NEWS LETTER

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# Summer 2010 – Part 2

## Collecting Rent From the Tenants of Delinquent Owners

Last week, we provided you with an overview of Senate Bill 1196 ("SB 1196") and the many changes to Chapters 718 and 720 of the Florida Statutes under the new law. Perhaps the most anticipated of those changes were the amendments that allow condominiums, cooperatives and homeowners associations to collect rent directly from tenants where the owner is delinquent in the payment of "monetary obligations." Although the new law is not effective until July 1, 2010, in anticipation of the interest and questions sure to follow, this newsletter is intended to provide a more specific analysis and explanation of the procedure required for this new remedy.

The new laws now provide that "if the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay the future monetary obligations related to the unit…"

In order to do so, the association must mail written notice to both the owner and the tenant, and if requested, provide the tenant with written receipts for payments made by the tenant to the association.

Although there is no time requirement for initial notice, the new statutes do require that the tenant receive a credit for prepaid rent if the tenant provides written evidence of the payment within 14 days after receiving the association's demand.

Furthermore, the tenant will not be liable for increases in the amount of the monetary obligation due from the unit owner unless the tenant is noticed at least 10 days prior to the date the rent is due, and in no case may the amount due from the tenant exceed the rent that would have otherwise been paid to the landlord/owner. Of course, the association is not a real party to the lease and will not necessarily know if the amount the tenant is paying the full, agreed upon month rent due to the unit owner.

If the tenant does not pay, the association is then entitled to sue for eviction under Chapter 83 of the Florida Statutes just as if the association were the actual landlord and a party to lease.

While these amendments are a step in the right direction and in the associations' interest, the statutes are plagued with some murky language that may be troublesome. First, neither statute defines what is meant by "monetary obligations related to the unit." Presumably, unpaid assessment would fall within this category, but whether or not unpaid

fines would is less clear as fines are typically levied against a unit owner (or tenant), not the unit itself.

Additionally, the statutes technically only allow associations to demand payment from the tenants for *future* monetary obligations of the unit. Why didn't the legislature simply say "any monetary obligations"? The statutes literally state, "the association may make a written demand that the tenant pay the future monetary obligations related to the unit…," which arguably means that the association cannot make claims or demand the tenant to pay for past due assessments that have already accrued. Obviously, this is another potential glitch in the statutes.

Unfortunately, the language of the statutes is not anywhere near perfect and creates ambiguity and lack of clarity we wish was not there, but it is nevertheless a remedy, with all its failings, that is better than what was available to associations prior to the amendment.

If you believe that this new law could be of benefit to your association, we strongly recommend you contact our office, and we can guide you through the required procedure and prepare the appropriate notice for your association so that you can comply with the statute and avail yourself of this new remedy. We would be happy to assist you in this endeavor.

Although other commentators have expressed an opinion that associations may begin making these demands now, the law is not effective until July 1, 2010, and the associations do not have a right to collect rent from the tenants at this time. While you may be able to send the notice now, the law is not clear, and we do not recommend doing so prior to July 1, 2010. By doing so, the association may be deemed to be demanding a debt that it is not currently legally entitled to under current law, and potentially in violation of Federal and State Fair Debt Collection Practices Acts.

*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 Firm's Community Law Section. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Brooke N. Bockemuehl (brookebockemuehl@paveselaw.com) is an Associate with the Pavese Law Firm. Stacy L. Bennings (stacybennings@paveselaw.com) is an Associate with the Pavese Law Firm. Charles B. Capps (charlescapps@paveselaw.com) is an Associate with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Labor/Employment Law. Ms. Bockemuehl also practices in the area of general civil litigation, bankruptcy creditor rights for community associations. Please feel free to contact them via the e-mail addresses listed above.*