

TIME TO FINE

BY ADAM C. GURLEY

Our clients are often concerned about the prospect of engaging in time consuming and expensive litigation in an effort to enforce their community's covenants, rules and restrictions. While filing suit in a court of law may very well prove to be your association's only remaining option, there are steps that can be taken prior to filing suit in an effort to secure compliance outside of the courtroom. One relatively cost-effective method by which to potentially secure compliance in connection with an ongoing violation is to levy fines. This is particularly true in a homeowners' association context, as homeowners' associations are permitted to place a lien on an offending owner's property for fines totaling \$1,000.00 or more.

In order to levy a fine, an association is generally required to provide the offending owner with at least 14 days' notice of the violation and an opportunity to request a hearing before an impartial fining committee. In the event that the owner requests a hearing before the fining committee, the role of the committee is solely to confirm or reject the fine originally proposed by the board of directors. In other words, the fining committee is not permitted to increase or reduce the amount of the fine, nor is it permitted to impose any additional fines.

In addition to the notice requirements outlined above, there are limitations as to the amount of the fine. In a condominium or cooperative association, fines are limited to \$100.00 per violation, although a fine may be levied for each day that the violation continues provided that the aggregate does not exceed \$1,000.00. In a homeowners' association, fines are permitted to exceed \$100.00 per violation and \$1,000.00 in the aggregate provided the association's governing documents expressly authorize the greater penalty.

While fining can be a powerful tool to secure compliance, associations should take care to ensure that they are in compliance with all applicable laws prior to attempting to levy or collect fines. In addition, associations should note that the purpose of imposing fines is ultimately to secure compliance - not to increase revenue. 



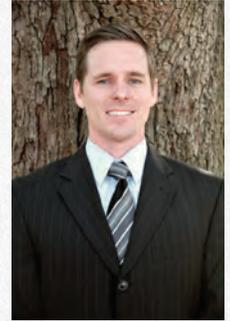
IS YOUR DECLARATION LIMITING YOUR STATUTORY ABILITY TO COLLECT?

BY MARK R. WATSON, JR.

You are advised by counsel that a Certificate of Title has issued to a purchaser pursuant to a lender's foreclosure action against a property in your community. Your association is preparing to make demand on the new owner for amounts which it believes it is entitled under Florida Statutes. STOP! Your governing documents may prevent the association from doing so, or the documents may limit the amount you are entitled to collect.

Florida law allows community associations to recover some or all of the assessments due against a property from purchasers at mortgage foreclosure sales. When a Certificate of Title is issued to a first mortgage holder (or any entity to which such mortgage was assigned), associations are statutorily entitled to recover the lesser of one percent (1%) of the original mortgage debt, or the property's unpaid common expenses and regular periodic assessments which accrued or came due during the twelve month period immediately preceding the acquisition of title. When a Certificate of Title is issued to any other third-party purchaser, by statute the new owner is jointly and severally responsible for all unpaid assessments that came due up to the time of transfer of title. (In situations where the Association holds title to a property prior to completion of the lender's foreclosure, the calculation is based on assessments that came due from the owner who held title prior to the Association.) These statutes have been revised over the years to afford greater protection to community associations.

Our office routinely communicates with purchasers at mortgage foreclosure sales regarding amounts due to our association clients based on Florida Statutes. For years, most purchasers simply paid the amounts due without question. Recently however, more and more lenders and third party purchasers are refusing to pay past due assessments based on exculpatory or ambiguous language contained in an association's governing documents.



We generally find language exempting lenders and third party purchasers from payment of past due assessments in the declarations of older associations which have not updated their governing documents. However, as association law is continuously changing to provide additional protection for community associations, ensuring that your documents afford you all the rights to which you are entitled is critical for ALL associations, new and old. Accordingly, it is very important that you review your governing documents to determine if you have language that may cost your association its ability to recover past due assessments from lenders and third party purchasers. If such language is found, you should promptly amend the provision(s) to ensure that your association is able to recover the past due amounts to which it is entitled pursuant to Florida law. 

IN PLAIN ENGLISH...

Section 718.106(4) of the Florida Statutes regarding dual use of condominium property means that a unit owner who leases his or her unit does not have the right to continued use of the common elements and association property available (such as recreational facilities or a marina) during the period that the unit is leased. The owner continues to have a right of access to the leased unit as a landlord. The tenants may waive their rights to use the common elements and association property in favor of the owner if desired, but such waiver must be in writing. This statute also gives the Association the right to adopt additional rules prohibiting dual use by owners and tenants. 

HAVE YOU CONSIDERED...

-  Could you and/or should you provide charging stations for electric vehicles on association property?
-  Do you know the difference between a service animal and an emotional support animal, and why that is important?
-  Are all lots within your subdivision still bound by the governing restrictions? Did you know after 30 years it is possible they are not, despite automatic renewal language which is customarily contained within the restrictions?

For answers to these and any other questions you may have, please feel free to contact our office.

UPCOMING EVENTS

February 23, 2017 -- Community Association Day & Trade Show, 9:00 AM - 3:00 PM, The Coliseum, 535 4th Avenue North, St. Petersburg, Florida 33701

March 9, 2017 -- West Florida CAI Community Association Trade Show, 8:00 AM - 4:00 PM, Bradenton Area Convention Center, 1 Haban Boulevard, Palmetto, Florida 34221

April 6, 2016 -- Board Certification Class. Please contact our office for details and reservations as seating may be limited.

April 20, 2017 -- Tampa Bay Condo & HOA Expo, 10:30 AM - 3:00 PM, Tampa Convention Center, 333 South Franklin Street, Tampa, Florida 33602

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