NEWS LETTER

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PAVESE LAW FIRM
Written by:
Christopher J. Shields, Esq., Christina Harris Schwinn, Esq., Stacy L. Bennings, Esq. and Charles B. Capps, Esq.

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Mortgage Foreclosure Delays

In a previous newsletter we provided information regarding the the option of filing a motion to compel against lenders who unreasonably delay their foreclosure actions.

During the 2009 Legislative Session, the Florida Legislature proposed several bills, including one that was intended to require lenders to conclude a foreclosure action within one (1) year after the filing of the complaint, or be held responsible for all assessments due to the Association from such point forward. Many were hoping that this would provide financial incentive and sanctions on lenders who are dilatory in pursuing mortgage foreclosures. However, the Bill was not passed into law. It was and is our hope that merely filing the motion to compel will motivate the lenders to move forward with their foreclosures. However, at least one Florida court has sent down an unfavorable ruling.

In U.S. Bank National Association v. Tadmore, 34 Fla. L. Weekly D____ (Fla. 3d DCA 2009), the condominium association filed a motion to compel asking the court to order the bank to diligently proceed with the foreclosure within 30 days or pay the monthly assessments during the pendency of the action. The trial court granted the motion, but on appeal, the Third District Court reversed. The District Court held that Florida Statutes, Section 718.116 only requires the mortgagee to pay assessments following its acquisition of title and that there was no basis to impose an obligation to pay assessments as a sanction.

In light of the U.S. Bank case, and given the additional expense involved in potentially noticing the motion for a hearing, and attending the hearing to argue the motion, we believe that the most cost efficient option may be to simply notice the action for trial. However, if we file a Notice for Trial and a trial date is set, prior to actually going to trial, the Association may now be required to first participate in mediation.

In December 2009, the Florida Supreme Court ordered local judges to adopt a uniform mediation program for foreclosure cases and other interventions to deal with the tide of foreclosure cases clogging the courts. Now, all foreclosure cases which are filed in state court that involve residential homesteaded property will be required to mediate unless the plaintiff bank and the borrower agree to skip the step, or the borrower refuses to participate in the mediation. As a named defendant to the foreclosure action, the Association may also be forced to participate in the mediation, which unfortunately would increase the Association's fees related to the foreclosure.

In short, in those cases where lenders are not actively pursuing their mortgage foreclosures, filing a Notice for Trial and forcing the lender to proceed to trial may propel lenders to pursue their foreclosures in a timely fashion. However, noticing a matter for trial may increase the actual expenses the Association incurs in this process. Each case should be reviewed and evaluated to determine if noticing the matter for trial is in the Association's best interests.

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. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in 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. Please feel free to contact them via the e-mail addresses listed above.