

# apm NEWS

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## **Beware of Inexperienced Service Companies**

**By John R. Math, LCAM**

With Palm Beach County experiencing a larger than normal downturn in the economy, climbing unemployment rates and a growing crisis in all areas of real estate and construction, most associations are going through a extremely difficult time maintaining their associations, keeping their maintenance costs low as well and trying to match assessment income with assessment costs.

Because of the recent economic and mortgage related problems, we have seen a growing trend with Associations hiring low cost and low fee service companies and we believe that this trend will cause additional problems to an association if ignored. These low cost vendors and service companies that are coming into the marketplace are new, inexperienced and under staffed. These new companies have no real experience in their chosen fields or new professions. These individuals who now represent themselves as service companies that cater to the Association industry are people who had been downsized, or laid off or their former professions have virtually been eliminated because of lack of demand. They have no real experience to back up their companies and they could cause your association more in the long run, due to them being untested, as opposed to the small amount of money they

claim they will save your association if you hire them.

In the past, when there have been major recessions or large layoffs in Palm Beach County, such as Eastern Airlines, IBM or Pratt & Whitney, the market place is suddenly loaded with new landscapers, roofers, management companies and other service companies that would like to serve the Association industry. Today, we have the same scenario but now it is with real estate salespeople, construction related individuals, mortgage brokers, title company employees and bankers. Since they believe that their former business or profession was "related" to real estates and association management services, they are then qualified and have the experience to provide another type of service to associations.

These new service companies do not have the experience and knowledge to adequately perform to the standards of associations, and with the sophisticated issues facing most associations today. Most new service companies do not have the resources, knowledge or experience to run their businesses and or that of a potential association client.

If an association is considering getting a price quote from a new service company, the following are a few of the questions that should be asked of that service company by

the association: 1) How long have you been in business and what is your direct experience in this business? 2) How many employees do you have and what are their job duties and responsibilities? 3) Do you sub-contract any of your work to any other companies or firms? And if that is the case, you will then have get all of this same information on that company as well. 4) What types of insurance does your company have and in what amounts? Also, get proof of their insurance as well. 5) What type of bonding does the company have and in what amounts? 6). What other types of services do they provide and does this arrangement create any conflict of interest, as they may not be able to supervise the affiliated company the way a third party would and 7) In case someone gets sick, goes on vacation or quits what are their contingency plans? Who are the back-up personnel and how will they interface with the association during this time? I am sure that there are other questions that are related to your association as well.

We have seen many associations jump at having a new service company based solely on price and what they can save by switching to a new company. The association believes that they have made a good choice only to eventually find out that the company they chose does not have

the experience or the resources to adequately provide the level of service that the association, the Board of Directors and the association residents have come to expect. The Board then find themselves spending their time either training the new company due to their inexperience or finding that they are doing the work of the management company due to their limited resources. The association found out that they have received exactly what they have paid for and it is a lot less than what they had received in the past.

If an association is looking to lower maintenance costs because of declining revenues then I think it makes much more sense for everyone involved to have a meeting of the minds to discuss how this can be accomplished, instead of just going out and hiring a new, inexperienced and under staffed company to solve the problem of cost. Today's experienced association service companies and management firms understand better than anyone the price and revenue challenges that associations are operating under and they are prepared to help the Association to get through these difficult times. This can be accomplished several ways, including possibly altering the existing contract by changing time on site, changing administrative duties or lowering the fee or contract price and allowing the company to make it up on extras (pay as you go) or being able to charge when a sale is made or a unit is sent to collections.

All service companies have the same overhead and costs. Therefore, if a new company price is much lower than an established firm, the association will not end up with same level of service and it will be much less than what they are now receiving. Therefore, do not get rid of the established and experienced service company or management firm, discuss with them how to lower costs in a way that helps the association without hurting the service company. If the problem is handled in this manner, the association will be getting the highest quality service at the best price.

## Ask The Attorney

By Jay Steven Levine

**Q. *Our community has several committees, including Finance and ARC. We never know when they meet and as far as I can see there are never any minutes taken. We should know what is going on. Is this right?***

**A.** F.S. 718.112(2)(c), applicable to condominium associations, addresses this question. The statute provides that meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget is subject to the statutory requirement that minutes be taken, that the meeting be noticed and with owners permitted to attend and participate at the committee meeting. Other committee meetings are not subject to these requirements only so long as the by-laws contain a provision exempting all other committee meetings from the statute mentioned above.

F.S. 720.303(2)(a), applicable to homeowners' associations, provides that provisions of the statute apply to meetings of any committee when a final decision will be made regarding the expenditure of association funds and to architectural review committees. This means that the meeting must be noticed, minutes taken and owners permitted to attend and observe at the committee meeting. No other committee meetings are regulated by the statute.

**Q. *For years we always gave our owners 30 days in which to pay their late assessments. We are now being told that we have to give them 45 days in which to pay and that we cannot lien them for 90 days. This will put a financial strain on our operations and budget if this is true. Is this true?***

**A.** A policy of giving owners 30 days to pay late assessments, after which the account is turned over to the association attorney, is a good sensible

policy. Once the attorney receives the account, both the condominium and homeowners' association statutes require that a notice of the intention of the association to lien the unit must be forwarded to the owner. The time period for payment before the association is able to file a claim of lien against a unit is 30 days for condominiums and 45 days for homeowners' associations. Thereafter, the attorney is required to send a notice of the intention of the association to file a lien foreclosure action to the owner. Here, too, the timeframe for condominium associations is 30 days and for homeowners' associations, 45 days. This author understands the financial hardship to associations because of the statutory timeframes, but the legislature had the intention to protect unit owners concerning the filing of liens and foreclosure actions, but failed to recognize that these limitations will work a true hardship to the association.

This article was prepared by Jay Steven Levine, P.A., which represents more than 300 community associations. The firm has dedicated its practice to the financial health of the association and has developed a niche practice in the area of casualty and insurance law, including hurricane law.

## REMINDERS!

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2009.
2. Fees to the Division are coming due and are late if not paid by January 1, 2009. The amount is \$4.00 per unit for all condominiums and cooperatives.
3. Corporate Annual Reports will soon be mailed and must be filled out and received by the Secretary of State by May 1, 2009. The Fee is \$61.25 for Not-For-Profit Corporations.

## ASSESSMENT COLLECTIONS - THE NEXT GENERATION

By Jay Steven Levine, P.A.,  
with offices in Boca Raton and Palm Beach Gardens, Florida

1. **Preamble.** A deteriorating national economy, falling home prices and an increasing number of mortgage foreclosures, and rising unemployment, have all come together to create the "perfect storm" on a national level. These forces have also similarly impacted community associations. This "perfect storm" requires more extreme measures to ensure that assessments are collected with the greatest diligence and efficiency.

2. **Pre-Attorney Collection Procedures by the Association.** Associations should ensure that their ledgers are clear and reflect all assessments and payments received from the owners. Any "balance carried forward" entry should be researched and broken down on the ledger; this is critical because if an owner demands that the collection attorney provide verification of the debt, the association would be unable to collect these unverified past due monies.

The oldest assessment should not be more delinquent than thirty to forty-five days before the collection account is turned over to the association attorney to commence the collection process.

3. **The Foreclosure Complaint.** Associations sometimes question the economics of filing a lien foreclosure action where there is no equity in the unit. Assuming that a bank foreclosure has not as yet been commenced, the firm finds that many owners do settle their delinquent assessment account once they are served with the complaint. If the owner does not settle, the association has the option to proceed to a conclusion, resulting in the forced sale of the unit on the courthouse steps to pay the judgment obtained.

Every foreclosure complaint contains a count two, alternatively seeking a final judgment for money damages. This type of judgment is attractive only where there is no equity in the unit and the association believes that the owners do have some financial means or are likely to obtain such financial means in the future to pay the money judgment.

The association must elect its remedy whether to obtain a final judgment of foreclosure or instead a final judgment for money damages, at the time of the motion for summary judgment.

4. **Mortgage Foreclosures.** When a bank commences a mortgage foreclosure action, the association should authorize its counsel, at minimum, to file an answer and monitor the proceedings. The association might consider authorizing the attorney to negotiate protective language in the final judgment of foreclosure to ensure that the association is in the best position to recover past due assessments after the foreclosure action is completed. Where the bank is delaying the process, the association might also consider authorizing the attorney to file a motion and petition the court to order the bank to complete the process quickly or otherwise commence paying assessments prior to the completion of the foreclosure proceeding.

5. **Waiving of Late Fees or Interest.** There are times when associations are willing to waive interest and late fees to settle a collection matter. Such a waiver violates the typical governing documents which mandate the collection of interest and late fees. Although there is no reported court case which has addressed selective enforcement in the collection area, a court could decline to award interest and late fees in a collection case where the owner can prove that other collection matters were resolved without the payment of interest and late fees.

6. **Disapproval of a Tenant Where Owner/Landlord is Delinquent.** A collection remedy recognized by the condominium statute and by a court case for homeowners associations, is for the association to deny approval of a tenant when the owner is delinquent in the payment of assessments. This remedy applies only where the association has a lease approval process in the governing documents.

7. **Assignment of Rent.** There are many times where the owner places a tenant into possession without complying with the lease approval process contained in the governing documents, at the same time that the owner is delinquent in the payment of assessments. An option is for the association to amend the governing documents to provide for an assignment of rent from the tenant to the association to pay the assessment delinquency. Although there is an argument that the condominium and homeowners association statutes would not permit this remedy because the statutes make no mention of an assignment of rent, the association does have a good argument that this remedy would exist if contained within the governing documents.

8. **Denial of Services.** Associations are considering terminating cable television and water services for units whose owners are delinquent in the payment of assessments. There is no reported court case providing direction on this issue. In order for the association to have any chance to succeed in enforcing this collection remedy, the governing documents must be amended to permit the association to terminate cable television and/or water services for the defaulting owner. The same statutory argument against the assignment of rent remedy would also apply here.

9. **Suspensions.** There is no provision in the condominium statute which permits a condominium association to suspend voting rights of members or use rights of members, tenants and guests. An "out of the box" position for condominium associations is to deny use rights by a tenant who is not approved by the association under a required lease approval process. This argument available to a condominium association is made difficult because of F.S. 718.106(4), which provides that when a unit is leased, tenants shall have all rights of the owner to use the property.

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C/O ASSOCIATED PROPERTY MANAGEMENT  
1928 LAKE WORTH ROAD  
LAKE WORTH, FLORIDA 33461

**APM NEWS**

**PAGE 4.**

**APM NEWS**

**Winter 2009**

F.S. 718.112(2)(n) was added to the condominium statute in 2008 and provides that a director or officer more than ninety days delinquent in the payment of the annual assessment is deemed to have abandoned the office.

F.S. 720.305(2) does recognize the ability of a homeowners association to suspend use rights of a member and a member's tenants, guests and invitees, so long as the governing documents so provide. We have found that many governing documents do provide for the right of suspension against some but not all of the persons who are candidates for a suspension under the statute. The governing documents should be amended if necessary to broaden the candidates for suspension to include the member and a member's tenants, guests and invitees.

F.S. 720.305(3) states that if the governing documents so provide, a homeowners' association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of ninety days.

**10. Conclusion.** In these trying times, association attorneys are finding themselves to be in the position of "financial advisors" to the association, not only in the collection of delinquent assessments, but also to assist the association in planning how to meet its financial needs, through the process of waiver of reserves, transfer of reserves to unrelated purposes, the levy of special assessments, the borrowing of money, increasing "income" sources and reducing or eliminating non-essential services.

**Associated Property Management of the Palm Beaches, Inc., is a twenty-year-old full-service association management firm. APM serves more than 130 associations in Palm Beach County. If you have any questions or comments, you may contact us at 1928 Lake Worth Road, Lake Worth, Florida 33461. Please call us at 561-588-7210, or you may email us at [assocpropmgt@bellsouth.net](mailto:assocpropmgt@bellsouth.net) at any time.**

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South Florida Water Management District  
561-686-8800 or [www.sfwmd.gov/index](http://www.sfwmd.gov/index)

Palm Beach County Property Appraiser  
561-355-3230 or [www.pbcgov.com/papa/](http://www.pbcgov.com/papa/)

Florida Division of Emergency Management  
850-413-9900 or [www.floridadisaster.org](http://www.floridadisaster.org)

Palm Beach County Div. of Emergency Mgt.  
561-712-6400 or [www.co.palm-beach.fl.us/eoc](http://www.co.palm-beach.fl.us/eoc)