

# apm NEWS

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## **Law Changes for Associations**

**By John R. Math, LCAM**

Governor Crist has signed into law the following changes to the Condominium (Chapter 718) law and the Homeowners' Association (Chapter 720) law, effective October 1, 2008.

We suggest that your Association attorney provide you with guidance on how these changes will impact your operations in the future.

### **Chapter 718 Changes**

(Effective October 1, 2008) - The following is a summary of the changes to Chapter 718 – Condominiums:

1. Board members will now be liable for monetary damages if their breach of duty results in an improper personal benefit.
2. Anyone who defaces or destroys accounting records

required by law can be fined up to \$5,000.

3. Records requested by an owner can be provided by e-mail or via the Internet.

4. The Board must place an item on the agenda, within 60 days upon receipt, if at least 20 percent of voting interests request something by petition.

5. Co-owners of a unit can't serve on the Board at the same time in associations of more than 10 units.

6. Anyone convicted in another state of a crime that would be a felony in Florida can't serve on the Board unless civil rights have been restored for at least five years.

7. Owners who owe back maintenance or assessment can't run for a Board seat; incumbents more than 90

days delinquent are deemed to have abandoned their job.

8. Directors charged with stealing or embezzling association money must be removed from office but must be reinstated if cleared.

9. Boards can't use association money to file lawsuits against owners who speak out about and against association issues.

10. The state must provide sellers with a form for prospective buyers that warns of their duties as a new owner.

11. Regardless of the condominium documents, associations must have adequate hazard insurance for full insurable value or replacement cost.

### **Chapter 720 Changes**

(Effective October 1, 2008) - The following is a summary

of the changes to Chapter 720 – Homeowners' Associations

1. Directors, officers and committee members can't receive a salary or benefit financially from service to the association, other than reimbursement for expenses or anything benefiting all owners.

2. New directors must certify in writing within 30 days of taking office that they have read the association's documents and rules.

3. Sellers must warn prospective buyers they are liable for all unpaid assessments owed the association.

Overall, these changes call for a Director to be more responsible, more liable and more involved in the operations of their Association. Owners will now have easier access to records and a reasonable assurance that they are being represented in a proper manner by their elected Board of Directors.

For the vast majority of Board members who are involved with their associations for the proper reasons, these law changes were unnecessary, and in the future may have a negative impact for attracting new directors to Boards. Overall, it remains to be determined whether these laws will help most associations in the State of Florida.

## Ask The Attorney

By Cari A. Podesta, Esq.

Q. All of our Directors go away during the summer and there is no one here in authority to make decisions. We need year round Directors. What can we do about this?

A. The residency of a Board member is NOT required for him or her to serve on the Board so the Association must be careful in trying to address this problem. If you are in a condominium association, the Board may create or appoint a search committee, which does not have the authority to appoint candidates for nomination but may encourage qualified person to become candidates for the Board. If the Board of your Association has members who are willing to serve on a search or nominating committee in the case of a homeowners association, then the Board can charge that committee with encouraging candidates to run for the Board who are full time year round residents of the community. The Association should encourage (but not require) candidates who run for the Board to disclose whether they are full time year round residents so that the members may factor this information when voting for their Board members. Keep in mind, however, that in a condominium association, candidates who elect to supply the Association with an information sheet about themselves are not required to disclose information concerning their residency, and the Association is likewise not responsible for the information disclosed.

Q. We have a Director who has several violations on their record. They never take care of these problems, yet they expect other owners to abide by the documents. We are having trouble enforcing the documents with other owners because of this situation. What can we do?

A. The other members of the Board need to approach this Board member on a one to one basis, and ask him or her to resign from the Board if the Board member continues to ignore or refuses to cure these violations. If the Board member fails to comply with any of these unofficial requests, then the Board member should be asked to voluntarily resign by the majority of the Board at the next Board meeting. The reasons for doing so should be made part of the minutes of the meeting. If this official request also fails, then the Association must proceed to take action including legal action if necessary to obtain compliance. Of course the membership can take its own action to recall/remove this member from the Board even if there is no recall procedure in the Association's governing documents.

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## REMINDERS!

**In anticipation of the hurricane season which began on June 1, review all insurance policies to make sure they are in order. Make copies of all contracts, warranties and unit owner roster sheets for storage in a safe deposit box or other safe place. Back-up any data on computers.**

**Make sure all of your Board of Directors and Members Meeting agenda, minutes and notices are up-to-date and in order, stored properly with separate copies.**

**Review your association's emergency evacuation procedures with all committee persons, residents and selected professionals.**

# Collections in the Housing Crisis

By Cari A. Podesta, Esquire

The number and frequency of mortgage foreclosures, and the length of time that it is taking these lenders to complete them and ultimately take title to the units or homes is putting many Associations in a real financial bind. There are some simple things that an Association can do to try and offset the impacts of the current housing and economic crisis.

**Start the process quickly** - Stay on top of your accounts and do not let your owners get too far behind. The Association should turn over accounts to its attorney for collection as soon as an owner becomes delinquent and does not respond to the customary demands for payment by the Association either on its own or through its management company. It is always easier for most owners to pay small amounts rather than large amounts. Remember the law now requires that you give an owner 45 days to pay in the case of a homeowners association or 30 days to pay in the case of a condominium association so you want to get the collections process started as quickly as possible. You want to find out as soon as possible if the Association is going to have a real problem collecting its assessments from the delinquent owner.

**Claims of lien** - The Association should have its attorney file claims of lien as promptly as legally possible. Since the lien is recorded in the public records of the County it puts all parties, including potential purchasers and/or mortgagees, on record of the monies owed the Association. While most professionals handling real estate closings and attorneys handling mortgage foreclosures will ask for estoppel information from the Association or name the Association as a party in a mortgage foreclosure action regardless of whether a lien is recorded, recording a claim of lien almost assures that the Association will be contacted or served with respect to both of these means of transferring ownership of the property as the lien will appear on a title search. The Association stands a much better chance of getting paid if it is included in these processes.

In addition to your sales and mortgage foreclosures, the lien puts the Association in a better position with respect to refinance transactions. The Association should be paid off in these situations, but title companies and lenders have been known to ignore Association claims of lien when conducting a refinance transaction. If this happens, then the Association is put in a position where its claim of lien is recorded BEFORE the new mortgage is placed of record. The Association may elect to foreclose out the new mortgage since the Association's claim of lien is now "first in time" and ahead of the new mortgage refinancing the previous one. The new lender will not want this to happen and should tender payment to the Association to avoid its mortgage lien from being extinguished. This, of course, is something, which should have happened BEFORE the new mortgage was placed on the unit or parcel.

**Acceleration** - For those Associations that have a means for accelerating the balance of the annual assessments, the Association should do so before filing its claim of lien. The Association should take care that it properly exercises this right. The Association's governing documents usually require some type of notice be given to the owner before the installments are accelerated. This notice can be given in the original demand letter but be careful not to confuse the debtor if the time period is not the same as the period for responding to the demand letter. It may be best to send out a separate notice.

Assuming that the Association has properly accelerated the balance of the annual assessments and then secured these sums with a claim of lien, then this puts the Association of being paid in advance for the entire fiscal year should there be a voluntary sale of the unit or parcel and estoppel information is requested by a title company or attorney handling the closing. In addition, the Association may also obtain a judgment for the assessment installments, which would otherwise not be due and owing, should the Association proceed to foreclose on its claim of lien.

**Statutory collections** - Assuming that the Association cannot participate in any surplus funds as the result of a foreclosure sale, then the Association must make sure that it collects the statutory amounts owed the Association from the party acquiring the unit or parcel pursuant to a foreclosure sale. These days, the person acquiring title is usually the lender. To accomplish this, the Association must file an answer to the mortgage foreclosure complaint, and assert a claim to these statutory amounts.

Under the Florida Condominium Act, a person acquiring title pursuant to a foreclosure or deed in lieu of foreclosure is liable to the Association for 6 months of delinquent assessments or 1% of the original mortgage debt whichever is less. If the person acquiring title fails to pay the Association within 30 days after it receives title, then the Association may file a claim of lien against the condominium unit.

Under the current language found in the Homeowners Act, a person acquiring title to a parcel is jointly and severally liable with a previous owner for all assessments that came due up through the date that title is transferred. What this means in the foreclosure context, is that a lender acquiring title through foreclosure is liable to the Association for: (a) all past due assessments owed by the previous owner through the date the court enters the certificate of title transferring title to unit or parcel to the lender; and (b) for all assessments due and owing in connection with unit or parcel from and after that date until the lender sells the unit or parcel (this second part was true even before the change in the language of the Homeowners Act). Homeowners associations need to vigorously pursue this statutory avenue to recover past due assessments from deep pocket lenders while they can.

The recovery of these funds should be done following the completion of a foreclosure action or when a lender requests estoppel information from the Association in the event of a sale of a foreclosed unit or parcel by the lender. In all cases, the failure to pay these sums should be secured by a claim of lien by the homeowners association following the collections procedure now required by law (i.e. 45 day demand letter to lender with an opportunity to pay).

Homeowners associations should be advised, however, that there is legislation (which if signed by the governor will become effective this July) that will limit liability for persons acquiring title via foreclosure to a percentage formula similar to that found in the condominium context except that the recoverable amount will be equal to 12 months assessments or 1% of the original mortgage debt, whichever is less.

**To foreclose or not to foreclose?** - While it has always been sound advice for an Association to foreclose on its own claims of lien in the past to recover the amounts owed or to derive a financial benefit from ownership or a unit even on a temporary basis, the frequency of mortgage foreclosures, and the expense of lien foreclosures requires the Association to give the decision to initiate its own foreclosure proceedings some thought. The Association should consult with its attorney before filing a foreclosure action to make sure that it makes sense for the Association to do so. The Association should have some idea of the equity in the unit or property in advance, and should ask its attorney if it is in a position to eliminate other liens or mortgage holders (perhaps a second mortgage) by the language found in its governing documents. The potential to eliminate other mortgage or liens will put the Association in a position of either creating more equity in the property or unit for itself or perhaps force the subordinate lienholder or mortgage holder to pay off the Association in order to preserve its lien or mortgage on the property. To add the subordinate lienholder as a party to the Association's lien foreclosure action will increase the costs of the foreclosure action for the Association but the benefits may far exceed the expense.

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**Be careful with expenditures** - Try and avoid spending Association funds on projects, which are not required for the immediate safety or welfare of your owners during this current crisis. In most communities it is difficult enough for the owners to pay their regular assessments on a current basis. Adding a special assessment, even if made payable in installments, will make things even more difficult for these owners. Remember that there are costs associated with collecting delinquent assessments, and the Association will have to bear the burden of those costs in addition to the financial burden of the unpaid assessments. Whatever the benefits a special project may bring to the community may be outweighed by the burden of paying for them during these difficult financial times.

**Relaxing leasing restrictions** - Some Associations have considered temporarily relaxing their restrictions on leasing in order to accommodate for those owners who cannot sell their units, and in order to minimize the financial impact upon the Association. From a legal perspective this can be very tricky particularly when the economy turns around, and the Association wants to begin to enforce these restrictions again. The Association should avoid pursuing these types of preventive measures, if possible.

These are just some general recommendations. The Association should consult with its professionals (management company and/or attorney) to pursue what is the best course for its own unique situation so that it may ride out this current crisis.

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**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.**

### **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.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)