

Associations should take advantage of new laws

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New laws will impact how associations are able to collect critical dollars.

For more than two years, homeowners and condominium associations throughout Florida have been struggling to stay afloat financially due to the economic recession and owners who are not paying their maintenance assessments.

Finally, relief has arrived in the form of new laws that were signed by Gov. Charlie Crist on June 1 and which took effect on July 1.

Among some of these new legal remedies for associations is the right to collect rent from tenants living in units where the owner is delinquent, the right to suspend owners from accessing common areas such as recreational facilities, and the right of condominium associations to potentially collect double the amount of past due assessments from a foreclosing lender.

Under the new law, associations now have the right to collect rent from tenants living in units where the owner is delinquent in the payment of any monetary obligation due to the association. Specifically, the new law relating to condominium associations states that, "if the unit is occupied by a tenant and the unit owner is delinquent

in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the association, and the tenant must make such payment." [F.S., 718.303(11)].

Additionally, under the new law, if such rent is demanded by the association and the tenant refuses to pay, the association will now have an eviction right against such tenant.

Associations may also now suspend the rights of past due owners and tenants to use certain common areas and may fine owners for violations relating to the same. In particular the new law for homeowners associations provides in relevant part that, "If a member is delinquent for more than 90 days in paying a monetary obligation due the association, an association may suspend, until such monetary obligation is paid, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines of up to \$100 per violation, against any member or any tenant, guest, or invitee." [F.S., 720.305(2)].

However, under the new statute, homeowners associations are limited from suspending any access to common areas that must be used to provide access to the owner's home or utilities relating to such home and, under the new law, condominium associations may not suspend rights to use limited common elements serving only such unit, access to the unit, utility services, parking spaces, and/or elevators.

Moreover, under the new condominium law, "a director or officer more than 90 days delinquent in the payment of any monetary obligation

due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law." [F.S., 718.112(2)(n)].

Under the new law, foreclosing first mortgage holders will also now be liable to pay the lesser of 12 months of past due assessments or 1% of the original mortgage to condominium associations, rather than only six months of past due assessments or 1% under the old law.

Although bank counsel may argue that the application of such increased amount only applies to mortgages entered into after July 1, our firm's interpretation of such new law is that the increased amount due is triggered at the time the certificate of title is actually issued to the lender (i.e., when the lender completes its foreclosure against the property). As such, under our interpretation, any lender who takes title to a condominium unit after July 1, 2010, would owe the increased amount under the new statute.

Associations should take advantage of these and other new laws that were adopted by the Florida Legislature this year. Such new laws will directly impact how associations are able to collect critical dollars necessary to operate and maintain their common areas and help them in the battle against mounting delinquencies.

Associations should also consult with their attorneys regarding any questions they may have relating to the interpretation of these new laws. Additionally, associations need to be more aggressive than ever to pursue the full amounts due to them by law including all late fees, interest, attorneys' fees and costs, especially during these difficult economic times.

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