COMMUNITY COUNSEL

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RECENT CASES

- **Condominium Association that leased aircraft hangers to members was not subject to real property taxes on the hangers because the underlying land is owned by the State of Florida.**
- **Also, we warn of the pitfalls and penalties for debt collection violations.**

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

A Review of Debt Collection Laws

Most associations and managers are generally aware that they must be wary when collecting association assessments in light of the federal Fair Debt Collection Practices Act (FDCPA). The tide of the case law has turned in favor of the owners and against associations in most federal courts which have addressed this issue. It now seems clear that association assessments are in fact "debts" within the meaning of the FDCPA.

Simply, the FDCPA protects debtors from unfair debt collection practices. For instance, FDCPA prohibits creditors from contacting the debtor at work, from using profane language or threats, from contacting the debtor's employer or other persons and telling them that the debtor owes money, etc. FDCPA prohibits many other types of unfair collection practices which may be a trap for associations or property managers.

Associations and managers can be hit for large damage awards.

Fortunately for self-managed associations, FDCPA exempts these creditors from the penalties imposed by FDCPA when the creditor is collecting its own debts and not acting generally as a debt collector. Therefore, an association is typically exempt from the provisions of the FDCPA so long as the association is collecting its own assessments. While this exemption may provide a safety net for self-managed associations, it most likely does not protect property managers or law firms attempting to collect debts on behalf of associations. ***Because associations may nevertheless be sued for the negligence of their managers***, ***all associations and managers should comply*** with the requirements of FDCPA when attempting to collect association assessments.

The State of Florida has a similar debt collection statute. In apparent response to the adoption of FDCPA, the State of Florida adopted the Florida Consumer Collection Practices Act (FLCCPA). The intent of the FLCCPA is to provide *additional* protections for Florida residents. Under the terms of the FLCCPA, the federal FDCPA and the state FLCCPA are to be interpreted together to provide the greatest protection for consumers. FLCCPA provides many of the same types of protections for consumers from unfair or unlawful debt collection practices, but there is one very important difference. ***The FLCCPA does not provide an exemption for creditors when attempting to collect their own debts***. Section 559.72, F.S. provides that no "person" shall engage in unfair collection practices. In the case of **Schauer vs. General Motors Acceptance**, 819 So. 2d 809 (Fla. 4th DCA 2002), the Court of Appeal held that the use of the term "person" was broad enough to encompass and include a creditor attempting to collect its own debts. Therefore, it is clear that both associations and property managers ARE subject to the terms and provisions of the FLCCPA .....

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RECENT CASE SUMMARIES

….. notwithstanding that they are solely collecting debts owed to the association. Both associations and property managers must be familiar with and abide by the unfair collection activities described in Section 559.72, F.S.. A copy of the FLCCPA (Sections 559.55-559.785, F.S.) can be obtained online through "myflorida.com" and from there to the website for the Florida Legislature. Be sure to check the most current version published

Note that the *minimum statutory damages* which may be awarded against a creditor *for each violation* of the FLCCPA is $1,000.00, or consumers may collect their actual damages if their damages exceed $1,000.00 for each violation. Additionally, consumers may recover all attorneys' fees and costs incurred in the action. Because each letter and/or each oral communication can be a separate and distinct violation of the FLCCPA, the miniumum statutory damages can add up to horribly high totals.

Finally many insurance companies are now exempting from D & O and other insurance coverages, damages awarded for violations of the FDCPA and the FLCCPA. Therefore, association directors, officers and managers may not have liability coverage available to them in the event that they either intentionally or unintentionally violate the FLCCPA. This leaves the association without insurance coverage to pay any judgment awarded against it for violations of the FLCCPA. Be careful !!

In **Nikolits vs. Runway 5-23 Hangar Condominium Association, Inc.,** 28 Fla. Law Weekly D___, (Fla. 4th DCA June 4, 2003), Nikolits, the property appraiser for Palm Beach County, sought to collect ad valorem property taxes on the Association. The State of Florida owns the Boca Raton Airport. The airport is leased for ninety years to the Boca Raton Aviation Authority, a governmental entity. The Aviation Authority in turn subleased the subject property to Boca Airport, Inc., a fixed-base operator, from 1985 to 2028. The fixed base operator then sub-subleased forty-one hangar spaces to Association from 1993 through 2028. Association operates the leased hangers as condominium units which it leases to private users. Association alleged that the forty-one hangars were exempt from real property taxes under the provisions of Florida Law, which exempts property owned and used by a governmental agency, and also provides for the exemption of activities of an aircraft full service fixed base operation which provides goods and services to the general aviation public. The hangars involved in this case are only a portion of the hangars on the airport property. The remaining hangars are leased by the fixed base operator directly to private aircraft owners. The appraiser concedes that these other hangars are exempt from taxation pursuant to Florida Law. However, the appraiser differentiates the condominium hangars on the theory that they are real property owned by the association under the condominium statutes. Section 718.106, F.S., provides that "a condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Association responded that each of its members leases only airspace and not the improvements and that pursuant to the Declaration of Condominium each member has a "leasehold condominium only and . . . no interest whatsoever in the underlying fee or the leases." Furthermore, Association emphasized that underlying property is owned by the State of Florida. The trial court ruled in favor of Association and held that the condominium parcels are not subject to ad valorem taxation. In affirming the trial court, the Fourth District Court of Appeal concluded that the property is owned by the state and is therefore is not subject to taxation.

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