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# MONTHLY NEWSLETTER

## MARCH 2020



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By Anthony T. Paris, III

# Documenting and Proving Violations at Trial

FRANK A. RUGGIERI

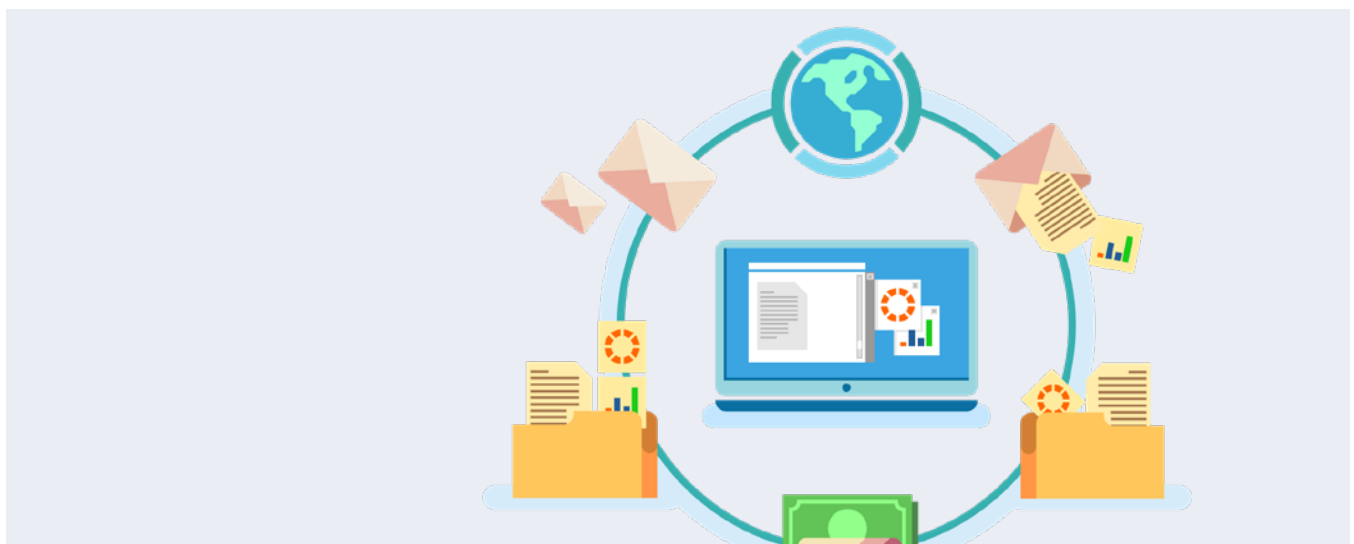
MUCH IS MADE OF MAINTAINING RECORDS REGARDING HOMEOWNER DELINQUENCIES, INCLUDING THE ISSUES WHICH CAN ARISE WHERE THE COMMUNITY MAKES A CHANGE IN MANAGEMENT AND THE PREVIOUS LETTERS AND ACCOUNTING RECORDS MAY BE DIFFICULT IF NOT IMPOSSIBLE TO INTRODUCE INTO EVIDENCE AT TRIAL ABSENT TESTIMONY FROM THE PRIOR MANAGING AGENT.

However, many of the same issues and then some can arise with respect to documenting violations of the covenants and ultimately proving them at trial, most especially where extended time has passed from commencement of enforcement until the time the matter goes to trial. I have long recommended that my Community Association clients actively document the status of violations and condition of a homeowner's property that is in violation with regular, dated photographs and accompanying notes taken contemporaneously with management inspections. A change in management can render maintenance of documentation problematic as management companies often differ in the procedures (and software) they utilize to document and assist their Community Association clients with covenant enforcement.

It is therefore all the more important to establish a detailed policy for covenant enforcement which mandates a specific procedure for documenting violations, including relevant dates. All photographs and notes should be actively maintained in the

homeowner's file, including information regarding the individual who took specific photographs of the property. A well-rounded and detailed policy which mandates the documentation of violations should allow the Association to introduce historical photographs and violation notes/logs as business records of the Association and therefore an exception to the hearsay rule. Ultimately, it may prove necessary to arrange for the attendance of a prior managing agent to testify concerning photographs and other violation documentation. Again, provided the records are maintained pursuant to an Association policy and in a specific format, the Association should be in a position to introduce this documentation as business records without the testimony of a previous managing agent.

As always, consult your Community Association counsel for guidance with respect to proper procedures for enforcement of the governing documents for your Community. ■







# Being Neighborly Could Cost You

ANTHONY T. PARIS, III

NO GOOD DEED GOES UNPUNISHED, OR SO THE SARDONIC SAYING GOES. IT CERTAINLY SEEMS FITTING IN THE CONTEXT OF THIS MONTH'S TOPIC WHICH INVOLVES THE CHARGING OF INTEREST ON DELINQUENT ASSESSMENTS.

Who would suspect that their association could get into legal trouble for refusing to calculate and charge interest when collecting assessments from delinquent owners? Some Boards, for example, may feel that charging interest on past-due assessments is wrong and may create a moving target for the delinquent owner who will never be able to catch up. And yet, pursuant to DBPR Rule 61B-21.003(2), the Division of Florida Condominiums, Timeshares and Mobile Home may fine a condominium association anywhere between \$10 and \$30 per unit, or a minimum of \$500, whichever is greater, for its failure to charge interest on past-due assessments.

The Division's reasoning here is that failure to charge interest is a violation of Section 718.116(3), Florida Statutes. The statute in question merely states: "assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid." If asked, the author would interpret the statute as allowing an association

to charge interest, but not forcing it do so under the threat of a penalty; regardless, the Division believes charging interest is a must.

The question then becomes: can a condominium association waive interest as part of a settlement satisfying the delinquency? It's a pretty safe bet the association would not incur a fine under this scenario, so long as the interest is correctly calculated and charged to the owner's account, and the Board enters into the settlement on an informed basis, in good faith and in the honest belief that the settlement is in the best interests of the association.

Please note, the above discussion pertains only to condominium associations as opposed to homeowners' associations. For a full list of violations covered by DBPR Rule 61B-21.003, please contact: [anthonyparis@ruggierilawfirm.com](mailto:anthonyparis@ruggierilawfirm.com). ■



# UPCOMING EVENTS

SEMINOLE COUNTY

## **Board Member Certification Class**

May 12, 2020 @ 6pm

Location TBD

POLK COUNTY

## **Board Member Certification Class**

May 28, 2020 @ 6pm

Location TBD

Final locations and times TBD. Refreshments and light hors d'oeuvres will be served.  
If you have any questions or to RSVP, email us at [contact@ruggierilawfirm.com](mailto:contact@ruggierilawfirm.com).

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