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LEGAL UPDATE

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1010 Lake Shore Association v. Deutsche Bank National Trust Company, 2014 IL App (1st) 130692.

Bank's Obligation to Pay Assessments – Last year, a Second District Appellate Court case was decided that created issues for associations trying to collect assessments after a foreclosure where the association was not properly named as a defendant, with the court stating that it did not matter if the condominium association was named if the bank paid the assessments coming due after the judicial sale. In an opinion issued by the First District Appellate Court, a bank was obligated to pay the entirety of the assessments that were due even if the association was properly named in the foreclosure, if the bank did not pay the amounts coming due after the judicial sale. In that case, the bank failed to pay approximately 23 months of assessments after the judicial sale. Because of this failure, the court made the bank responsible for more than $40,000 in assessments that came due prior to the judicial sale.

It is not clear at what point the bank has to pay the assessments coming due after the sale date to avoid having to pay the assessments that should have been extinguished in the foreclosure case. 9(g)(3) of the Condominium Act only makes the bank responsible for assessments that come due after the sale provided that the judicial sale has been confirmed by the court. If the bank does not pay assessments coming due after the sale in some reasonable time after the order confirming the sale, the association should strongly consider pursuing collection of the unpaid assessments.

Royal Glen Condominium Association v. S.T. Neswold & Associates, Inc., 2014 IL App (2d) 131311

Insurance Broker Does Not Have Duty to Secure Proper Insurance Coverage Under Condominium Act – In an opinion filed on September 2, the Second District of the Appellate Court addressed an issue that had not previously been considered by a court: whether an insurance broker is responsible for making sure that an association's insurance policy complies with the law and the declaration. In the case, the association obtained insurance coverage that included coverage with ordinance and law endorsements covering $1 million. One of the buildings within the association burned down and in order to rebuild it, the association had to comply with a local ordinance which required the installation of sprinklers. The cost to rebuild the building to code was $1.3 million. The association sued the broker for failing to exercise ordinary care in securing an insurance policy that covered the full replacement cost of the building as is required by Section 12 of the Condominium Act. The court found that the insurance broker does not have a statutory duty under Section 12 of the Condominium Act to obtain the required coverage.

Oviedo v. 1270 S. Blue Island Condominium Association, 2014 IL App (1st) 133460

All Requests for Documents Are Not Created Equal – The Condominium Act allows owners to submit a records request to see an array of documents. If a request seeks contracts, leases, and other agreements, a list of names, addresses and weighted vote of all members entitled to vote, ballots and proxies and the books and records of account, the owner must submit the request in writing stating with particularity the records requested as well as a proper purpose. In *Oviedo*, an owner sent in a request for records to be sent to his office within 15 days and stated that it was being requested due to a series of unauthorized expenses without giving many examples. The request also did not cite any statute that requires an association to produce records, which could include the Condominium Act, the General Not-For-Profit Corporation Act and, because the association is located in Chicago, the Chicago Municipal Code. Additionally, four days before the "request" the owner received a demand notice for failure to pay assessments.

The Appellate Court deemed the request improper for a number of reasons. First, the court stated that it did not reference any of the statutes and also demanded production of records in a time frame (15 days) that does not appear in any of those laws. Additionally, nothing requires an association to mail documents to the owner. Instead, the association must make them available for inspection. Finally, the court stated that the request was sent in an effort to retaliate against the association considering that the unit owner never had an issue with the financial management of the association. The unit owner's vague assertions of mismanagement were not enough. It is interesting to note that the association did send some of the requested records via email and informed the owner that he could inspect the remainder of the records. There was no evidence that the unit owner ever sought to setup an appointment.

Tyrka v. Glenview Ridge Condominium Association, 2014 IL App (1st) 132762

Dangerous Dogs – Many associations have restrictions that prohibit certain breeds of dogs and those weighing in excess of 30 or 35 pounds. In this case, a condominium association was named as a defendant in a lawsuit related to a dog bite case. The plaintiff in the case alleged that the Association exercised control over the common areas where the attack occurred. The court stated that, in order to find that an association could be liable for a dog attack, it must be shown that the association has knowledge of the dog's viciousness prior to the attack. In this case, vague allegations of three previous complaints about a dog attack without an explanation concerning the attack were deemed insufficient. Accordingly, the court found that the association was not liable.

Palm v. 2800 Lake Shore Drive Condominium Association, 2014 IL App (1st) 111290

No More Closed Board "Workshops" or "Executive sessions" – In *Palm v. 2800 Lake Shore Drive Condominium Association* ("*Palm II*"), the Illinois Appellate Court issued a decision concerning the validity of practices and procedures routinely used by many condominium associations. The Illinois Supreme Court refused to hear the case so the Appellate Court's decision is final and binding on all condominium associations in Cook County and, arguably, throughout Illinois.

In reaching its decision, the Supreme Court reviewed the facts in the *Palm* litigation spanning many years. For simplicity, the key findings in *Palm II* are summarized here: (i) no more closed "workshops", "executive sessions" or "planning gatherings"; (ii) voting by email is not permitted because it represents an unlawful closed discussion of Board business between board members outside of an open meeting; (iii) polling/canvassing board members is not permitted because it represents an unlawful closed discussion of board business between board members outside of an open meeting ;(iv) email communications between/among a majority of the members of the board constitutes a "meeting of the board" for which owners must receive prior notice and an opportunity to attend ; and (v) after-the-fact ratification not permitted because board decision was previously made in an unlawful closed discussion.