

# apm NEWS

**News, Issues & Information for Community Associations - Spring 2002**

## **CONTRACTOR LIEN RIGHTS AND COMMUNITY ASSOCIATIONS**

**By John R. Math, LCAM**

Many associations find themselves in a dispute with contractors because they do not comply with the Florida Construction Lien Law (Chapter 713, Florida Statutes – The Mechanic's Lien Law). There are stories of community associations who have paid roofers, painters and paving companies all of the required funds, received release of liens and final release of lien, when the project was finished, only to receive a notice of lien from a supplier of materials or labor that they had never been paid from the contractor. This can be very expensive for the association as they may be paying for the same work twice!

The State of Florida Construction Lien Law is a mandatory state-wide legislation, which shall be enforced in every jurisdiction throughout the State. Applicants for a permit on a building project that exceeds \$2,500 in value are required to provide information concerning the Owner, Mortgage lender and the Architect/Engineer. In addition the application has to have the Owners notarized signature affixed.

A certified copy of the recorded Notice of Commencement must be posted and maintained, along with the permit, from the start of the job through the final inspection. **The State mandates that no inspections shall be approved without the Notice of Commencement being posted.**

This requirement applies to all permitted work regardless of building valuation or funding (cash or credit) source.

**What to do to protect your association** – For your protection, if you are planning to spend over \$2,500 on building or improvements, before your start building, repairing or replacing, it is suggested:

You consult an attorney regarding the Mechanics Lien Law before starting a major construction project. Make sure that all requirements for recording and posting the "Notice of Commencement" have been accomplished.

Before making any payments to your contractor, you should get a sworn statement in writing that the contractor has paid all the bills for your job.

If you have received a "Notice to Owner" from anyone, you should require your contractor to get a sworn statement from each such person stating that they have been paid for all work done on your job. **This should be done before making any payments to your contractor.**

If a Mechanics Lien is filed against your property, consult an attorney immediately.

The Mechanics Lien Law provides a method by which a contractor, subcontractor, laborer, building material supplier, architect, landscape architect, interior designer, engineer, or land surveyor may claim lien on real property on which they have done work, or to which they have furnished materials. If the lien is not satisfied, your property may be sold to pay the lien.

**What is it?** A "lien" is a charge or encumbrance on real property (land that is improved and the improvements thereon, including fixtures), which must be satisfied by the property owner to ensure clear title. "Attachment" means

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that if a court finds a claim a lien valid, the owners' property may be seized and sold to satisfy the lien if it is not voluntarily paid.

A "Notice of Commencement" is a notice, which is filed with the Clerk of the Circuit Court in the county where the work will be performed. The notice should not be recorded before the construction or development mortgage is recorded, but must be recorded before actual construction begins. It contains detailed information on the property owner, financing arrangements, and other specifics regarding the construction project. If a performance bond is to be posted, a copy of the bond must be attached to the "Notice of Commencement".

**The owners' responsibility** – Before any construction begins, and after the construction mortgage has been recorded, the owner should take the following steps: At the time application is made for a building permit, a "Notice of Commencement" form may be created by the Association's attorney or obtained from an office supply store. Complete the "Notice of Commencement" form with the required information and retain a certified copy.

After the building permit is issued, record the Notice of commencement with the Clerk of the Circuit Court in the county where the work will be performed. If a performance bond is to be posted, a copy of the bond must be attached at the time of, or prior to, recordation of the "Notice of Commencement". Post the certified copy of the "Notice of Commencement" at the job site.

There is no requirement to post a  
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## Ask The Attorney

By **Natalie C. Chin-Lenn, Esq.**

**Q.** Our documents do not provide for a voting certificate to be issued from the owner of a unit. How do we know that the person who is voting has that right on behalf of the owners?

**A.** Section 718.103(29) of the Florida Statutes defines voting certificates as a document which designates one of the record title holders, or the corporate, partnership, or entity representative, who is permitted to vote on behalf of the condominium unit. Voting certificates remain valid until the owners decide to change it. If the documents do not provide for such a procedure, the owners of the unit can provide identification or documentation at the meeting showing they are the owners and are entitled to vote. If two people show up to vote for the same unit, the two parties should agree who will cast the vote for the unit. If someone other than the owner claims the right to vote, they should provide proof by providing a proxy for that specific meeting with the proxy signed by all owners. A proxy and a voting certificate are two different items, however, a properly executed proxy may be used as a voting certificate for a specific meeting provided that it is executed by the owners.

**Q.** Our Board passed a budget this year, which shows that all of the necessary and required reserve funds are fully funded. The owners want to vote on this budget and the Board claims that since it is fully funded that they do not have to let the owners vote. Who is right?

**A.** The approval of the budget is dependent upon your Association document requirements. Some

documents provide that the budget is adopted by the board of directors and others provide that the adoption must be by a vote of the owners. In either case, a meeting must be called where a quorum is present and the majority vote must be obtained.

Part of your question deals with reserves. Since the Association is fully funding your reserves, owner approval will not be required unless your documents require the budget to be approved by the membership. If an association intends to waive or reduce reserves that are required by statute, the Association would be required to obtain the majority vote of the members at a duly called meeting.

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**Natalie C. Chin-Lenn, Esquire practices exclusively in the area of Community Association Law. She has been practicing in this area over 11 years and currently represents over 90 Associations in Palm Beach County. She is a member of the local chapter of the Community Associations Institute and a past Board Member. For Further information please call 561-640-3377 or email LawNCL@Aol.com.**

## REMINDERS!

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2002.
2. Fees to the Division are coming due and are late if not paid by March 1, 2002. 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, 2002. The Fee is \$61.25 for Not-For-Profit Corporations.

# EFFECTIVE TERMITE TREATMENT

By Terry Chapin, Certified Operator

Subterranean Termites live in the soil, and normally gain access to a structure through expansion joints, cracks, where utility or plumbing pipes come up through the slab, or by constructing air tight and moisture tight tubes leading from the Termite Colony in the soil to the wood. These tubes can go up walls, along pipes, and even stand free without any added support.

The termite workers commute between their food source (wood), and the soil. They collect moisture for themselves, and deliver nutrition to other members of the Termite Colony.

The treatment to eliminate Termite Colony can be done with either of the following two treatments;

**Liquid Treatment:** By treating the soil around and beneath the structure with a Termiticide proven effective against Subterranean Termites, this movement can be prevented. Once the structure has been treated, if Subterranean Termites are in a structure they must return through the treated soil, and will soon die. Those termites beneath the Termiticide "BARRIER" will die when they try to cross this barrier. It is most important that **ALL TERMITE ENTRY POINTS BE TREATED.** A liquid treatment will have the following characteristics;

- Provides control, not eradication.
- Down drill front sidewalks, patios and porch areas.
- Treat all utility pipes when available.
- Treat all ground floor bathrooms.
- Trench and rod soil and exterior wall.
- Drill and treat all expansion joints.
- Horizontally drill exterior foundation at slab level, every 14 – 16 inches.
- Patch all holes with a latex compound.

**Baiting System:** By placing monitoring stations around the structure, which are designed to encourage termite feeding, and subsequent baiting with growth regulator; the termite worker trans-

mits the growth regulator to the Colony, thereby causing the eradication of the Subterranean Termite Colony. A baiting system will have the following characteristics

- Total colony ELIMINATION, as opposed to limited CONTROL.
- Eliminates ALL types of Subterranean Termites including FORMOSIANS, which are not typically covered by other contracts.
- No drilling, patching, or painting necessary.
- No liquid chemical barrier required.
- Only Subterranean Termite treatment allowed by law within 25 feet of a well, or nearby water source.
- Excellent choice for "Chemically sensitive" people.
- Preventative treatment will ensure entire property is protected before any damage is done.

When choosing a termite treatment determine the most cost effective method for your particular situation. Allow a termite professional to help guide you in determining the best course of action.

Choose a company and their Certified Operator based on their years of experience, the amount of man power to perform their service and whether they will follow-up to determine that the treatment has been successful.

**Terry Chapin is the Certified Operator of Palm Beach Exterminating. Terry has been with the company for 25 years. Palm Beach Exterminating was founded in 1928 and was Palm Beach County's first pest control company. They have 50 employees and they service all of Palm Beach County. They offer the following services.**

**Interior Pest Control for Homes, Condominiums, Commercial properties**

**Exterior Pest Control and Ornamental Insect Control  
Fertilization for Trees, Palms and Shrubs**

**Complete Termite Control and Renewable Termite Service Contracts. Terry Chapin can be reached at**

**561-689-0808**

Mailing Label

C/O ASSOCIATED PROPERTY MANAGEMENT  
400 SOUTH DIXIE HIGHWAY, SUITE 10  
LAKE WORTH, FLORIDA 33460

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copy of the bond at the construction site. An owner's failure to comply with these requirements could affect title to your property.

**When can a lien be filed against your property? –**

There are two instances, which can result in a lien being filed against your property: 1. If you fail to pay your contractor for work performed, your property can be subject to a Mechanics' Lien filed by the contractor. 2. If a laborer, subcontractor, or a person supplying materials to your property is not paid and has given you a "Notice to Owner" and your contractor fails to pay laborers, subcontractor, or material

**Associated Property Management of the Palm Beaches, Inc. is a fourteen year old full service association management firm. APM serves more than 100 associations in Palm Beach. If you have any questions or comments you may contact us at 400 South Dixie Highway, Suite 10, Lake Worth, Florida 33460 or you may call us at 561-588-7210 or you may email us at [assocpropmgt@bellsouth.net](mailto:assocpropmgt@bellsouth.net)**

man, they can file a Mechanics Lien against your property. A "Notice to Owner" is a written statement that gives you the name, address, and description of the work to be done by the subcontractor or material man.

The steps to protect the association may seem to be very involved but by following the Florida Mechanics' Lien Law, the association will be protected from loss and potential delays in having any sales/transfers take place.

**USEFUL WEBSITES FOR YOUR ASSOCIATION**

Associated Property Management  
561-588-7210 or [www.assocpropmgt.com](http://www.assocpropmgt.com)

Florida Department of State  
904-487-6000 or [www.sunbiz.org](http://www.sunbiz.org)

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.co.palm-beach.fl.us/papa](http://www.co.palm-beach.fl.us/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)