

Condo Associations Don't Need to Record Lien to Collect From Tax Sale Proceeds

Condominium associations rely on their statutory lien rights to enforce the collection of assessments from their unit owners, but a recent appellate court ruling found that they do not absolutely need to record a lien in order to collect from the surplus funds after a tax sale.

By **Michael E. Chapnick** | April 2, 2018



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Condominium associations rely on their statutory lien rights to enforce the collection of assessments from their unit owners, but a recent appellate court ruling found that they do not absolutely need to record a lien in order to collect from the surplus funds after a tax sale.

In *Calendar v. Stonebridge Gardens Section III Condominium Association*, the Fourth District Court of Appeal concluded that the association was not required to actually file a lien in order to be entitled to priority over the unit owner in the distribution of surplus funds generated by the tax sale of her residence.

In upholding the trial court's order that surplus funds from the tax sale of the owner's residence be disbursed to the association based on its claim for unpaid assessments, the Fourth DCA found that Section 718.116 of the Florida Statutes implies that a claim of lien against a unit owner for assessments becomes necessary only in cases in which a mortgagee is also asserting a claim. Therefore, recording a claim of lien is not an absolute prerequisite to the enforcement of a lien for unpaid assessments.

The appellate panel's interpretation of the statute was consistent with a dissenting opinion in a case involving a foreclosure sale, *Aventura Management v. Spiaggia Ocean Condominium Association*, written by Judge Frank A. Shepherd of the Third District Court of Appeal. Judge Shepherd's dissent indicated that a "statutory lien" is created by the Florida law, and that a recorded claim of lien is not required under the section in most circumstances.

Judge Shepherd opined that "the Legislature has given condominium associations a statutory lien on each condominium unit over which it has jurisdiction, to secure payment of assessments without the necessity of filing a claim of lien in the public records, with the single exception of first mortgagees, where record notice is required."

The Fourth DCA panel agreed with his reasoning and held that the lien in favor of the association in the current case was created by the statute itself. Because there was no first mortgage at issue, the association was not required to file a claim to validate its lien.

It is important to note that while the *Stonebridge Gardens* case discusses a condominium association's statutory lien, it does so in the context of establishing priority for purposes of distributing surplus proceeds to subordinate lienholders after a tax sale. Section 718.116, Florida Statutes, sets forth requirements for what must be included on a claim of lien in order for it to be valid. It provides that no judgment on a lien foreclosure may be entered until at least thirty days after an association gives written notice of its intention to foreclose its lien to collect unpaid assessments. Among other matters, the notice must also advise the unit owner that a claim of lien has been filed against their property.

Consequently, while a recorded claim of lien may not be necessary to establish an association's priority with regard to the distribution of surplus proceeds after judicial sale, it remains necessary in order to foreclose an association's claims for delinquent assessments.

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