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# MONTHLY NEWSLETTER

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## **Proof of Mailing**

By Frank A. Ruggieri

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## **Fining Hearings May Be “Off Limits” During the Pandemic**

By Anthony T. Paris, III



# Proof of Mailing

FRANK A. RUGGIERI

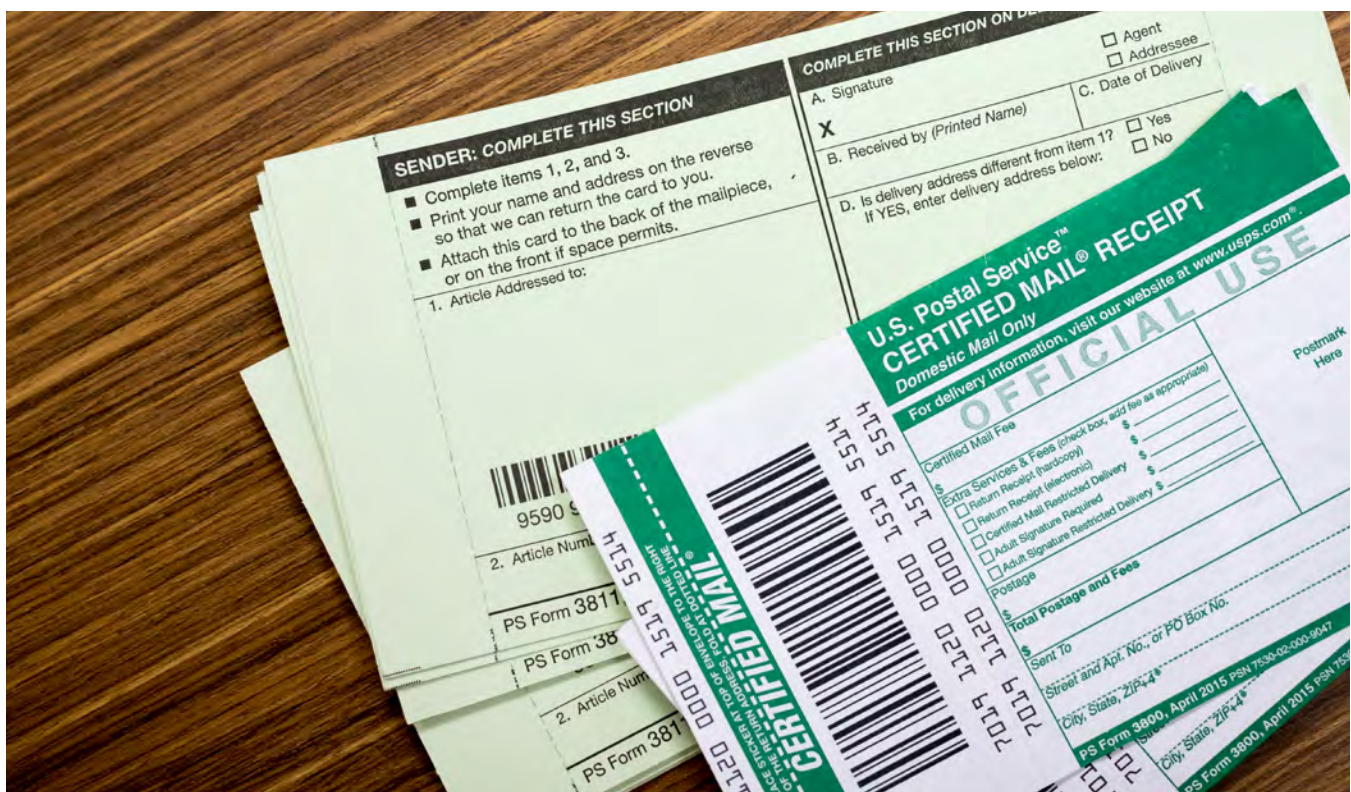
WHILE ELECTRONIC COMMUNICATIONS ARE BECOMING MUCH MORE PREVALENT WITH MANY OFFICES MOVING TO DIGITAL FILES, MAILED NOTICES ARE STILL A NECESSITY.

Chapters 718 and 720 require certified mail in connection with notice of the Association's intent to impose a lien as well as notice of the intent to foreclose. However, the statute does not mandate certified mail for all association notices, including notice of a fining hearing or notice of the fine itself which the statute allows to be sent regular mail. Certified mail is expensive and it is cost prohibitive for community associations to send all notices by certified mail.

A recent decision from Florida's Fourth District Court of appeals is a reminder of the need to document mailing of notices that do not get sent certified or registered and the burden of proof should the issue reach the courthouse. With regard to the mailing of notices in the mortgage foreclosure context, the Court reiterated Florida law: mailing must be proven by producing additional evidence such as proof of regular business practices, an affidavit swearing

that the letter was mailed, or a return receipt. In order to use routine business practice to prove mailing, the witness must have personal knowledge of the company's general practice in mailing letters. To put it simply, the Association must either have a witness with personal knowledge that the letter was mailed, an affidavit swearing that the letter was mailed, or a witness with personal knowledge regarding the Association's mailing practices who can testify that the practices were followed in any given case. Documentation of the mailing will not always be available and it is therefore imperative to establish a routine business practice for mailing notices which can be utilized after the fact to establish that a particular notice was mailed.

Please consult with your Association's counsel further to make certain that your Association is able to establish in a court of law if necessary that a specific notice was mailed. ■







# Fining Hearings May Be “Off Limits” During the Pandemic

ANTHONY T. PARIS, III

AS MANY READERS OF OUR MONTHLY NEWSLETTER ALREADY KNOW, IN ORDER TO BE VALID, A FINE FOR THE VIOLATION OF A COMMUNITY ASSOCIATION’S DOCUMENTS MUST BE LEVIED IN STRICT ADHERENCE TO THE REQUIREMENTS OF THE FLORIDA STATUTES.

It is the Board of Directors which imposes a fine, and it is the fining committee’s responsibility to approve or disapprove the levy of the fine, based on its findings at a fining committee hearing. Owners have the right to appear at these hearings to argue their case, creating a fair balance between the interests of owners and the Association; not unlike a small government.

To a varying degree, the COVID-19 pandemic has affected the operation of every level of Florida’s government, from the capitol seat in Tallahassee, right down to the local community association. One readily apparent affect the pandemic has had on our community associations is the postponement of board and committee meetings. Gatherings are risky, and groups of ten or more are outright prohibited. Fining has become especially tricky, considering the board vote to impose a fine, and the fining committee’s review of it, cannot occur without a meeting. While some communities understandably have curtailed the level of enforcement of minor offenses during these difficult times, others are dealing with longstanding violations that began long before the pandemic made the news headlines. Previous articles from our firm have addressed Board and membership meetings, but what about fining? Can the hearing be scheduled by “teleconference”?

Unfortunately, there appears to be no practical solution to this problem as the homeowner must be allowed to introduce documents or other evidence which they feel is relevant to the fine. The Board could likely develop some protocol, such as advance submission of documents and evidence, but the process would be entirely too burdensome and likely lead to potential challenges. Instead, we recommend postponing any fining hearings until after the stay at home order has been lifted, or consider focusing on alternative remedies, such as demand letters and enforcement through legal counsel.

As always, consult your Association counsel for advice concerning your specific issues. ■



## UPCOMING EVENTS

All of our classes have been postponed until further notice.  
If you have any questions, email us at [contact@ruggierilawfirm.com](mailto:contact@ruggierilawfirm.com).

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