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COMMUNITY UPDATE

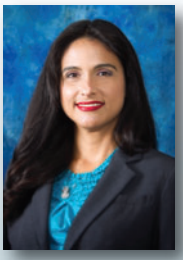
INSIGHTS, ANALYSIS & IDEAS FOR COMMUNITY LEADERS SINCE 1980

The Association Was Served With A Writ Of Garnishment For An Employee/Vendor…

Now What????

If the garnishment concerns a judgment against an employee/vendor of the Association, then the Association's only concern is with ensuring that it is properly withholding from distribution to that employee/vendor the portion of the payment which is subject to garnishment. In other words, the Association is not responsible for disputing the validity of the judgment or defending its employee/vendor against garnishment.

In order to properly withhold garnished funds, the Association must determine if there is any money owed to the person and calculate the amount to be withheld based on State and Federal guidelines and then file an Answer to the Writ of Garnishment. Normally the Association seeks the help of its payroll coordinator and attorney in determining the amount to withhold and the nature of the Answer to be filed.



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The key with garnishment in this setting is that if the Association does not garnish the funds immediately, it could be held financially responsible for the entire amount of the judgment along with interest and any other sanctions the Court imposes. To avoid such a liability shift, the Association must begin withholding the proper funds essentially from the day the Writ of Garnishment is served even if the Answer has not yet been filed and even if the employee/vendor indicates there is an error, that they are disputing the judgment, that they will not work if the money is garnished, or more significantly that they cannot pay their bills unless they get their entire paycheck. All of those arguments are to be made by the employee/vendor to the Court and the Court will determine if garnishment is proper. The Association simply has no choice in the matter and failing to garnish places a financial burden on the Association.

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PROBLEM PARKING

in your Community Association?

It really shouldn't come as a surprise that older multifamily communities in Florida (and elsewhere in the country) have serious parking problems these days since those communities were built decades ago when families used fewer cars.

Today, people move into these communities with three, four and sometimes five cars in tow. In condominiums and cooperatives, there is limited space in the parking garages and parking areas. In homeowners' associations, parking on the streets and in private garages (many of which are inaccessible due to the fact that they are used as storage units) can be just as problematic.

The proper management of parking spaces is necessarily tied to how parking spaces are classified in a community's governing documents. In some communities, one or more spaces may be appurtenances to the units, meaning they are conveyed via deed along with title to the unit and cannot be split apart from unit ownership. In other communities, all spaces are defined as common elements which are freely assignable by the board whereas in still other communities, parking spaces are limited common elements which means they are used exclusively by the owners to which they are assigned.

Boards dealing with parking problems often have to navigate amongst the following:

- Requests for reassignment of parking spaces;
- How to accommodate disabled parking requests;
- Insufficient guest parking, particularly during holidays;
- Initial Developer parking assignments which have been ignored or forgotten over many years; and
- Owners swapping parking spaces without the authority to do so.

There are a variety of ways to handle parking space problems including possible amendments to your declaration and/or rules and regulations in order to update an antiquated system put in place decades ago.

Even brand-new communities can have persistent parking problems. Recently, a large part of the appeal of a shiny new building in Miami-Dade was its "automated parking garage". The Robotic Valet was intended to eliminate the need to fight over spaces, remove any concerns about security and generally make residents' lives easier. It all sounded wonderful but the room for mechanical and human operator error quickly became apparent with some owners waiting for hours for their cars to arrive. One of the areas which was overlooked was peak hours for vehicle retrieval requests. Another was the need to get robotic parking right if you build a garage with a reduced number of parking spaces!

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The (Tree) Root of the Problem:
Who Is Responsible When Tree Roots and Branches Cause Damage?

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They say good fences make good neighbors. But trees, on the other hand, have been known to strain the relationship between neighbors. Damage and disruption amongst neighboring lot owners, caused by tree roots and branches, is a very common problem in Florida. Not surprisingly, Florida courts have addressed this issue and have carved out a very specific rule of law on this topic.

There are two theories which have been brought before Florida courts in an attempt to hold adjacent property owners liable for damage caused by trees encroaching past the property line. They are actions for nuisance or negligence. However, neither action has succeeded. The Third District Court in Vaughn v. Segal, 707 So.2d 951 (Fla. 3d DCA, 1998), held that there is no cause of action in such circumstances in either nuisance or negligence.

In Richmond v. General Engineering Enterprises Co., 454 So.2d 16, 17 (Fla. 3d DCA, 1984), the plaintiff sued for money damages based on the alleged "negligence" of the defendant in permitting branches of a Ficus tree growing on its property to extend over and onto the next lot where the plaintiff's home was located. While the Court acknowledged that there was substantial authority to the contrary in other States' jurisdictions, the Court took the position that in Florida, "in view of the undoubted right of the land owner himself to cut off intruding roots or branches at the property line, no such action may be maintained."

As for nuisance, the rule of common law and the majority rule in this country, which is followed in Florida, is that a possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land. The joint property owner to such a nuisance, however, is privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto this property. While the complaint claimed certain damages for a nuisance allegedly created by the trees growing on the neighboring land, such damages were not recoverable under the established law of this State. Gallo v. Heller, 512 So.2d 215 (Fla. 3d DCA, 1987).

As a result of the above-referenced rule of law in Florida, many community associations refuse to get involved in these types of "owner versus owner" disputes. The law gives owners the right and obligation to have the tree roots and branches cut at the point when they "cross over" onto their property.

LEGAL DECISIONS

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Which Could Affect Your Community

Many community associations do not have an absolute right to approve or disapprove of prospective purchasers; but instead the governing documents give them a right of first refusal to assign a sales contract to another purchaser on the same terms and conditions. A lis pendens is a publicly recorded notice on real estate documenting a pending legal proceeding involving that particular piece of real estate.

In a case involving the Decoplage Condominium Association in Miami Beach - 100 Lincoln Road SB LLC v. Daxan 26 FL LLC - an Appellate Court ruling has cleared the way for a potential reversal of the commercial space sold by Walgreens for $28 million dollars in 2014. According to the lawsuit, the condominium association had a right of first refusal to buy the commercial condo owned by Walgreens, plus the right to match or exceed any offer on them. Walgreens asked the condo association to waive those rights so it could sell the property to 100 Lincoln RD SB. The association instead assigned those rights to Daxan 26 LLC. Daxan and the association told Walgreens they wanted to exercise their right of first refusal, but Walgreens refused and went ahead with the closing. As part of its lawsuit, Daxan filed a lis pendens on the property, which allegedly prevented 100 Lincoln RD SB from executing a new contract to sell the property for $43.5 million to another company and now that sale is legally held up. The Appellate Court found that a lis pendens was proper without any bond until the complaint is resolved.

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