

South Florida BUSINESS JOURNAL

THIS WEEK
in the SFBJ

RECORDS REVOLUTION:

A new law tightens
the way medical
records are kept

P5



The Good, the Bad & the Ugly

Failures of some banks will lead
to acquisitions by the strongest

BY BRIAN BANDELL

Preliminary results for one of the worst years in Florida banking show more institutions stumbling into regulatory nooses, but others have the treasure trove to do deals.

Unfortunately, for ailing banks, there are few quick-draw artists willing to pull the trigger on acquisitions before regulators step in.

The good: With all but two of the top 25 South Florida-based banks reporting, 10 improved profitability or cut losses from the third quarter to the fourth quarter.

The bad: Only seven did better in 2009 than the year before.

The ugly: Five South Florida-chartered banks are below required capital levels and Clint Eastwood hasn't shown up yet to shoot down the

SEE **BANKS** | 29



MARK FREERKS

Jody Baurle photographs her husband Joe in front of the Super Bowl sign on Las Olas Boulevard and A1A in Fort Lauderdale, as JR Wilson waits his turn.

South Florida is likely to stay a favored Super Bowl venue

BY BILL FROGAMENI

The National Football League would be left with few warm-weather venues if it follows through on a threat to avoid future Super Bowls at an open-air Sun Life Stadium, a *Business Journal* analysis has found.

That raises the question as to how much the NFL is bluffing as it floats the idea that up to

\$200 million in renovations are needed at the stadium, which has received \$300 million in upgrades over the past few years.

The two other Super Bowl sites in Florida are also open-air stadiums, and the NFL has already rejected San Diego's stadium, saying it, too, needs renovations. The league doesn't

SEE **SUPER BOWL** | 28



KEEPING BOATING AFLOAT

As the 2010 Miami International Boat Show launches Feb. 11, officials expect slightly higher attendance than last year. Boat sellers are marketing 'affordable' boating options to attract buyers in a tough economy. P4



TRIAL AND TRIBULATION

The trial in the case against two local men charged with shredding evidence related to alleged Ponzi schemer R. Allen Stanford began Feb. 1 in Miami federal court. Prosecutors say Stanford ran the \$7-billion scheme through his Antigua-based bank. P7



LAWSUITS OVER LOANS

BankAtlantic filed four lawsuits against Daniel Catalfumo, CEO of Catalfumo Construction and Development, and related entities, seeking a total of \$48.6 million in past-due loans. P15

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Health care reform is not DOA, our panelists say

BY KEVIN GALE

If health care reform was a patient, some might say it's on life support.

However, participants on our second 2010 Critical Conversations panel say it's not time to give up just yet. Labels like DOA just aren't appropriate.



Our panel – which includes representatives from managed care, hospitals, medical schools, insurers and professional associations – outlines some of the lesser-known advantages of the proposed 1,000-page legislation – and

tell why it's not in the public interest to give up. U.S. Rep. Debbie Wasserman Schultz, an influ-

ential voice on Capitol Hill, gives her interpretation on what might happen next.

Reform's big new selling point now may be cost containment, an approach that may gain bipartisan support.

Our special report also includes a short read on just how happy doctors are – or aren't – these days. Should you worry that your doctor feels trapped in a career that's not enjoyable?

Critical Conversations begins on Page 8.



MEET THE PRESS:

Join the SFBJ staff for breakfast on March 11 at our Fort Lauderdale offices. Network with the publisher, editors, reporters and sales team. See Page 30 for registration information.



Homeowners associations score win against banks over foreclosures

BY PAUL BRINKMANN

Attorneys for the Keys Gate Homeowners Association in Homestead recently won a legal victory that could set a precedent for banks that drag their feet in taking title to homes facing foreclosure.

The Association Law Group of Miami won the case on behalf of the Keys Gate HOA using what it calls a reverse foreclosure, designed to speed up the process of awarding a property to a bank, thus making the bank liable for fees and maintenance, even if the property is vacant.

Based on the reverse foreclosure procedure, Miami Dade Circuit Judge Jerald Bagley awarded title of a home in the Keys Gate development to HSBC Bank on Jan. 12.

The home had fallen into foreclosure in 2007. Since then, the home remained in limbo, owned and maintained by the association, but with an HSBC foreclosure action pending for more than two-and-a-half years.

"ALG's reverse foreclosure procedure will finally help associations force banks to take title to financially upside-down units much faster than ever before," ALG attorney Ben Solomon said.

As part of the reverse foreclosure, Keys Gate waived its rights to the property and, as the current unit owner, waived its right to public sale. The motion was granted, and the clerk of court issued a certificate of title the same day, transferring ownership of the property to the bank. The certificate of title then triggered HSBC Bank's requirement to pay its share of past due assessments, legal fees, court costs and all assessments going forward.

The practice of banks holding up foreclosure proceedings is not uncommon and has a huge financial impact on homeowners as-

sociations that must write off month after month of bad debt until the home is taken off its hands. Given the crush of foreclosures clogging South Florida courts, attorneys and judges are continually examining existing laws for ways to break the logjam.

In another case, Miami Dade Circuit Court Judge Barbara Arces entered an order Jan. 27, determining mortgagee Countrywide Home Loans deprived condominium association Jade Winds Association of its constitutional due process rights by unilaterally cancelling two court-ordered foreclosure sales without a prior court order.

Jade Winds, with more than 900 units, is struggling with foreclosures and delays when banks don't take title immediately after a judgment in their favor.

Association attorneys Ross Toyne and Michael Schimmel, of Miami-based Toyne & Mayo, had foreclosed on the unit owners before Countrywide filed its mortgage foreclosure suit.

"When the bank filed its foreclosure complaint, the association basically said 'here, take it' with the bank receiving final judgment in its favor," Toyne said.

According to the law firm, the bank ignored the association's property rights and unilaterally cancelled court-ordered sales without a hearing, even though the unit owner had already been foreclosed.



Toyne



Schimmel

The 3rd District Court of Appeal had tossed out similar rulings last year, but Jade Winds distinguished its case by highlighting that the waiver by the bank would become effective only if the bank takes title at the foreclosure sale, now set for the third time.

The bottom line for Jade Winds is this: If Countrywide takes possession at the next scheduled sale, it will have to pay about 18 months of assessments, instead of the usual six-month minimum under the law, because its ownership will be deemed to have started at the last sale cancellation in June 2009.

David Arnold, an attorney for Association Law Group, said banks are facing new difficulties in cancelling sales.

"It used to be that, if you didn't show up, they just canceled the sale. Now, you need an order to cancel," he said. "Having these sales cancelled and reset is clogging the courts."

Arnold warned that another new tool, blanket receivership, is being abused by association lawyers in some cases. Under the blanket receivership precedent, judges are allowing receivers to collect rents directly from tenants in units that are in foreclosure, bypassing a landlord in default on condo fees. A recent ruling allows receivers to begin collecting rents directly as soon as a unit falls into default.

"Blanket receivership is a good tool, but association lawyers are also taking it too far now and can expose associations to liability," Arnold said.



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