Now... the Gauntlet
While the Supreme Court's Task Force strategy passed its acid test with flying colors, to remain effective, it must also survive the legal pounding it will absorb throughout the next year. Specifically, it will be aggressively vetted by legal skywalkers employed by the 600 pound gorilla of the "special interest" universe - the lending industry. Despite decades of arrogantly breaking every rule, regulation, ordinance, statute and Federal Law, in addition to emerging unscathed, bankers have been rewarded with full reimbursement and bags filled with taxpayer-funded "fresh start" working capital. Facing the state's most powerful lobby, association attorneys should prepare for a blizzard of dirty tricks in the courtroom and steel cage rollerball in Tallahassee. Whatever the outcome, Happy Holidays to the Florida Supreme Court.•

Solutions

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January–February 2011

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