

A publication of:  
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## WELCOME ABOARD



As our readers know, this firm's practice is devoted to the representation of condominiums and homeowner associations.

We are proud to announce

the addition of the following associations to our list of clientele: **Brickell Place Phase II Condominium**, in Miami; **Ocean Marine Yacht Club** and **Islands Martinique Condominium**, in Hallandale; **Franklin Farms HOA**, in Miramar; and **Aquavista Condominium**, in North Miami Beach. We can assure you that we appreciate the business and confidence placed in our firm.

## ARE FELONS ON YOUR BOARD?



Homeowners Associations have long fought against stringent statutory regulation by the state, in order to maintain more control over their affairs, in contrast to regulation of condominium associations under Florida law. Sometimes you have to be careful of what you wish for. Currently in condominium associations, a person who has been convicted of a felony cannot serve on a condominium board unless his or her rights have been restored for at least five years, but the Florida Homeowners Association Act does not contain such a restriction.

## JOINING OUR LEGAL TEAM

Our firm is proud to announce its new addition, attorney Pennie Mays. Mrs. Mays is a graduate of Florida A & M University and the University of Florida School of Law. She has several years of experience in construction law and has worked with the National Oceanographic and Atmospheric Administration.

## MANDATORY MEDIATION IN HOA'S



Another difference between HOA's and condominium associations is the statutory requirement that certain disputes between HOA's and property owners **shall** be addressed at a pre-suit mediation before the dispute can be filed in court. Condominium associations are not required to mediate before filing an action in court or in mandatory arbitration. Examples of HOA disputes that must first be mediated are: covenant enforcement disputes; disputes regarding amendments to the HOA's documents; disputes regarding meetings of the board and committees appointed by the board; membership meetings not including election meetings; and access to the official records of an HOA. Pre-suit mediation proceedings must be conducted in accordance with the Florida Rules of Civil Procedure, and such proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to pre-suit mediation do not include the collection of any assessments, fines, or other financial obligations, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. There is no pre-suit mediation requirement for disputes involving unit owners and their condominium association. For further information regarding mediation, go to: [www.association-mediation.com](http://www.association-mediation.com).

## BANK FORECLOSURES

Our firm has aggressively fought banks that have deliberately delayed foreclosure actions, which they refuse to finish. Our office has successfully had judges order banks to move for final judgments within thirty days or face dismissal and/or sanctions, which include payment of association dues that accrue after the order.

## INSPECTING VACANT UNITS



As the foreclosure crisis continues, many associations find that vacant units, including units, which are owned by banks, are being neglected. These units are causing damage to surrounding units and common elements. In *Los Prados Condominium Association, Inc., v. Lemley* an arbitrator for the Florida Department of Business and Professional Regulation held that when an owner does not reside in a unit, it is incumbent on the owner to routinely and periodically examine and inspect the unit to ensure the absence of leaks and conditions that would otherwise lead to damage that may affect the surrounding property. In recognition of the fact that when multiple owners occupy a single building, a problem can develop in one unit that may affect other units and the common element components of the building, the arbitrator recognized that there are many conditions that can occur within a unit where it would not be immediately observable to an association. The conditions mentioned by the arbitrator include: rusting; leaking water heaters; infestation of rodents or insects; electrical problems; major appliance malfunctions; pipes from any washing or plumbing fixtures that erode and flood the building; backups in the sewer system or break-ins from criminals. Even if a unit is vacant, it is owned by someone, and if the association has even the slightest indication of problems existing in the unit, all attempts to find the owner and demand access to the unit should be made. If the owner cannot be found, the association has the statutory right of entry into the unit to prevent damage to the unit, other units or the common elements.

## DEVELOPER LIABILITY



Florida law does not allow developers to escape liability for the wrongdoing of its appointed directors to the association's Board. Florida Statute 718.301 states that

prior to the developer relinquishing control of the association, actions taken by members of the board of administration, who are designated by the developer, are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

The hiring of a lawyer 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.

## CONSTRUCTION DEFECTS

Chapter 558 of the Florida Statutes is known as the Construction Defect Statute and was created as an alternative to lawsuits, as a means to resolve construction disputes. Filing under this statute may reduce the need for litigation against developers and contractors, while still protecting the rights of property owners, including condominium and homeowners' associations. The statute requires an association to file a notice of claim to its developer, contractor, subcontractor, supplier, or design professional that the association asserts is responsible for a defect. This notice should provide the adverse party with an opportunity to resolve the claim without resorting to litigation. If an association files a lawsuit, without first complying with the pre-suit requirements of the statute, the court must abate the action. In associations with 20 or more units, the notice must be served at least 120 days before filing a court action and must describe the claim in reasonable detail, sufficient for the adverse party to determine the general nature of each alleged construction defect and a description of the damage or loss resulting from the defect, if known. The Act then allows for reasonable inspections within 50 days and even for destructive testing. The entity receiving the claim is required to respond to the claim indicating whether the claim will be remedied, compromised, settled for money or will remain disputed.

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**Pennie S.A. Mays:** born March, 1980, B.A. Florida Agricultural and Mechanical University 2002, J.D. University of Florida, 2004.

The firm is devoted to representation of condominium and homeowner associations in the South Florida area. The firm has represented hundreds of associations since its inception in 1994, regarding all facets of association law. In addition, the firm routinely litigates, mediates and arbitrates association cases in state and federal courts and before the Division of Florida Land Sales, Condominiums and Mobile Homes, Arbitration Section.