

COMMUNITY COUNSEL

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RECENT CASES

- ◆ **SOLDIERS' AND SAILORS' CIVIL RELIEF ACT IS TO BE LIBERALLY CONSTRUED TO PROVIDE AN OPPORTUNITY FOR RELIEF TO MILITARY PERSONNEL WHO FAIL TO FOLLOW THE STATUTE'S REQUIREMENTS.**
- ◆ **FLORIDA CIRCUIT COURTS HAVE THE INHERENT EQUITABLE POWER TO APPOINT RECEIVERS EVEN WHEN THE REQUIREMENTS CONTAINED IN THE CONDO ACT FOR APPOINTING RECEIVERS ARE NOT PRESENT.**

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.

'TIS THE SEASON NOT TO FORECLOSE

It's that time of year again... the leaves are rustling, the evenings are becoming a bit crisp, and 2013 is getting ready to come to a close. This also signals that "special" time of year when mortgage foreclosure cases will come to a slow crawl, even slower than is normal the rest of the year.

As we approach the end of the year, please keep in mind that any residential properties in mortgage foreclosure will likely remain that way until 2014, due to the charitable impulses of court and creditor, and the desire to avoid comparison to Scrooge. However, it is a good time for the Board to review those properties that are in foreclosure and take note of the following:

1. Is the property occupied?

If the property is vacant, be alert for squatters during the winter months. Take note of any properties that have been left unsecured, and specifically check any vacant properties with backyard pools that have not been drained. If you have any concerns that a property may pose a safety risk, please contact our office and we can contact the attorneys for the foreclosing banks to ensure that the property is secured.

2. Have you had any recent contact with the owner?

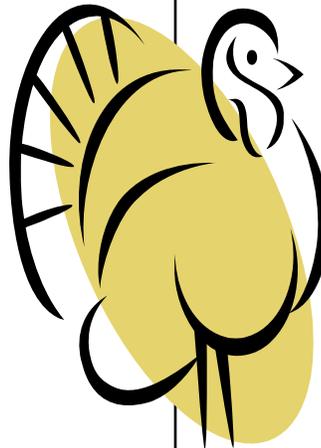
Now is a good time to update your contact information and connect with any owners who you know to be in mortgage foreclosure. You may wish to ask them if they are reviewing loss mitigation options with the bank, like

working toward a short sale or refinancing the mortgage. You may want to consider asking them for a quitclaim deed, either to the Association or to the foreclosing lender.

If the owner is non-responsive and the mortgage foreclosure case has been lingering with little action, it is unlikely that any action will be taken by the courts until January, 2014 - at the earliest. You will want to budget the Association's resources accordingly. If the bank has any hearings or sales scheduled during the month of December, it is highly likely that the hearing or sale will be cancelled. Banks usually declare a "holiday moratorium," and ask the court to cancel any action that would result in a

family losing their home. In addition, with the holiday breaks and vacations, fewer court hearing times are available, especially for case management conferences and trials. As a result, you will see less action in mortgage foreclosure cases. However, you may see a small increase in short sales and sales of bank-owned homes, as the banks attempt to clear those properties from their books before the end of the year.

If you have urgent concerns about any properties in foreclosure, now is the time to take action so that we may ensure that those matters get addressed by the courts as soon as possible in the new year. Understand that most bank foreclosure cases are best managed with patience until then, and instead take this opportunity to pause and give thanks for all that you do have to be thankful for. Happy holidays.



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RECENT CASE SUMMARIES

In **Higgins vs. Timber Sprints Homeowners Association, Inc.**, 38 Fla. L. Weekly D2274a (Fla. 5th DCA, November 1, 2013), Association brought an action to foreclose an assessment lien. For an answer to the complaint, Owner filed a response that he was currently an active member of the United States Army and requested that late fees be waived. He also pled that the Soldiers' and Sailors' Civil Relief Act precluded active duty service members from having civil liability in this case. Undeterred, Association filed a motion for summary judgment. Owner filed another letter, again indicating that he was an active member of the military and asserting protections afforded by the federal Soldiers' and Sailors' Civil Relief Act. Owner included a copy of his military orders that showed that his permanent duty station had been changed from Orlando, Florida, to Coraopolis, Pennsylvania, and that he was required to report to Pennsylvania two weeks prior to the summary judgment hearing. Notwithstanding Owner's responses, the trial court went forward with the hearing and entered summary judgment in favor of Association. Prior to the foreclosure sale, Owner filed yet another letter, asking the court to postpone the sale due to his active military status. The trial court denied Owner's request to abate the action. On appeal to the Fifth District Court of Appeal, the appellate court noted that Owner did not file an explicit request to invoke the Soldiers' and Sailors' Civil Relief Act, nor did he follow some of the Act's explicit requirements, such as filing a "*letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents appearance and that military leave is not authorized.*" The appellate court reversed the trial court finding that the Act is to be liberally construed in favor of those "who dropped their affairs to answer their country's call." Given the equitable nature of the proceedings, and because the Act is to be liberally construed, the appellate court held that the trial court should have given Owner a chance to supplement his request with the required information prior to entry of summary judgment.

In **Granada Lakes Villas Condominium Association, Inc., vs. Metro-Dade Investments Co.**, 38 Fla. L. Weekly S777a (Fla. October 31, 2013), Metro-Dade was the developer of Association and still owns several units in Association. Association is part of a larger condominium complex that is subject to a Master Association. Owners in Association are required to pay fees to both their (condominium) Association as well as the Master Association. As established, Association is to collect both its assessments and the assessments due Master Association. In 2009, a financial dispute between Association and Metro-Dade and Master Association arose, causing Metro-Dade and Master Association to file a complaint for damages and other relief. Metro-Dade and Master Association alleged that Association, and other individuals related to Association, failed to pay Metro-Dade and Master Association the assessments due after collecting the joint fees and assessments from Association's unit owners. Metro-Dade and Master Association alleged that as a result, they were unable to pay for utilities and maintenance expenses for the common areas, which resulted in ongoing health nuisances on the property. In 2010, Metro-Dade filed an emergency motion for the appointment of a receiver to facilitate the collection of the fees and assessments from the unit owners and to perform a proper accounting. Initially, the trial court orally granted the motion to appoint the receiver. However, upon rehearing the trial court determined that it lacked the statutory authority to appoint a receiver in this case. Specifically, the trial court acknowledged that the appointment of a receiver would be invaluable to the court, however Chapter 718 specifically defines the circumstances when the court may appoint a receiver and the statutory requirements were not met. On appeal to the Second District Court of Appeal, the appellate court reversed and remanded for the trial court to exercise its discretion on whether to appoint a receiver because the "*trial court erred as a matter of law because its right to appoint a receiver in this instance is inherent in a court of equity, not a statutorily created right.*" The Florida Supreme Court was then called upon to review the decision of the Second District Court of Appeal. The Court noted that a receiver is "*a disinterested person appointed by a court for the protection or collection of property that is the subject of diverse claims.*" The power to appoint a receiver has long been recognized as one that is inherent in a court of equity. Thus, the Court concurred with the conclusion of the Second District Court of Appeal and found that the trial court was not limited to the statutory conditions for the appointment of a receiver, and that the trial court had the inherent equitable power to appoint a receiver in the exercise of the trial court's discretion.

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