



Good Morning!

I hope you all have had a great week. You'll remember that last week we had an introduction to the key law governing homeowners associations (HOAs) in Florida, and we began discussing how disputes over HOA assessments can spiral out of control. If you would like a refresher on last week's newsletter, [you can read it here](#). This week, I'd like to offer a few tips if you find yourself in a dispute with your HOA over assessments:

1. **Before an HOA can record a claim of lien against your property for past due assessments, the HOA must provide you with a 45-day notice**, informing you of the HOA's intent to record a lien against your property and providing you with 45 days to cure the alleged default. This must be mailed to you via registered or certified mail and by first-class mail. [See Fla. Stat. 720.3085.](#)
2. **If you do not satisfy the alleged default within this 45-day period, the HOA then must mail a 45-day notice of intent to foreclose to you.** This notice must also be sent via registered or certified mail and by first-class mail. This notice must provide you with 45 more days to cure the alleged default and inform you that if you fail to do so, the HOA will foreclose on the lien it has recorded against your home. [See Fla. Stat. 720.3085.](#)
3. **If the HOA fails to mail these required notices to you, and the HOA sues you anyways, this could be an important defense to the HOA foreclosure action.** These notices constitute what we call "conditions precedent," actions which must be taken before suit can be brought against you.
4. **If the HOA sues you, you must receive proper service.** This usually means a process server will show up and hand you a thick stack of papers, providing you with 20 calendar days to respond to the lawsuit. **You must respond within the 20 day period or you would risk losing the case by default.** Do not just contact the HOA and assume everything is going to work out. If you have already been sued, be sure to file an appropriate response with the court and mail a copy to the attorney for the association. This protects you from losing your case, and your home, by default.
5. **If you try to negotiate a settlement with the HOA, be sure to get it in writing.** Remember, if you have an ongoing delinquency, under Florida law the association will apply any payments to interest, then to any administrative late fee, then to any costs and attorney's fees incurred, and then finally to the delinquent assessment. If your HOA sends you a demand letter, stating you owe your past due assessment in addition to attorney's fees, don't just send a check for the assessment and think this solves your problem. Make sure any settlement with the HOA is in writing and signed by an authorized representative of the



HOA. Save a copy of the settlement papers for your records as well as your proof of payment, just in case the HOA breaches the settlement at a later point in time.

6. **Remember that pursuant to [Fla. Stat. 720.30851](#), you have the right to an "estoppel" certificate. This is essentially an up-to-date payoff statement.** Sometimes homeowners are not sure how much is owed and need a breakdown of the amounts alleged to be due. Your HOA is required to post on its website the contact information to request an estoppel certificate. Be sure to request the estoppel certificate in writing, whether you request it by e-mail or by mail. If the estoppel certificate is sent to you electronically (i.e. by e-mail), it is good for 30 calendar days and if it is sent to you by mail, it is good for 35 calendar days. This means that if you pay the amount on the estoppel certificate during that time period, then you will be current with the association.

7. **If you have been sued by the HOA and you receive something called a "Motion for Summary Judgment," it's time to get a lawyer.** This is the motion the HOA lawyers file to foreclose on your home. If that motion is granted, a judgment will be entered against you and a public auction date set on your home. **Summary judgment practice can be complex and there are critical deadlines that come up before the court hearing.** Be sure to contact competent counsel as soon as possible if you learn that a Motion for Summary Judgment has been filed against you.

In case you would ever like to reference any of our previous newsletters, we are archiving all of them [here](#). Next week, I will offer a few more recommendations on how to protect yourself and your home during such assessment disputes with your homeowners association.

Stay tuned...

Thank you for reading and I hope you have a wonderful Sunday.

Best,

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