

## Few options exist for retail tenants if landlord is foreclosed on, expert says

By [Matthew Arrojas](#)

A project more than a year in the making is at risk of failing before it can open, as its landlord is in foreclosure negotiations.

[Lorenzo Borghese](#) is the co-owner of South Beach Brewing Co., a microbrewery that's slated to open this month at 1058 Collins Ave. in Miami Beach. However, after numerous setbacks, Borghese said he received notice in November that he'd been listed in a foreclosure lawsuit after his landlord failed to make a loan payment to Amerant Bank.

According to court documents, New York-based Gideon Asset Management is [the target of a \\$6.5 million foreclosure suit](#) after it failed to make a loan payment in May.

"Given that Covid-19 has destroyed the brewing industry," Borghese said, "It feels like everything that can go wrong has gone wrong so far."

Since signing the 1,200-square-foot lease for the taproom in July 2019, he said South Beach Brewing has made every rent payment. All together, he estimates the company has spent about \$400,000 on rent and property improvements over the past 18 months.

Still, the foreclosure lawsuit could force the tenant out in the coming months. [Aziz Syed](#), VP of acquisitions at Gideon Asset Management, said the landlord is negotiating a deal with the bank to avoid a foreclosure, and a deal seems likely.

If a deal is unsuccessful, however, Borghese is worried he will not be kept on as a tenant.

### How common a problem is this?

While tenants have little options when a landlord is foreclosed on, [Steve Silverman](#) of Miami-based Kluger, Kaplan, Silverman, Katzen & Levine PL said it's rare that retail tenants don't already have lease terms in place that state what would happen in case of foreclosure.

Silverman added that these terms must be worked out between the lender and the tenant, not just between the landlord and the tenant. Most deals he sees include the lender, and tenants often negotiate a deal in which they can remain operating if the property is foreclosed on, with the lender becoming their landlord, he said.

"It's a valuable right that tenants negotiate for and lenders often want," he said. "They want the security of a tenant continuing to pay rent."

In cases where this arrangement isn't pre-made, however, Silverman said retail tenants are left to the discretion of the lender, which could choose to force them out of the space – which happens in cases where the property could be more valuable demolished – or have them operate indefinitely until the bank finds a new buyer.

There is one other alternative for the tenant: the right of redemption, Silverman said. This option is more often used in residential foreclosures, but there are commercial real estate cases.

Essentially, this right allows any tenant to purchase the loan during the court proceedings and become the new landlord, Silverman said.

In South Beach Brewing's case, either it or the adjacent restaurant tenant, Sunny's, would need to pay the outstanding loan balance – more than \$7 million – and they'd be able to continue operating.

## **What's next?**

Borghese said his company can't afford a multimillion-dollar note purchase. The brewery, which produces beer in a facility in Clearwater, saw revenue drop 95% due to Covid-19.

He said he spoke with a restaurant owner who is looking into the possibility of buying the loan, but a decision has not been made yet.

Until then, Borghese remains in limbo. The judge overseeing the foreclosure case said he must continue to pay rent during the process. That money is not being held in escrow, which means those payments won't be returned if the landlord and bank can't strike a deal to reorganize the loan or delay payments.

"All I can hope is that our landlord can make a deal in negotiations," he said.

Gideon Asset Management's Syed declined to say how close a deal is, or when it might close. A representative from Amerant Bank did not respond to a request for comment.

Even if a foreclosure decision comes soon, Borghese said, he still plans to open South Beach Brewing to the public this month.