**CONDOMINIUMS HAVE POWER TO COLLECT ASSESSMENTS**

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Florida condominiums are created by a declaration of condominium. The declaration must meet requirements set by statute and regulations and be approved by the State. Condominium association rely upon assessments from unit owners to pay the bills. Each declaration of condominium includes provisions addressing assessments but Florida statutes control procedure.

The legislature addresses assessments and liens in some detail. Statutes attempt to provide common procedures and rights for both owners and associations, primarily to prevent abuse by associations. Section 718.116 Florida Statutes is the legislature’s primary effort to address assessments.

The statute confirms that an owner, regardless of how title is acquired, including by purchase at a foreclosure sale, is liable for all assessments coming due while he or she is the owner and also for all unpaid assessments that came due up to the time the owner acquired title. That can be quite shocking to someone who buys property at a mortgage foreclosure and later finds that there is a substantial unpaid assessment balance due the association. The statute does carve out an exception for first mortgage holders acquiring title through foreclosure, limiting the mortgage holder’s liability for assessments that became due before the mortgagee acquired title to the lesser of 12 months of assessments or 1% of the original mortgage debt. But, even a mortgagee acquiring title is responsible for assessments that come due after acquiring title.

Assessments not paid when due bear interest at the rate provided in the declaration. If the declaration does not provide a rate, interest accrues at 18% per year. Many associations simply apply that 18% figure to delinquent assessments without reading their own declarations. Some of the older declarations set interest at 6% or less. The statute allows late fees but caps those fees at the greater of $25 or 5% of each delinquent assessment. To avoid argument, the statute also provides that any payment received by an association must first be applied to accrued interest, then late fees, then to costs and reasonable attorney’s fees of collection, and only after all of those items are paid to the delinquent assessment.

The statute confirms that associations have a lien on each parcel to secure payment of assessments. The lien must be recorded in the public records to be valid. The lien must describe the condominium parcel, the name and address of the association, the amount due and the due dates. A lien is only effective for one year after recordation, unless within that time the association files suit to foreclose the lien.

An association lien is foreclosed just like a mortgage. As an alternative, the association can sue the owner for unpaid assessments without waiving any claim of lien. The association is entitled to reasonable attorney’s fees in either a lien foreclosure or an action for unpaid assessments.

The legislature went out of its way to make sure unit owners get told about assessments, potential liens and risks of nonpayment before an association can pursue collection. The statutes require the Association send an invoice for assessments to the unit owner address maintained in the Association’s official records. An association cannot require payment of attorney’s fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides opportunity to pay without the assessment of attorney fees. That notice of late assessment must be sent to the owner’s address in the association’s records and, if the address is not the unit, must also be sent by first-class mail to the unit.

The association is prohibited from filing a lien foreclosure suit against the condominium unit until 45 days after it sends the unit owner certified mail notice of intent to file foreclosure. That notice must be sent to the owner at the owner’s address in the association’s records and, if not the unit address, also by first-class mail to the unit. If the association has not sent the notice of late assessment, even if it hires a lawyer to send the pre-lien notice, it cannot charge the owner attorney’s fees if the amount due the association is paid during the 45-day pre-foreclosure notice period.

If the association does not timely provide the 45-day pre-foreclosure notice, the association is also barred from recovery of attorney fees or costs if the owner pays all assessments due the association prior to entry of foreclosure judgment by the court.

The legislature’s primary intent through the statutes is to protect owners by requiring associations give owners lots of notice before pursuing collection. The legislature did not overlook the possibility of an abusive owner. If a delinquent owner has a tenant, the association can serve the tenant with a notice requiring the tenant to pay rent to the Association instead of to the owner. The tenant is immune from liability to the owner from paying rent to the association. If the tenant does not pay rent to the association as it comes due, the association can evict the tenant just like an owner.

If there is a tenant in the unit during a lien foreclosure, the association can ask the court to appoint a receiver to collect the rent. If the owner remains in possession of the unit after foreclosure judgment, the court can require the owner to pay rent for the unit.

A lot of associations make mistakes in the lien process. Many fail to send the notice of late assessments and then try to collect attorney’s fees when the association lawyer sends a pre-lien letter. Others charge 18% interest on delinquent assessments even when the declaration mandates a lesser amount. More than a few charge late fees in excess of the statutory maximum. All of these mistakes could be avoided if associations adopted procedures after review of their declaration and the statutory requirements with association counsel.

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