LEGAL- BEAT

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LEGAL ADVERTISEMENT

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: **Duo Master Association** in Hallandale, **Oak Hammock of Fort Lauderdale HOA** in Fort Lauderdale**, Plaza of the Americas Condominium** in Sunny Isles Beach**, Turnberry on the Green Condominium** in Aventura and **Oxford Towers Condominium** in Hollywood**.** We can assure you that we appreciate the business and confidence placed in our firm.

COLLECTING ASSESSMENTS

Often times we are asked by our clients if their association should accept partial payment from a delinquent unit owner. Recently, the 3rd District Court of Appeals held that an association and its management company acted improperly by refusing partial payments of maintenance fees from a unit owner. Additionally, the court held that the association's foreclosure action against its unit owner was premature. The court held that associations must accept partial payment even if unit owners place a "restrictive" endorsement, designation, or instruction on or accompanying the payment. Moreover, in this particular case the court noted that had the Association accepted and applied the tendered payments, the dispute would have been reduced to an inconsequential amount, and the Association's attorneys could not in good faith have filed to foreclose for the miniscule claim remaining. Bottom line: accept any payment no matter how small.

DEVELOPER DOUBLE TALK

The firm recently won an appeal against a unit owner, who prior to purchase of her condominium unit, was granted verbal authority by the developer to make certain modifications to her limited common element back yard. Upon the turnover of control of the board to the unit owners, the association became engaged in litigation with the unit owner regarding the subject alterations. The 4th District Court of Appeals rejected the unit owner's argument that she should be allowed to keep the modifications because she was justified in relying on the developer, who was also a member of the board of directors. The court however noted that two sections of the declaration required the owner to obtain written permission of the board as a whole, prior to making improvements or alterations to her property or the common elements, and that the unit owner was required to comply with the provisions of the declaration pursuant to its own terms and section 718.303, Florida Statutes.

LEGAL-BEAT: 10 Years & Counting

The firm is proud to be publishing the 10th year of its quarterly association law newsletter, Legal-Beat. All of our editions are on our website and can serve as a great resource tool. We are flattered each and every time we are introduced to a new client who shows us prior issues that they have been holding on to for years. As long as you keep on reading, we promise to keep on writing.

TIME FOR CHANGE

Although the Florida Legislature has attempted to address the troubles that have plagued condominium associations, unfixed problems remain:

*It has become painfully obvious that banks initiate foreclosure proceedings and then subsequently drag their feet. Requiring them to only pay 6 months of assessments is simply not enough, and at a minimum the law should be changed to require the bank to pay one year of unpaid assessments;

*Condominiums that have recently been turned over, especially conversion condominiums, are often left with expensive construction defects and a developer and/or contractor who no longer has any assets. The unit owners are forced to bear the expense of repairing the condominium even though there is a warranty in effect. Why not require the developer to post a bond or a percentage of each sale into an escrow account until the construction and turnover issues have been resolved?;

*The condominium arbitration statute is badly broken. The law requires certain condominium disputes to be arbitrated prior to being litigated in a court of law. Believe it or not however, if a condominium contains even one commercial unit, that condominium is not eligible for arbitration and must go to court. This is despite the fact that nearly every condominium built in the last five years contains at least one commercial unit. Worse yet, if you do arbitrate, the arbitrator can then refer the case to a mediator. If the mediator can't resolve the case, it gets dismissed if either party does not want to continue with the arbitration. The parties can then go to court. So…..the entire arbitration process up to that point was for naught, including the attorney's fees and costs of both parties. If the dispute is resolved before a court case is filed however, the case becomes moot and is no longer eligible for a court determination. Ironically, the statute was designed to encourage speedy and cost effective resolution of condominium disputes;

*Routinely, Boards of Directors refuse to certify recalls of members of their own Board despite the fact that they are legally obligated to do so. Often times, the reasons given for failure to certify the recall are given in bad faith and without justification. They do so with impunity because the law does not provide that the loser in the recall proceeding pay the winner their attorney's fees and costs. This law needs to change and the arbitrator must be given the authority to impose fees against associations who refuse to certify a recall, when bad faith is found. If you agree with the foregoing, let your elected representatives know how you feel.

PRESERVING HOA COVENANTS

(By Kristy Phillips, Esquire)

The Florida Marketable Record Title Act states that any document recorded over thirty (30) years prior, will be extinguished and unenforceable (with the exception of those matters found in Fla. Stat. §712.03). This includes the enforcement of HOA covenants. Due to the fact that HOA covenants are recorded only one time, usually at the inception of the association (unlike condominium associations in which the declaration of condominium is specifically referenced in each deed), all HOA covenants face the possibility of being extinguished by MRTA. In order to prevent the extinguishing of homeowner covenants and to ensure that the HOA still has legal authority to operate, (i.e. manage the common elements, and collect assessments), the HOA must file a ***"Statement of Marketable Title Action"*** in the official records in the county where the HOA is located during the 30 year period immediately following the recording of the HOA covenants. In the event the association fails to renew its covenants within the required time period, the covenants will be extinguished. If this occurs, the association must revive its covenants through an often time consuming and costly statutory process. Therefore, our office strongly advises all homeowners associations to review the date that your covenants were filed and calendar the 30 year deadline for renewal

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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.