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SOLOMON'S LAW

Is Your Association Attorney Taking Their Legal Fees Out of Your Assessments?



BY: BEN SOLOMON, ESQ.

If your homeowners or condominium association attorney is taking their legal fees and costs out of your assessments they are collecting (or only collecting the assessments due to the association and then billing the association without collecting such fees and costs on top of the association assessments), then you may want to consider finding a new attorney. Florida Statutes and most association governing documents protect an attorney's right to collect his or her legal fees and costs in addition to the assessments due to the association. Therefore, if the attorney only collects the assessment amount for the association and then separately

bills the association for their legal fees (which fees, in some cases, may be more than the actual assessments collected) then, in essence, the attorney has taken their fees out of the association's money instead of taking advantage of the association's legal right to collect all of its legal fees and costs in addition to the assessments.

Additionally, some attorneys either bill their association clients up front or at some other stage of the collection matter instead of deferring such legal fees until the matter is successfully concluded and the association also receives its money. While smaller practitioners may need to bill their clients up front or along the way in order to cover overhead expenses and other financial needs, the irony is that most associations in this market cannot afford to pay any legal fees (which is why they need a good collection attorney in the first place) and therefore should consider finding an attorney who agrees to defer all of their legal fees until such legal fees are fully collected from the debtor or the lender. Additionally, having to pay legal fees up front or along the way is actually a deterrent to many associations from even pursuing advisable legal remedies such as filing their own association foreclosures against delinquent owners (instead of just waiting for the lenders to come through) because the legal fees are cost prohibitive.

Some naïve attorneys also allow lenders' counsel to convince them that the statutory cap for a qualified first mortgage (who completes a foreclosure against its borrower) also includes a cap on the association's legal fees and costs. It does not. Such statutory caps, if applicable, only apply to "assessments" and, as such, the legal fees and costs are all recoverable in addition to the capped amount of assessments due from the prior owner. If the Florida Legislature had intended to cap legal fees and costs for qualified first mortgage holders, it would have stated so in the applicable statute. Practically speaking, this also could not have been the intent because the legal fees and costs are typically more than the statutory cap in the first place, which would mean that if the legal fees were capped, the association would not only typically get nothing (because the fees would be greater than the assessments due), but would possibly leave the association upside down owing an additional balance to the attorney, in which case no association would be able to hire an attorney for such purpose. *Ben Solomon, Esq. is a partner and co-founder of Association Law Group, P.L. (ALG) and practices in the areas of developer representation and association representation. www.AssociationLawGroup.com / ben@algpl.com*

the lender to come through.