

# COUNSELOR'S COMMUNITY CHRONICLE

SIEGFRIED,  
RIVERA,  
LERNER,  
DE LA TORRE  
& SOBEL, P.A.

Fall 2007

## 2007 LEGISLATION UPDATE

Inside this issue:

2007 Legislation  
Update

Page 1

New HOA  
Assessment  
Collection Laws

Page 1

Condominium  
Legislation

Page 3

Siegfried Rivera  
News

Page 4



After two years of proposing numerous bills but not passing any, the Florida Legislature passed several significant changes to Chapters 718, 719, and 720, Florida Statutes in 2007.

### Homeowner Association

#### HOA Collections

Section 720.3085, Florida Statutes, was created to provide that a parcel owner, no matter how he has acquired title, is responsible for all assessments that come due while he or she is the parcel owner.

The new Section provides that a parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that were outstanding up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner.

It will be interesting to note how case law develops with regard to this new Section concerning the joint and several liability a new parcel owner has with the previous parcel owner.

It also provides that assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

Additionally, the new Section provides that if the declaration or bylaws so provide, the association may charge an administrative late fee in an amount not to exceed the greater of \$25 or 5 percent of the amount of



each installment that is paid past the due date.

Furthermore, under the new Section any payment received by an association and accepted shall be applied: first to any interest accrued, second to any administrative late fee, third to any costs and reasonable attorney's fees incurred in collection, and finally to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. This provision will greatly assist associations in recovering the fees incurred in the collection process.

A homeowners' association may not file a claim of lien against a parcel for unpaid assessments unless a written notice or demand for past due assessments as well as any other amounts owed to the association pursuant to its governing documents has been made by the association. The written notice or demand must:

*cont. on page 2*

**Practice Areas:**

**Construction Law and Litigation, Condominium Law, Homeowner Association Law, Real Estate, Shopping Center Law, Landlord Tenant Litigation, Complex Corporate and Commercial Transaction Work, Aviation Law, Collection Litigation.**



- ◆ Provide the owner with 45 days to make payment for all amounts due, including, but not limited to, any fees and actual costs associated with the preparation and delivery of the written demand.
- ◆ Be sent by registered or certified mail, return receipt requested, and by first-class United States Mail to the parcel owner at his or her last known address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address. If the address reflected in the association's records is outside the United States, then sending the notice to that address and to the parcel address by first-class United States mail is sufficient.

The association may bring an action in its name to foreclose a lien for unpaid assessments secured by a lien in the same manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. Such action may not be brought until 45 days after the parcel owner has been provided notice of the association's intent to foreclose and collect the unpaid amount in the manner provided above.

The association may recover any reasonable attorney's fees incurred in a lien foreclosure action or in an action to recover a money judgment for the unpaid assessments.

Additionally, the association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the parcel.

If after service of a summons on a complaint to foreclose a lien the parcel is not the subject of a mortgage foreclosure or a notice of tax certificate sale, or the parcel owner is not a debtor in bankruptcy proceedings, the parcel owner may serve and file with the court a

qualifying offer at any time before the entry of a foreclosure judgment. For purposes of the new section, the term "qualifying offer" means a written offer to pay all amounts secured by the lien of the association plus interest accruing during the pendency of the offer at the rate of interest provided in this section. The parcel owner may make only one qualifying offer during the pendency of a foreclosure action.

The parcel owner must deliver a copy of the filed qualifying offer to the association's attorney by hand delivery or by certified mail, return receipt requested.

The parcel owner's filing of the qualifying offer with the court stays the foreclosure action for the period stated in the qualifying offer, which may not exceed 60 days, to permit the parcel owner to pay the qualifying offer to the association plus any interest accruing during the pendency of the offer.

The qualifying offer of the parcel owner must be in writing, signed by the owner of the parcel and the spouse of the owner if the spouse holds a homestead interest in the parcel, acknowledged by a notary public, state the total amount due the association, state that the total amount due the association is secured by the lien of the association, state that the association is entitled to foreclose the lien and obtain a foreclosure judgment for the total amount due if the parcel owner breaches the qualifying offer, state that the parcel owner will not endanger the priority of the lien of the association or the amounts secured by the lien, and state the actual date or dates that the association will receive the total amount due from the parcel owner.

If the parcel owner makes a qualifying offer under this Section, the association may not add the cost of any legal fees incurred by the association within the period of the stay other than costs acquired in defense of a mortgage foreclosure action concerning the parcel, a bankruptcy proceeding in which the parcel owner is a debtor, or in response to filings by a party other than the association in the lien foreclosure action of the association.

However, if the parcel owner breaches the qualifying offer, the stay shall be vacated and the association may proceed in its action to obtain a foreclosure judgment against the parcel and the parcel owners for the amount in the qualifying offer and any amounts accruing after the date of the qualifying offer.

### HOA Reserves

Section 720.303(6) was amended to provide, among other things, that the association's annual budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible, to the extent that the association's governing documents do not limit increases in assessments.

An association is deemed to have provided reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so by an affirmative vote of a majority of the total voting interests. Once established, the reserve accounts must be funded and maintained, or have their funding waived.

The amount to be reserved must be computed by using a formula that is based upon the estimated remaining life and estimated replacement cost or deferred maintenance expense of each reserve item. The funding formulas may either be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets. The new legislation provides the proper funding formula depending on which option (separate or pooled) the association chooses.

Once reserve accounts are established, the membership of the association may provide for no reserves or less reserves.

Reserve funds and any interest shall remain in the reserve account and may be used only for authorized reserve expenditures. If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in special assessments if reserves are not provided, each financial report for the preceding fiscal year must contain a statement in conspicuous type as provided by the bill.

For those Homeowner Associations with existing reserves that were not established by the developer, or were not established by the affirmative vote of the homeowners, the "old law" still applies, and such reserves may be assessed and allocated pursuant to the association's governing documents.

Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association may not

vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interest.

### Condominium Legislation

Section 718.117, Florida Statutes, was substantially rewritten this past legislative session. The Section deals with condominium termination provisions. While rarely garnering much attention from owners and legislators in the past, after the number of hurricanes and their aftermath over the last few years, termination provisions have been a hot topic the last two legislative sessions.

The revised Section 718.117, Florida Statutes ("718.117"), applies to all condominiums in this state in existence on or after July 1, 2007. The bill provides that where the continued operation of the condominium would constitute economic waste or would be impossible, the necessary vote for termination is the lesser of the lowest percentage of voting interests needed to amend the declaration. The criteria for economic waste or impossibility are:

- ◆ The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- ◆ It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

718.117 further provides that, regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80% of the total voting interests of the condominium, provided that not more than 10% of the total voting interests of the condominium reject the plan of termination by negative vote or by providing written objections thereto. The declaration can provide for a lower threshold.

718.117 also provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Additionally, 718.117 also provides that after a natural disaster, where the board of directors cannot be located, identified, or refuses to act, any interested person may petition the court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the association following

# Personalized Professionalism

Means tailoring our treatment of every matter to the client's specific needs.



Visit our completely new and redesigned website:

[www.siegfriedlaw.com](http://www.siegfriedlaw.com)

## Contact us:

**Main Office**  
Suntrust Plaza  
201 Alhambra Circle  
Suite 1102  
Coral Gables, Florida 33134

Telephone: 305-442-3334  
Facsimile: 305-443-3292

Email: [info@siegfriedlaw.com](mailto:info@siegfriedlaw.com)

**Condominium Collection**  
Department  
Suntrust Plaza  
201 Alhambra Circle  
Suite 603  
Coral Gables, Florida 33134

Telephone: 305-442-0877  
Facsimile: 305-460-8727

**Broward Office**  
AmTrust Bank Building  
8211 West Broward Blvd  
Suite 250  
Plantation, Florida 33324

Telephone: 954-781-1134  
Facsimile: 954-465-2590

**West Palm Beach Office**  
Northbridge Centre  
515 North Flagler Street  
Suite 701  
West Palm Beach, Florida  
33401

Telephone: 561-296-5444  
Facsimile: 561-296-5446

This journal does not contain specific legal advice. The information here is summary in nature. Any principles of law here cited are subject to change. Any questions can be directed to Siegfried, Rivera, Lerner, De La Torre, & Sobel, P.A. at 201 Alhambra Circle, 11th Floor, Coral Gables, FL 33134

ADVERTISEMENT

The hiring of an attorney is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

## Firm News

### *Helio De La Torre elected to Community Associations Institute College of Community Association Lawyers*

Shareholder Helio De la Torre was recently accepted to the Community Association's Institute ("CAI") College of Community Association Lawyers. The College of Community Association Lawyers ("College") was established by CAI for attorneys who have distinguished themselves through contributions to the evolution of the practice of community association law. The College provides a forum for the exchange of information among experienced legal professionals for the purpose of advancement of the community association field.

As an inducted member of the College, Mr. De La Torre is recognized for his ongoing contribution to the promotion, improvement and advancement of community association law and high standards of professional and ethical conduct. The firm congratulates Mr. De LA Torre on this significant accomplishment.

### *Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., continues to expand*

Thanks to you, our loyal clientele, our firm has been able to grow to meet your needs. Last year we opened our Plantation office. This office now has nine attorneys and staff, as well as a collections department. For our north Dade, Broward, and Palm Beach clients, this means easier access to our collections department for all your needs, as well as making it more convenient for your residents to interact with our collections department when needed. Please contact our Broward collections department at the numbers listed to the left for our Broward office.

### *Steven H. Siegfried, Helio De La Torre, Stuart H. Sobel, and Michael J. Kurzman selected for inclusion as 2007 Florida Super Lawyers*

Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A. is proud to announce that four of the firm's attorneys were named to the list of 2007 Florida Super Lawyers.

Super Lawyers names Florida's top lawyers as chosen by their peers and through independent research conducted by Law & Politics, which publishes Super Lawyers. The 2007 edition is based on the survey of more than 44,000 lawyers across the state. Only five percent of the total lawyers in the state are selected for