

COMMUNITY COUNSEL

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REPORT AND ADVICE FROM THE FRONT LINES

LAW FIRM NEWS

CONGRATULATIONS TO CHRISTINE A. OWEIS (WHO HAS BEEN A FULL- AND PART-TIME PARALEGAL WITH THE FIRM SINCE 2001) ON BEING ADMITTED TO THE FLORIDA BAR AS AN ATTORNEY. CHRISTINE WILL HANDLE GENERAL ASSOCIATION MATTERS AT AN HOURLY RATE OF \$180.00

ALSO, WE WELCOME ATTORNEY ERIN A. ZEBELL, WHO JOINS OUR COLLECTIONS DEPARTMENT. ERIN HAS PRIOR COLLECTIONS AND FORECLOSURE EXPERIENCE. HER HOURLY RATE WILL ALSO BE \$180.

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.

The current economic downturn has adversely impacted many of our association clients, who look to our law office for help collecting assessments from unit owners who are unable or unwilling to pay.. Our collections practice has more than doubled in the last two years. Although statutory and jurisdictional procedures have had various waiting periods built-in for years, they seem especially constraining during difficult economic times. As May 1st was "Law Day," it seems appropriate to give our clients some insight into our practice as association attorneys. We hope this information and our recommendations will help clients to work more effectively with us to achieve the client's goals and objectives. First, here are some factors that impact our representation of your interests:

1. Work Flow: We can not control how and when work is sent to our office, but we still aim to provide timely and personal service despite the volume. With the rise of widespread use of email each attorney may receive 7500 emailed work assignments per year. That works out to about 35 substantive work requests per attorney per day. This requires that we use our professional judgment to prioritize the fires that need to be put out, and therefore clients sometimes get faster and sometimes slower responses. Know that we are aware of your request, have queued your request based on its priority against other pending matters, and that we will attend to it, along with attending night and weekend meetings, and doing our share of public services work.

2. Crowded Courts: Longer waiting periods involved with more and more legislatively-mandated notices are deemed to be consumer protection measures. Court procedure also has built into it various waiting periods after pleadings and motions are filed. Additionally, delays in obtaining hearing time before a judge due to the heavy volume of similar cases means a longer delay in obtaining judgments. Overwhelmed clerks are taking more than 60 days from the sale date to issue Certificates of Title. Similarly other persons in the process also require more time to react, including process servers and skip tracers.

3. Case Management: In order to save the Association from unnecessary legal fees and delays,

and to better advise our clients on strategy, we spend many hours each week searching public records and court dockets for the existence and status of mortgage foreclosures before proceeding with collections and lien foreclosure actions.

We also spend many hours dealing with delinquent owners, trying to determine if and what they will pay. In each case, the time spent is necessary, but it is also non-billable under our fee structure.

Here are some recommendations to assist us to better help you:

1. Educate Yourself, Act Yourself. Understand the mechanics of the matter we are handling for you. Whether it is a lien foreclosure, mortgage foreclosure, covenant enforcement matter or transactional work, we are happy to advise you about the steps involved and the natural work flow to expect. Sending out a preliminary notice or demand letter yourself is both a cost-saver and a necessary condition precedent for every association action.

2. Read. Both the correspondence and billing narrative you receive from our office will explain what is happening on your cases. Often there are documents which need to be executed and returned and/or cost deposits that need to be sent or replenished. Mistakes or delays in the handling of these requests will cause further delay.

3. Be Our "Eyes and Ears." We are working on the matter from our office, not from within the community. It is important that you update us as soon as you become aware of any change concerning the address or status of a property owner or when you obtain any other new information concerning a matter that we are handling.

4. Be reasonable. If you understand the system and the process and how the current economy impacts us all, your expectations are apt to be more in line with the possible and doable. This will better equip you to make smart decisions on all aspects of your case, ranging from deciding whether to continue to foreclose, to dealing with owners who are requesting concessions.

Here is what we all must deal with to help you succeed.

WEAN & MALCHOW, P.A.

646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803

TEL: (407) 999-7780

FAX: (407) 999-LAW1

E-MAIL: W-M@WMLO.COM

WWW.WMLO.COM

RECENT CASE SUMMARIES

In **Aberdeen Property Owners Association, Inc., vs. Bristol Lakes Homeowners Association, Inc.**, 24 Fla. L. Weekly D807b (Fla. 4th DCA 4/22/2009), Master Association moved for a writ of prohibition to prohibit Palm Beach County Circuit Court Judge David French from continuing to preside over a lawsuit filed against it by Subassociation. The plaintiff is subject to the Master Association's governing documents. Subassociation challenged the validity of several amendments to the Master Association declaration, which imposed a requirement that, effective October 30, 2004, all new owners taking title to property in subdivisions of Master Association become members of the Aberdeen Country Club. After the trial court granted Subassociation's motion for summary judgment, and denied Master Association's motion for summary judgment, Master Association moved for reconsideration and rehearing. While that motion was pending, Master Association moved to disqualify Judge French. The motion for disqualification was based on Master Association's becoming aware, on October 2, 2008, of a potential conflict of interest, bias, or prejudice on Judge French's part, based upon Judge French's involvement with a similar dispute in his own homeowners association. Master Association argued that the judge should have disclosed his personal dispute and critical opinions he held on that matter and disqualified himself. In support of the motion to disqualify, Master Association attached two letters written by Judge French. In the first letter, Judge French referred to his resignation from the country club board, putting his house up for sale, and his intention of leaving the community and club forever. Judge French also expressed his opinion that mandatory membership could severely affect the future alienation of his home. In the second letter, Judge French made it clear that the settlement with anti-mandatory forces "would only postpone the day of reckoning regarding the legality of the mandatory vote." On appeal, the Fourth District Court of Appeal noted that Rule 2.330(f) requires a judge to enter an order granting disqualification if the motion to disqualify is "legally sufficient." The motion is legally sufficient if it shows a party's well-grounded fear that the party will not receive a fair trial. In reversing the trial court and granting the writ of prohibition, the appellate court agreed that Judge French's personal situation aligned him with the plaintiff's position on the primary issue to be determined in this litigation and therefore supports his disqualification.

In **Lake Forest Master Community Association, Inc., vs. Orlando Lake Forest Joint Venture, et al.**, 34 Fla. L. Weekly D692a (Fla. 5th DCA, 4/3/2009) Association appealed entry of summary judgment in favor of Developer. Association brought suit based on alleged construction defects in improvements located in the common areas. The summary judgment was predicated on Association's purported failure to give proper notice, according to Florida HOA law and Association's governing documents, of the meeting at which authorization to bring suit was obtained. Association filed suit alleging, among other causes of action, counts for breach of implied warranty, defective construction, and building code violations and sought damages in excess of \$4 million. Developer answered and denied the existence of any construction defects and raised numerous defenses. After discovery, Developer filed a motion for summary judgment based on its contention that Association failed to meet the statutory condition precedent of approval of a lawsuit by a majority of Association's voting interests, as required by section 720.303(1), Fla. Stat., because the meeting where approval was given had not been properly noticed. After a hearing, the trial court entered summary judgment in favor of Developer, concluding that proper "... notice was not given to all residents of the [Association] entitled to vote." Section 720.303(1), Fla. Stat., requires that "...before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of the majority of voting interests at a meeting of the membership at which a quorum has been attained." On appeal, the Fifth District Court of Appeal reversed the summary judgment in favor of Developer. In part, the appellate court rejected Developer's argument that Section 720.303(1), Fla. Stat., requires a majority of all voting interests, not a majority of voting interests present at the meeting where approval is given. The appellate court noted that this interpretation would render superfluous the quorum requirement and that it would appear that such a reading would be contrary to legislative intent when viewed in the context of the entire statute.