

Daily Business Review

Ruling Proves Community Associations Need to Revise Own Governing Documents

By **Maryvel De Castro Valdes** | June 23, 2020



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A ruling in May by Florida's Third District Court of Appeal added to the growing string of decisions in recent years illustrating how an old and outdated provision in HOA and condominium association declarations is preventing some communities from collecting what they would be owed under the current state law from purchasers in foreclosure actions. The new and past rulings cry out for community associations to review and consider amending their declarations to avoid the prospect of shooting themselves in the foot with their buyer/lender-friendly provisions from prior ages.

The ruling came in the case of *Old Cutler Lakes by the Bay Community Association v. SRP SUB*. The LLC took title to a unit within the community via a mortgage foreclosure auction and subsequently filed an action for declaratory relief seeking to determine its liability for the association assessments that accrued prior to acquiring title.

While Florida law holds that a parcel owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title, including by purchase at a foreclosure sale, the LLC was apparently well aware that the association's declaration contained a provision that essentially extinguished its liability for the past-due assessments owed by the previous owner.

Old Cutler Lakes' declaration reads:

"The sale or transfer of any Lot pursuant to the foreclosure or any proceeding in lieu thereof of a first mortgage meeting the above qualifications, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer."

The LLC's arguments did not end there. It also relied on the Third DCA's 2017 opinion in *Beacon Hill Homeowners Association v. Colfin Ah-Florida 7*, which addressed these same declaration provisions and cited a Fourth DCA ruling from 2015.

In the May ruling, the Third DCA panel concluded that the trial court's amended final judgment provided a thorough and well-reasoned analysis of the relevant provisions of the community's declaration and the application of the appellate court's 2017 decision in *Beacon Hill*. It found no error in the lower court's interpretation of the relevant provisions and affirmed the amended final judgment concluding the LLC is not liable for any of the past-due assessments, attorney's fees and/or costs that accrued prior to its acquiring title.

This ruling adds to the growing consensus among Florida's district courts of appeal that community associations' existing governing documents override Florida law placing liability on the new owner for the previous owner's past-due assessments.

While many community association governing documents mirror the language in the current Florida Condominium Act and Homeowner Association Act, there are numerous older communities with governing documents that extinguish a successor's liability for the previous owner's assessments. Those communities should consider amending their governing documents to allow them to collect from the eventual buyers of units at mortgage foreclosure sales and avoid complete write-offs of past assessments.

It is important to note that association governing documents can vary greatly, and the amendment procedure/mechanism will differ by community. Associations and their boards of directors should review their governing documents with the help of highly qualified condo and HOA attorneys to identify these outdated provisions. If an amendment is in order, the board and/or membership must vote to approve the amendment language and, if approved, record the amendment in the public records. Keep in mind that an amendment will only take effect after it is properly recorded in the public records and may not apply retroactively.

Addressing these dated provisions via effective amendments will surely yield significant future financial boons for many of Florida's older communities.

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