

JUNE 2011 MONTHLY COLUMN

NEW LEGISLATION IN 2011 RELATING TO COLLECTION OF RENT FROM TENANTS WHERE OWNERS ARE DELINQUENT IN PAYMENT OF MONETARY OBLIGATIONS

Effective July 1, 2010, Florida Statutes 718.116 ("Condominium Act"), 719.108 ("Cooperative Act") and 720.3085 ("Homeowners Association Act") were amended to specifically provide that, upon providing a tenant of a delinquent owner with a written demand, the association has the authority to collect future monetary obligations that may be owed to the association directly from the tenant. If the tenant fails to pay, then under certain circumstances, the association may utilize the eviction procedures set forth in Chapter 83, Fla. Stat., to have the tenant removed.

This legislation was adopted by the legislature to provide associations with much needed assessment revenue by allowing the association to have a direct remedy against a tenant where that tenant's owner was delinquent in the payment of monetary obligations to the association that were more than ninety (90) days past due. Many associations have been successful in obtaining such assessment revenue through this procedure, although the 2010 legislation only allowed the association to collect future monetary obligations directly from the tenant. Therefore, while the 2010 legislation was helpful, it did not clearly allow the association to collect rent to offset past due assessments.

Currently, there is pending legislation (HB 1195) that, if enacted, would amend the above-referenced provisions of the Condominium Act, Cooperative Act and Homeowners Association Act to allow associations to collect all rent from a tenant in order to offset any outstanding delinquent assessments, and not simply future monetary obligations. The legislation, if signed by the Governor, would specifically provide that all subsequent rental payments shall be made by the tenant to the association until all monetary obligations of the unit owner have been paid in full to the association. Additionally, the legislation provides a template for the specific demand letter that must be sent to both the owner and tenant in order to properly make a demand for such rent.

Our law firm will be monitoring the status of HB 1195, and we expect that it will be signed by the Governor in the coming weeks and enacted into law effective July 1, 2011. Other amendments were also passed by the legislature in HB 1195, which will also have some impact on your community association, and we will be summarizing many of those changes in future articles. If you have any questions about these amendments and how they may affect your community, we strongly suggest discussing same with your association's legal counsel.

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