BECKER & POLIAKOFF
Legal and Business Strategists

COMMUNITY UPDATE

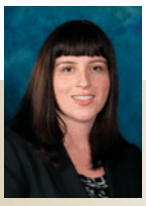
INSIGHTS, ANALYSIS & IDEAS FOR COMMUNITY LEADERS SINCE 1980

Dealing With Squatters

In this economy, most Associations have enough collection problems on their plate because of non-paying owners. But the glut of units pending slow-moving bank foreclosures has added yet another problem: squatters. More and more cases of unknown parties taking up residence in neglected or abandoned homes are being reported. What's an Association to do?

GATHER INFORMATION. If possible find out the names of the parties that have taken up residence and by what authority they think they're allowed to reside (i.e. are they presenting themselves as guests of the owner? New owners? Tenants?) This will help your attorney make more specific recommendations about how to deal with them.

RENT DEMAND. Both Condominium and Homeowners' Associations are empowered by their respective governing statutes to serve a rent demand upon a tenant when the owner of the unit is delinquent. The occupant must redirect the rent to the Association or face a possible eviction. Actually filing the eviction has its pros and cons. On the plus side, you can get rid of a problem tenant who is using your resources while the Association is not getting paid. Some drawbacks though include the cost of the eviction and the possibility that the owner/landlord will install another problem, non-paying tenant, or that another squatter will come along and take up residence again.



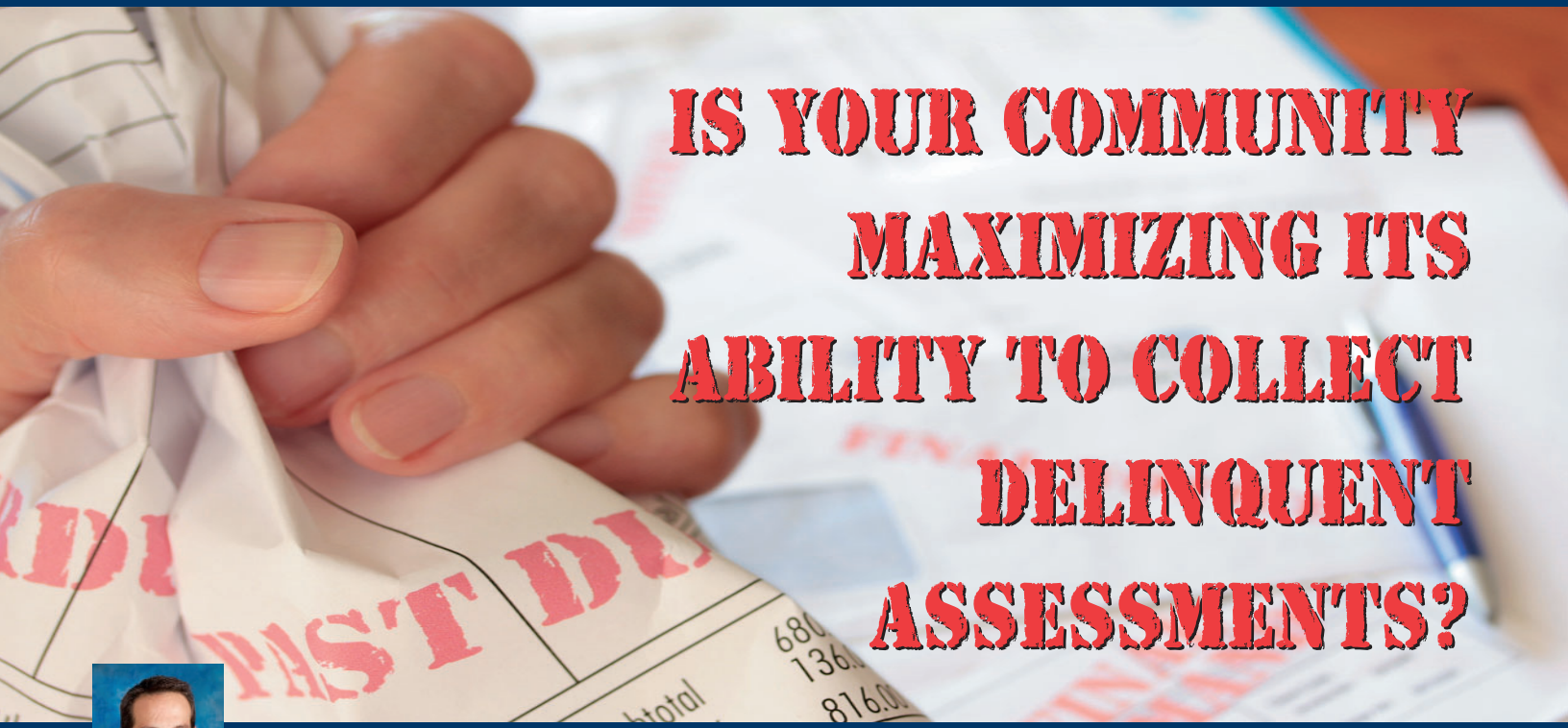
By Nicole Guiliano, Esq.
nguiliano@bplegal.com

ENFORCE YOUR DECLARATION. Most Associations have language in their Declaration or other governing documents that empowers you to bring a suit against the owner and their unwanted guest/tenant, or even an unknown squatter, to remove the unauthorized person from the premises. In some ways, this is more effective than an eviction because the owner is also a party to the suit and could potentially be ordered by the Court to pay the Association's attorneys fees and refrain from allowing unauthorized parties in the future. It is not as helpful however if the owner is missing or if the identity of the squatter is unknown.

FORECLOSE. Ultimately, the only guaranteed way to take control of the unit and prevent unwanted parties is to take ownership away from the delinquent owner. The Association is empowered to do this by following the procedure to record a Claim of Lien for your unpaid assessments and then bringing a suit to foreclose the Claim of Lien. At the end of a foreclosure the property is auctioned and either the Association takes title (if there are no other bidders) or a bidder pays your judgment and takes title for themselves. If the Association obtains title you can then rent the unit or, in some cases, sell it to a new owner. Most importantly in the case of squatters, the Association has full control over who occupies a unit that the Association owns and can remove any unwanted parties much more easily (it's yours now after all, the police will finally treat them like trespassers or burglars). Of course, there are many considerations to take into account when deciding to foreclose, including whether there is a mortgage on a unit and whether the mortgage is already in foreclosure. Our collections team at B & P is happy to answer any questions you may have regarding the process.

IN THIS ISSUE

VOLUME IV, 2014
Lisa Magill, Esq., Editor
1 East Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
www.bplegal.com



IS YOUR COMMUNITY MAXIMIZING ITS ABILITY TO COLLECT DELINQUENT ASSESSMENTS?

By Andres San Jorge, Esq.
asanjorge@bplegal.com

South Florida's now-infamous housing crisis not only financially impacted, and in some cases crippled, many communities, it also taught us many lessons on how to better protect our communities in the event of another economic downturn. One such lesson was that Florida statute, whether it be applied in the context of a condominium or a homeowners' association, limits a first mortgagee's liability for delinquent assessments in the event it takes title to a unit or lot within the association via foreclosure or deed in lieu of foreclosure. Another, often harsher, lesson we learned is that in some instances the association's very own declaration prevents it from collecting anything at all in those same instances.

In the case entitled, *Coral Lakes Community Association, Inc. v. Busey Bank, N.A.*, 30 So. 3d 579 (Fla. 2d DCA 2010), the appellate court for the Second District of Florida determined that the applicability of language contained in an association's governing documents could supersede the statutory limitations on a first mortgagee's liability for past due assessments. Specifically, the Court held that where the declaration provides that a first mortgagee has no liability for assessments that came due prior to its acquisition of title via foreclosure (or deed in lieu of foreclosure) or provides for liability on the part of the lender of less than that imposed by statute (i.e. the lesser of 1% of the original mortgage or 12 months of past due assessments), the language of the Declaration controls over the language of the statute. It should be noted that this case involved a homeowners' association, but may have a broader application that could extend to condominium or cooperative associations as well.

Needless to say, the Court's decision in *Coral Lakes* has the potential to negatively impact many community associations that may already be facing financial troubles. So what can your association do to maximize its ability to collect delinquent assessments and avoid or limit its potential exposure to fallout from this decision? The first step is to review your Declaration along with your legal counsel to determine whether or not the language contained therein exposes the association to the negative impact of the *Coral Lakes* decision. If you discover that your Declaration does contain the "bad" language similar to that found in the *Coral Lakes* case, you may wish to discuss with your community association attorney how an amendment to your declaration may potentially help your association maximize its collection efforts.

COMMITTEE MEETINGS

To Notice, or Not to Notice, That is The Question

Part of good leadership is proper delegation. This holds true for boards of directors in community associations. Committees are very common in the community associations, and come in many forms such as budget committees, architectural control committees, legal committees, rules and regulations committees, etc. The question for today is whether a particular committee must provide notice of its meeting? The answer to this question depends on (1) what the authority of the committee will be; and (2) whether your association is a condominium or homeowners association.

The Condominium Act provides that committee meetings wherein the committee has authority to take action on behalf of the board of directors or make recommendations to the board regarding the association budget must be noticed no matter what the association's bylaws state. Additionally, if the association's bylaws do not expressly exempt any other type of committee meeting from notice requirements, then all committee meetings must be noticed. For all committee meetings which require notice, the notice procedure is met so long as notice of the meeting, which indicates the meeting's agenda items, is posted at a conspicuous location on the condominium property at least 48 continuous hours before the meeting occurs.

The Homeowners Association Act treats committee notice a bit differently than the Condominium Act. A committee meeting in which the committee will have final decision authority regarding the expenditure of association funds and to committee meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel must be noticed. The notice procedure is met so long as notice of the meeting, which indicates the meeting's agenda items, is posted at a conspicuous location on the community property at least 48 continuous hours before the meeting occurs. No other committee meetings require notice in the homeowners association context.

By Jay Roberts, Esq.
jroberts@bplegal.com

continued from page 4 Parking Spaces

It is important that the declaration or an amendment thereto, sufficiently addresses the intricacies involved with these type of transfers. For example, the declaration should identify whether Board approval is required and set forth any conditions or limitations on an owner's ability to transfer, assign, or purchase a parking space. Also, the declaration should address the specific responsibilities of the parties involved in order to ensure a proper and effective transfer. These issues, and others, should be discussed with legal counsel. Provided the declaration addresses the relevant legal and practical issues and implications associated with limited common element transfers, the ability for owners to transfer parking spaces can have a positive impact on your association.

1 East Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
www.bplegal.com

By Andrew Provost, Esq.
aprovost@bplegal.com

For many unit owners, having an assigned parking space is a very important aspect of condominium living. Parking spaces are usually originally assigned by the developer as units are sold. Those who are first to buy a unit from developer, or pay extra for a premium parking space, receive the most sought after parking spaces. Most declarations of condominium deem assigned parking spaces as limited common elements. Once a parking space is assigned to a unit, it is reserved for exclusive use of that unit owner and transfers with title to the unit. As you can imagine, some of the best parking spaces hold a significant value and therefore owners often want the ability to sell, buy, transfer, or exchange parking spaces.

Fortunately, the Condominium Act provides authority and a method for transferring use rights with respect to limited common elements, such as parking spaces. Section 718.106(2)(b), Florida Statutes, states that owners may transfer their exclusive right to use limited common elements provided the declaration grants unit owners such right and the transfer conforms with the procedures set forth in the declaration. If your declaration does not provide authority to transfer limited common element use rights, the association can adopt an amendment allowing owners to transfer parking spaces and set forth a procedure to accomplish the transfer. Therefore, provided the declaration, or an amendment thereto, authorizes owners to transfer limited common elements and the process set forth in the declaration is followed, owners may effectively transfer parking spaces to other owners.

continued on Page 3