COMMUNITY COUNSEL

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RECENT CASES

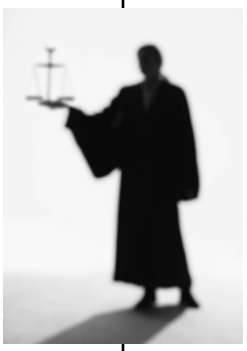
- WHEN MAKING SERVICE USE A COMPETENT PROCESS SERVER WHO MAKES NOTES WHEN TOLD OF ALTERNATE ADDRESSES FOR PEOPLE HE IS TRYING TO SERVE!
- MANAGEMENT COMPANY NOT LIABLE FOR INJURY TO SUBCONTRACTOR WHERE IT WAS CONTRACTOR'S DUTY TO OVERSEE THE WORK, MEANS AND METHODS AND TO ENFORCE SAFETY IN PERFORMANCE OF THE WORK.

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.

NEWS LAWS BECOME EFFECTIVE 7/1

July 1st has arrived and with it a series of new laws take effect. The main community association bill is HB 73, which contains many miscellaneous changes.

For HOAs, Condos and Co-ops it attempts to make consistent between the three statutes certain provisions that previously appeared in some but not all of them. We highlight those changes that the bill seeks to apply to each type of community. Thus, now, in each type of community:



- association members have the right to use a smart phone, tablet, portable scanner, or other technology capable of scanning or taking pictures to copy official records in lieu of the association providing copies to the member, and without charge to the member, and
- associations may print and distribute a directory with the member's name, parcel address, and telephone number. However, the association must permit members to exclude their telephone numbers from the directory by submitting a written request, and
- any challenge to the election process must be commenced within 60 days after the election results are announced but the statute prohibits recall attempts prior to that time, and it prohibits election recalls when there are less than 60 days before the next election, and
- the suspension of an owner's rights **for infractions** does not apply to common areas/ elements that are intended to be used only by that owner; nor to common areas/elements needed to access the home/unit; nor to utility services to the home/unit; nor to parking spaces, nor to elevators, and
- financial reporting requirement have changed so that complied financial statements = $150,000 to $299,999, and

  reviewed financial statements = $300,000 to $499,999, and

  audited financial statements = $500,000 up, and

  Associations of up to 50 lots (rather than 75 or fewer units), or with total annual revenues of less than $150,000 can prepare a report of cash receipts and expenditures in lieu of a financial statement.
- newly elected or appointed members of the board must provide a post-election certification that they have read the governing documents of the association, or alternatively, must submit a certification showing the satisfactory completion of an educational curriculum within 1 year before the election or 90 days after the election or appointment, and
- the personnel records of management company employees are among the records that are not accessible to the association's members.
- the requirement that the parcel owner submit a written request to speak prior to a meeting in order to exercise his or her right to speak at a meeting is also deleted.
- silence operates as the implied consent by a lender when lender consent to an amendment is required by the governing documents, unless the mortgagee's priority or right to foreclose or other interests is materially adversely affected for all mortgages written after July 1, 2013.

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RECENT CASE SUMMARIES

In **Castro vs. The Charter Club, Inc.,** 38 Fla. L. Weekly D1233a (Fla. 3d DCA, June 5, 2013) Association sued Owner for unpaid assessments and sought to foreclose Association's assessment lien. Association served its notice of intent to lien (NOL) on Owners at their daughter's address. After filing suit, Association unsuccessfully attempted to serve Owners at the condominium address. Thereafter, Association attempted to serve Owners at the daughter's address where the NOL had been successfully received. During this attempt at service a "woman" (apparently Owner's daughter) advised the process server that Owners lived at "6701 Collins Avenue, unit 3704, on Miami Beach." However, when process server attempted service at that address, process server discover no such address existed. For the hearing, an affidavit of the daughter was presented which stated that she told the process server that her parents resided at "6365 Collins Avenue", not "6701 Collins Avenue", that the process server did not write down the address, and was thus mistaken. It was undisputed that process server never returned to daughter's home to verify the address or seek a correction. Thereafter, Association obtained jurisdiction over Owners through publication. Later, Association (thru its legal counsel) entered into an agreement with Owner's daughter to place a tenant in the unit, but have the tenant pay rent directly to Association to reduce Owner's obligation to Association. Two years later, Association through its attorney moved for a default final judgment. Judgment was entered in favor of Association. Upon learning of these events, Owners hired an attorney and moved to vacate the judgment. On appeal to the Third District Court of Appeal, the court determined that the affidavit in support of service by publication was defective and therefore reversed the summary judgment entered in favor of Association.

In **Sterling Financial & Management, Inc., vs. Gitenis, et al.,** 38 Fla. L. Weekly D1213a (Fla. 4th DCA, June 5, 2013) Subcontractor sued Management Company for personal injuries suffered as a result of a fall. Plaintiff/Subcontractor was injured after he separated a two-part extension ladder owned by his employer. Using the part of the ladder that did not have traction feet, he gained access to a roof. On the way down the ladder, Plaintiff fell after the ladder, which was neither secured to the building nor being held by another person, slipped. A third worker warned Plaintiff not to put the part of the ladder without rubber feet on cement, so it was placed on asphalt. Just before the accident, as Plaintiff was preparing to descend from a roof, someone yelled for him to wait because no one was holding the ladder. Plaintiff ignored the warning and attempted to descend when the ladder slipped, causing the Plaintiff to fall to the ground. At trial, Plaintiff prevailed and judgment was entered against Management Company on the theory that Management Company directed and controlled the manner in which Plaintiff performed the work of the Subcontractor. The project upon which Subcontractor was hired was a conversion of apartments into condominium units. Through the condominium association that it controlled, the property owner entered into a garden variety condominium management agreement with Management Company. As part of that management contract, Management Company was required to maintain the property in accordance with appropriate standards of maintenance consistent with the character of the community. On October 24, 2005, Hurricane Wilma hit South Florida, resulting in substantial damage to the project's landscaping and roofing. The property owner, contractor and the subcontractors (including Plaintiff's employer) worked on an oral contract to clean up the property on a time and materials basis plus 10%. A Management Company employee instructed contractor to have Subcontractor assess the damage to the roofs. Other than that instruction, no one from Management Company communicated directly with Plaintiff. On appeal to the Fourth District Court of Appeal, the appellate court noted that Management Company's role was to assist, facilitate, and coordinate the work done on the property, which it did by identifying the types of jobs to be completed for the post-hurricane clean-up without telling the contractors how to do them and without hiring its own subcontractors. Thus, as with any construction project, it was the obligation of the general contractor, not Management Company, to hire subcontractors, to oversee the work performed by subcontractors, and to maintain the safety of the project. In the instant case, Management Company did not exercise the requisite control over the manner in which the independent contractor performed his work. As such, judgment against Management Company was reversed and remanded to the trial court to direct verdict in favor of Management Company.

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