NEWS LETTER

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PAVESE LAW FIRM
Written by:
Christopher J. Shields, Esq. and Stacy L. Bennings, Esq

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Collecting Rent From the Tenants of Delinquent Owners

In our recent newsletters, we have discussed the recent amendments to Chapters 718, 719, and 720, Florida Statutes, which now allows condominiums, cooperatives, and homeowners associations to collect assessment directly from tenants' rent where the owner is delinquent in the payment of "monetary obligations." Unfortunately, there are a number of problems with the language of the new statutes, including the limitation on the Association's ability to collect only "future monetary obligations" related to the property which are due to the Association. Stated literally, this means the Association can only collect assessments as they come due. This creates additional challenges where the Associations are levying assessments in intervals greater than monthly, such as on an annual, semiannual or quarterly basis.

Since only "future" monetary obligations may be collected, any assessments that were due prior to the demand letter being sent to the tenant cannot be demanded from the tenant. For example, in the case of an unpaid annual assessment, which was due on January 1, 2010, the Association arguably would not be entitled to demand anything from the tenant until the next annual assessment is due on January 1, 2011. This is also true where quarterly assessments are levied. For example, an owner fails to pay assessments which were due July 1, 2010. The Association responds by sending a demand letter to the tenant of the delinquent owner requiring the tenant to pay future rent to the Association. However, since the Association is only entitled to collect and retain "future monetary obligations" of the unit/parcel, the Association will not be entitled to collect anything until the October 1, 2010 quarterly payment is due.

A related potential unintended consequence is where the Association has accelerated assessments due for the remainder of the fiscal year. If the Association has accelerated the assessments prior to sending demand to the tenant, the Association is arguably prevented from collecting anything from the tenant until the following year's annual assessments are levied.

For these reasons, I strongly recommend that where authorized by the Association's Bylaws, all Associations should consider levying assessments on a monthly basis, and if monthly assessments are not authorized by the Bylaws, that the Bylaws be amended to provide for monthly assessments. Also, before the Association accelerates assessments, the Association should be aware that doing so could prevent it from later being able to collect from tenants should the owner lease the unit. Finally, to the extent that any Association does not already have the right to do so, it should consider amending the Declaration to provide the Association with the

authority to approve and disapprove leases, to preclude owners from leasing their property when any assessments or other obligations are past due, and at to further require the owner to provide a copy of any lease and information about the tenant (i.e., names, contact information, etc.). This will give the Association additional leverage and ensure that should it become necessary to make demands on tenants, that the Association has the lease information.

In some cases it may not be practical or desirable to levy assessments on a monthly basis. Some large Master Associations may wish to continue to levy assessments on an annual or semiannual basis despite the potential loss of this remedy. However, where the Association has recreational and other facilities, another option is to suspend the owner and/or tenant's rights to use these facilities as leverage to compel the owner to pay the assessment. If you are considering suspending members' use rights, feel free to contact our office and we can guide you through the process.

On a related note, we strongly recommend that all Associations review the assessment provisions of their current documents with particular attention to provision related to the assessment liability of owners who acquire title through foreclosure or deed in lieu of foreclosure to make sure that those provisions do not conflict with current Florida law. Keep in mind that under Senate Bill 1196, the liability of a first mortgagee in the condominium setting was expanded to 12 months instead of 6 months of assessments, but is still capped at 1% of the original mortgage debt. Some condominium declarations may specifically limit their obligation to 6 months. Any discrepancy with the statutory provisions of the respective Chapter, 718, 719, or 720, should be eliminated by amendment.

If your Association requires amendments to address the concerns above, please feel free to contact our office and we will be happy to assist you.

This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Members of the Pavese Law Firm Community Law Section include: Christopher J. Shields (christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm and heads the Firm's Community Law Section. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Brooke N. Bockemuehl (brookebockemuehl@paveselaw.com) is an Associate with the Pavese Law Firm. Stacy L. Bennings (stacybennings@paveselaw.com) is an Associate with the Pavese Law Firm. Charles B. Capps (charlescapps@paveselaw.com) is an Associate with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Labor/Employment Law. Ms. Bockemuehl also practices in the area of general civil litigation, bankruptcy creditor rights for community associations. Please feel free to contact them via the e-mail addresses listed above and check us out on the web at www.paveselaw.com.