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COMMUNITY ASSOCIATION NEWSLETTER

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Case Law Update: Warning to Condominium Associations, Homeowners Associations, and Cooperatives – On Accepting of Partial Payments

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A recent Florida Appellate Court case entitled *St. Croix Lane Trust v. St. Croix at Pelican March Condominium Association, Inc.*, 144 So. 3d 639 (Fla. 2d DCA 2014) has effectively changed the rules for how and when partial payments should be accepted.

Florida statutory law currently provides that any condominium, homeowners association, or cooperative which receives payment on a delinquent account must apply these amounts to interest, late fees, costs of collection, attorney fees, and then to the delinquent assessments. These statutes also provide that the payment(s) must be applied in the order described above, despite any restrictive endorsement or instruction that accompanies the payment (for example, a payment with an accompanying note such as "to be applied towards the principal assessment ONLY…").

Because of these laws, community associations have been required to accept these payments, even if it is merely a partial payment. Community associations then simply applied the payment according to the Florida laws previously discussed. If there were any balance remaining, the delinquent owner would still remain liable for the rest of the balance.

Now the *St. Croix* case has changed the entire process for how and when partial payments should be accepted and later applied. The court in *St. Croix* held that if a partial payment is accepted and that payment is accompanied with an offer to settle (accord and satisfaction), and the community association does accept that payment, then the payment will be acceptance of the settlement offer and the association **will not be entitled to recover the remaining balance.** Along this line, if a partial payment is received with these types of restrictive endorsements or instructions and the association accepts this partial payment, the remaining balance will be completely lost.

So what is the best practice moving forward after this pivotal case? Here at Pavese Law, we believe certain procedures for the review and application of payments needs to be implemented to protect our clients' rights to pursue all of the amounts due from delinquent owners and accounts.

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If you have any accounts that are delinquent and with our office for collections, it is critically important that you immediately forward all checks you receive to our office for our review. This should include any correspondence which accompanies the check. If you have accounts which are not with our office, your association needs to have procedures implemented that will review payments and any accompanying documents **before they are accepted and deposited**. Do not deposit payments with statements like "this is for full satisfaction of amount due…" or words to that effect, unless you intend to accept any partial payment as full payment.

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. Christopher J. Shields (christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm and heads the Community Law Section for the Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Ms. Schwinn also specializes in Labor/Employment Law. Susan M. McLaughlin (susanmclaughlin@paveselaw.com) is a Partner in the Pavese Law Firm. Keith Hagman (keithhagman@paveselaw.com) is a Partner in the Pavese Law Firm. Brooke N. Martinez (brookemartinez@paveselaw.com) is a Partner with the Pavese Law Firm. Charles B. Capps (charlescapps@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner with the Pavese Law Firm. Kathleen Oppenheimer Berkey (kathleenberkey@paveselaw.com) is an Associate with the Pavese Law Firm. Matthew P. Gordon, Esq. (matthewgordon@paveselaw.com) is an Associate with the Pavese Law Firm. Christopher Pope (christopherpope@paveselaw.com) is an Associate with Pavese Law Firm. Chené Thompson (chenethompson@paveselaw.com) is an Associate with the Pavese Law Firm. Matthew E. Livesay (matthewlivesay@paveselaw.com) is an Associate with the Pavese Law Firm. Every attorney listed above is a member of the Firm's Community Association Law Section and is experienced and capable of handling all aspects of community association law, including but not limited to governing document interpretation, covenant enforcement, collection of assessments, lien foreclosures and general litigation matters. Please feel free to contact them via the e-mail addresses listed above.

In addition, Pavese Law Firm is a full service law firm consisting of over twenty-four (24) lawyers.

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