COMMUNITY COUNSEL

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LET'S STOP FLORIDA RIP-OFF ON DOC STAMPS

There has long been a substantial injustice worked on Florida community associations that foreclose on lots and units for unpaid assessments. When recording their certificates of title, the Florida Department of Revenue has required the payment of documentary tax stamps. However, the amount charged has been grossly overstated, without any apparent justification in law or fact.

Under Florida law, specifically Section 201.02(1)(a), Fla. Stat., the amount of documentary stamps to be paid on any transfer of real property is set at $.70 per $100.00 of *consideration* for the transfer. The question, then, is what is the consideration when a property is taken for unpaid assessments. Logically, it would seem to be the amount of the debt owed, as determined from the association's judgment.

Not so, says the Florida Department of Revenue. Rather, for some unfathomable reason, the Department has determined that the consideration for the transfer includes the amount of senior liens, such as outstanding mortgages, even though a foreclosing association has no connection to or liability for the outstanding senior liens. Thus, instead of paying documentary stamps of $35.00 for a lien foreclosure on a $5,000.00 judgment, if the unit involved has a $200,000.00 first mortgage, the amount of doc stamps that an association must pay balloons to $1,435.00, or almost one-third (1/3) of the amount of the judgment the association obtained.

It is time to stop what is a blatant rip-off of associations, one that creates an artificial expense that can be high enough to discourage associations from exercising the remedies available to them under law, It is now time to amend Section 201.02, Fla. Stat. to say that the amount of documentary tax stamps due from an association (whether under 718, 719, 720 or 721) that forecloses on its lien for unpaid assessments should be based upon the judgment it obtained, or in the case of a deed in lieu of foreclosure, on the amount of the owner's debt.

In no way should the amount of senior liens that encumber a property (and on which the unit owner already paid doc stamps) be viewed as consideration for the transfer and charged all over again to a party without any relationship, contractual or otherwise, to those lien holders.

It appears as though the Department of Revenue has made the fallacious assumption that a foreclosing entity, like an association, automatically assumes the debt due to the senior lienholder. Nothing could be further from the truth in 99% of cases. Rarely is an association interested in assuming or paying off the prior mortgage to obtain clear title to the property. Since the association is usually acquiring a property with prior encumbrances, the value to the association of the property as encumbered is substantially less than it would be unencumbered. Hence, the amount of tax stamps that the association should be paying should reflect the value of the interest that is being acquired.

It is time to stop this blatant and unconscionable rip-off of our community associations' assets. Will 2014 be the year?

RECENT CASES

- IN AFFIDAVITS TO SUPPORT A SUMMARY JUDGMENT, FACTS ARE NEEDED TO SUPPORT ENTRY OF JUDGMENT AND MERE STATEMENTS THAT LANDSCAPING WAS NOT BEING MAINTAINED WERE INSUFFICIENT TO STATE FACTS.
- SALE FOR UNPAID TAXES WIPES OUT LIABILITY FOR PRIOR ASSESSMENTS DUE TO AN HOA, ALTHOUGH ASSESSMENTS COMING DUE AFTER THE SALE REMAIN DUE.

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.

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RECENT CASE SUMMARIES

In **Boyle vs. Hernando Beach South Property Owners Association, Inc.**, 38 Fla. L. Weekly D2073a (Fla. 5th DCA, September 27, 2013), Association brought a covenant enforcement action against Owner for failing to maintain his residence. The declaration provided that "lot owners. . . . keep their lots in a neat, clean and orderly condition. . . ." The declaration also provided that any violators may be subject to an equitable suit to enforce the declaration. Association brought suit against Owner seeking to compel him to comply with the declaration. The mandatory injunction issued by the court required Owner to comply with the declaration by ". . . properly maintaining and trimming the landscaping and trees and cleaning or removing the mold on the home." The injunction further provided that if Owner failed to take the required actions, Association could enter the property, make the repairs, and place a lien on the property that could be foreclosed if the costs incurred by Association were not paid. The injunction was obtained at a summary judgment hearing. Association's motion for summary judgment was supported by affidavits of officers and directors that, based upon their personal knowledge, Owner failed to property maintain his lot and specifically that the landscaping and trees needed to be trimmed and property maintained. Additionally, mold on the home needed to be cleaned/removed. Owner appealed to the Fifth District Court of Appeal. On appeal Owner argued that the summary judgment evidence did not indicate how he was in violation of the declaration. Regarding the landscaping and trees, the appellate court agreed. The affidavits contained no specific allegations of exactly how the landscaping and trees were not maintained. However, the mold was entirely another matter. The mold on the house was established by the statements made in the affidavits, and left no room for speculation or conjecture. Association argued correctly that "the existence of mold on the subject home was a readily observable fact to the five affiants who swore to their personal knowledge" and thus this was sufficient to establish the mold as a violation of the declaration.

In **Cricket Properties, LLC, vs. Nassau Pointe at Heritage Isles Homeowners Association, Inc., et al.,** 38 Fla. L. Weekly D2013b (Fla. 2d DCA, September 20, 2013), Cricket brought an action to quiet title to property it purchased at a tax deed sale. The final judgment quieted title as to the banks' mortgages, but did not quiet title as to any lien of Association for unpaid assessments. Cricket filed suit to quiet title in January 2012. Association filed an answer and affirmative defenses and alleged that Cricket was liable for all unpaid assessments that came due up to the time of the transfer of title pursuant to section 720.3085, Fla. Stat. Cricket filed a motion to strike the affirmative defense and argued that pursuant to section 197.573(2), Fla. Stat. tax deed purchasers acquire property free and clear of liens for assessments. The trial court denied the motion. Cricket subsequently filed a second amended motion for summary judgment asserting it was entitled to summary judgment and again asserted that it acquired the property free and clear of Association's lien for unpaid assessments pursuant to the provisions of section 197.573(2), Fla. Stat. The issue before the trial court was whether section 720.3085(2)(b) or section 197.573(2) controlled. The trial court ultimately concluded that section 720.3085 supersedes the provisions of section 197.573. The trial court thus entered judgment quieting title in Cricket's favor as to the banks' claims, but the judgment did not quiet title as to any lien of Association. On appeal to the Second District Court of Appeal, Cricket argued that the trial court erred in its holding that section 720.3085, Fla. Stat. supersedes the provisions of section 197.573, Fla. Stat. Chapter 197 governs the collection of ad valorem taxes and provides that the government shall have a first lien position on all real property for payment of such taxes. To collect such taxes the legislature devised a statutory scheme providing for a tax deed sale of the property at a public auction with the proceeds to be first applied to the outstanding taxes and costs of the sale. Section 197.552, Fla. Stat. addresses the limitation on the survival of the rights, interests, restrictions and other covenants in connection with a tax deed sale and provides that ". . . except as specifically provided in this chapter, no right, interest, restriction, or other covenant shall survive the issuance of a tax deed. . . ." Section 197.573, Fla. Stat., generally provides for the survival of covenants and restrictions after a tax deed. However, this section provides that ". . . this section shall not protect covenants creating any debt or lien against or upon the property." The appellate court reversed the trial court and held that the trial court erred in determining that the lien for unpaid assessments survived the tax sale. While Cricket would be liable for assessments arising after it obtained title, it was not liable for assessments accruing before the tax sale, which were extinguished as a result of the tax sale.

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