

## HOMEOWNER ASSOCIATION COLLECTION EFFORT UPDATE

New Florida Statute 720.3085, effective July 1, 2007

On June 19, 2007, Governor Crist signed into law, effective July 1, 2007, Florida Statutes which affect homeowner associations. Below I have discussed one of the recent statutory changes, adding F.S. 720.3085, providing guidance and requirements for payment and collection of homeowner association assessments. This new law only affects Homeowners Associations (not condominium associations).

The highlights of the new F.S. 720.3085, in summary, is as follows:

1. Assessments are obligations owed by a parcel owner, regardless of how they obtained title to the property.
2. Owners, regardless of how they acquired the property are "jointly and severally liable with the previous...owner for all unpaid assessments that came due up to the time of transfer of title."
3. Unpaid assessments bear interest from the due date until paid at either the rate in the declaration or bylaws of the association or 18% per year, if none is stated.
4. The Association can also charge an administrative late fee in an amount not to exceed the greater of \$25 or 5 percent of the amount of each installment, if the declaration or bylaws provides for same.
5. Payments received and accepted shall be applied as follows: first to interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. (Regardless of any restrictive endorsement a delinquent owner states on their check.)
6. The statute requires that a "Demand Letter" be sent by both certified or registered mail and regular U.S. mail, at least 45 days prior to a lien being filed against a delinquent unit owner. The Demand Letter must be sent to both "...the parcel owner at his or her last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address. If the address reflected in the records is outside the United States, then sending the notice to that address and to the parcel address by first-class United States mail is sufficient."
7. The statute also requires that after the Demand Letter and prior to foreclosing on a Claim of Lien, a letter be sent to the delinquent owner of the association's intent to foreclosure a lien at least 45 days prior to filing the foreclosure lawsuit. (We will refer to this letter as the "Claim of Lien Letter".)
8. Once a foreclosure action is filed, an owner can file a "qualified offer" to pay all sums due and the owner has sixty (60) days to remit payment from that point. The qualified offer is bound to be subject to debate and the way the courts interpret this portion of the new legislation will be interesting.

Please note that any pending collections must comply with the new statutory requirements.

You are strongly encouraged to seek advice from your association attorney to discuss the particulars of your association relating to legal matters. This article is only meant to be a summary and for reference only.

Regards,  
V. Claire Wyant-Cortez, Esquire

V. Claire Wyant-Cortez, Esquire is a Partner in the law firm of Hilley & Wyant-Cortez, P.A., located at 860 US Highway One, Suite 108, North Palm Beach, Florida 33408. Hilley & Wyant-Cortez, P.A. specializes in community association law (other areas of practice include, but are not limited to, real estate, estate planning, probate/guardianship, business law and general litigation).

## WINDSTORM MITIGATION

BY HELEN MARTINSON, CIC

There may be some "hidden" credits available depending on certain construction features of your buildings. The following features of a building that comply in whole or in part with the 2001 Florida Building Code (FBC) have proven to reduce damage during high wind events like hurricanes:

1. Roof Shape – hip roofs
2. Roof Coverings – FBC approved shingle, metal or tile roofs
3. Roof Deck and Roof Deck Attachment
4. Secondary Water Resistance
5. Roof – Wall connection – Hurricane clips or straps
6. Opening Protection – Impact resistant windows and doors or shutter protection providing impact resistance for all windows and doors in the building.

Some credits are still available even if the buildings were built before the new FBC. Windstorm construction features protect your buildings from catastrophic hurricane damage as they strengthen the building's ability to withstand the uplift, shear and lateral forces of the wind associated with a hurricane to the exterior of the building. These features help the vulnerable components of the building's protective shell by fortifying your roof, exterior walls, windows and doors so they will not fail in high winds. In the past three years, many of us have learned when the exterior shell is breached, not only can wind driven rain and debris enter the building causing considerable damage to its interior, but the high winds can enter the building and exert pressure on the walls and roof leading to catastrophic damage to the property.

In order to take advantage of one or more of the credits available, an FBC Commercial Mitigation Verification Affidavit (MIT-5) form or an FBC Commercial Roofing Mitigation Verification Affidavit (MIT-6) form for each building must be completed and signed by a Resident Licensed General, Residential, or Building Contractor; a Licensed Building Inspector, a Registered Architect or an Engineer in the State of Florida or a Building Code Official (who is duly authorized by the State of Florida or its county's Municipalities to verify building code compliance.)

Mitigation credits apply only to the windstorm portion of the premium, and will vary according to the features of the building. Credits apply every year, not just the first year after the inspection. There is a cost involved to have the buildings inspected, but the savings generally far out weigh the cost of the inspection.

Helen Martinson is a Certified Insurance Counselor specializing in Homeowner and Condominium Owner Associations. Helen works for Slaton Insurance Agency located at 5713 Corporate Way, Suite 200, West Palm Beach, FL 33407.

## LANDSCAPE CORNER

Now is the time to get your lawn, ornamentals, trees and palms ready for the winter. Many Associations apply mulch at this time of the year - great idea, but remember that the mulch should not touch the trunks of hardwood trees or palms and that mulch should be less heavy as you get closer to the trunks of hardwood and palms so that the roots can breathe.

Lawns need to be fertilized with a fertilizer blend high in potash in order to promote deep root growth. Since our soil naturally has a high level of phosphates, use a fertilizer with low phosphates. We would suggest a fertilizer like 15-0-22 with a 50% slow release (nitrogen, phosphate and potash).

Mike Kilby, Pest & Plant Management of South Florida, Inc.