

Kirk Palmer & Thigpen



Contemplating Collections

Due Process and the Law

KPT

Kirk Palmer & Thigpen

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Community Association Law

Today's Outline



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Laws Governing
HOA Collections

UNDERSTANDING
LIENS AND
FORECLOSURES

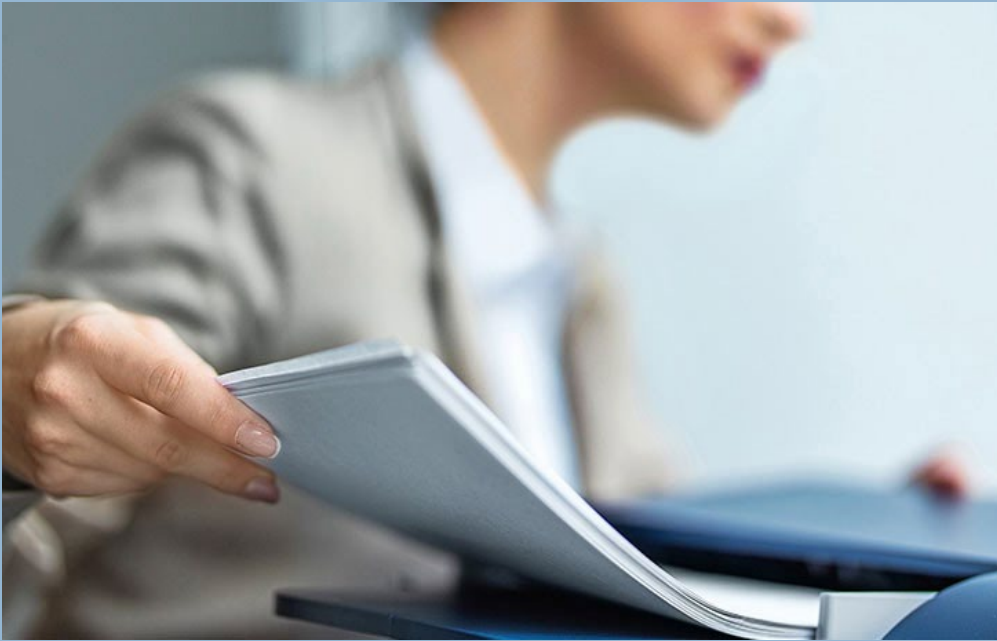
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BEST PRACTICES

Foreclosure Law

1. North Carolina
 - A. Planned Community Act
 - B. Condominium Act
2. South Carolina
 - A. Horizontal Property Act
 - B. Caselaw and Contract





Collection Steps

Pre-Lien Letter

Lien is filed

Foreclosure is Initiated

Property is sold

Collection Process

- A lien can be filed only once assessments or fines are 30+ days delinquent.
- Owner must be provided a statement of assessments at least 15 days prior to a lien, along with notice that the owner will not be obligated to pay attorney's fees if the balancer is paid.
- The Association instructs the HOA's law firm to file a lien.
- Foreclosure can be filed once a debt is 90+ days old.
- Liens expire after 3 years



Foreclosure Process

- Foreclosure is typically by “power of sale”
 - A neutral trustee initiates and prosecutes a power of sale foreclosure
 - Attorney’s fees are capped at \$1,200.00 (uncontested)
- Foreclosure typically takes 60-90 days to complete
- Sale of the property takes place at the courthouse.
- The HOA can collect only the amount of the debt
- Surplus proceeds are deposited with the Clerk



Alternative Situations

- Judicial foreclosure
 - Only option if the balance consists of fines, interest on fines, or attorney's fees.
- Lawsuits to recover the balance
 - Typically less successful, and more costly
- Difficulty of collecting the balance owed
 - Statutory exemptions
 - Execution by the Sheriff



Collection Process



- Depends on what the governing documents say for HOAs.
- Condominiums have statutory foreclosure rights.
- Foreclosures should be commenced only when the debt is significant. “A foreclosure proceeding is a solemn judicial proceeding . . . A foreclosure proceeding is a last resort, not a business model to be swiftly invoked for the purpose of exploiting property owners.”
- Liens have no expiration date.





Foreclosure

- North Carolina
 - Foreclosure Sale
 - Upset Bid Period
- South Carolina
 - Judicial Sale





Surplus Proceeds

- Funds generated at a foreclosure sale that are in excess of the debt
- The HOA does not get to keep the excess





FDCPA Concerns & Unauthorized Practice of Law

- North Carolina and South Carolina are governed by fair debt laws (often referred to by an acronym for Fair Debt Collection Practices Act)
- The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation . . .





Collections = Confidential

What is Private?

1. Do not post “delinquency lists” or disclose the identity of delinquent owners
2. Board can and should have closed-door meetings to discuss sensitive issues.
3. Communication between board and attorneys should remain confidential.
4. Communications between board members are not confidential.



Attorney Client Privilege

Sharing communications between the Board and the Association's attorney with others. . .

...can sever the attorney client privilege and make those communications discoverable in a lawsuit.

con·fi·den·tial
/ˌkənˈfəˈden(t)SHəl/



Violation & Delinquency Policies



- Make sure owners know and understand the ramifications of not paying dues and/or violating restrictive covenants.
- Adopt written violation and delinquency policies.
- Enforce the policies consistently and uniformly in order to avoid claims of arbitrary and capricious enforcement.
- Self-help?



Delinquencies

- Enforce written policies, including foreclosure, if necessary.
- Don't play favorites.
- Be compassionate in hardship situations, and be agreeable to reasonable repayment plans.
- It's best for board members not to communicate directly with owners who are in collections.



CarolinaCommonElements

<https://carolinacommonelements.wordpress.com>

Who is Responsible for Maintenance on my Townhome?

November 8, 2019 · by Mike Hunter | in Uncategorized | Leave a comment

Q: I recently had water damage which my homeowners' association ("HOA") is repairing. During reconstruction, the contractor found termites. My HOA instructed me that it was my obligation to pay for termites. When I bought my townhome in 2008, I was told the HOA would provide termite treatment. I recently found out that the HOA

Increasing Events of Extreme Rain and Flooding Cause Headaches for HOA Homeowners: Part II

October 3, 2022 · by Mike Hunter | in Flooding, HOA liability, rain, rain damage | 1 Comment | Edit

"Don't Rain on My Parade" This is the second column in a two-part series examining the effects of increasing rain and flooding events in the region. A townhome community in Salisbury suffered unprecedented flooding rainfalls over the last two years. One townhome in the community's low-lying area sustained considerable damage to other [...]

Rules for Age-Restricted Communities

October 29, 2019 · by Benjamin Karb | in Condo | Leave a comment | Edit

Ed. note: this month's column was written by my associate Ben Karb. Q: I live in a subdivision that was marketed as a 55+ community, but I cannot determine that the developer included any age restrictions in our Master Deed. If the developer did not include the "legal" requirements in the Master Deed or our [...]

Charlotte's 2040 Plan: No, the Sky Isn't Falling

October 10, 2022 · by Mike Hunter | in HOA board | tagged charlotte 2040 plan, multi-family, rezoning, single family | Leave a comment | Edit

There has been a bit of consternation among HOA boards around Charlotte the last few months before and after the City Council approved the controversial "2040 Plan" that will guide development in the city for the future. In particular, it is the provision that allows the city to rezone neighborhoods currently zoned for single-family residential [...]

Is Your Association Required to Confront the Bully?

October 24, 2022 · by Benjamin Karb | in discrimination, HOA board | tagged HOA association liability, discrimination | Leave a comment | Edit

It seems like there's no such thing as a minor disagreement. Owner-to-owner disagreements between neighbors in a homeowners' association or condominium association fall outside of the HOA's authority or jurisdiction, but not necessarily when the disagreement reveals a more-sinister motive: discrimination. HOAs and condos are subject to the Fair Housing Act ("FHA"), [...]

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HOA Blog



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North Carolina and South Carolina Homeowners' Association Law

KIRK PALMER & THIGPEN
COMMUNITY ASSOCIATION LAW PRACTICE

ABOUT THE KIRK PALMER & THIGPEN COMMUNITY ASSOCIATION LAW PRACTICE

While representing more than 700 community associations throughout the Carolinas, the KPA Palmer & Thigpen Community Association Law Practice lawyers are uniquely positioned to provide guidance to our HOA clients, covering the entire spectrum of condominium and community association law. For more than 30 years, Kirk Palmer & Thigpen has

Is Your Association Required to Confront the Bully?

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These days, it seems like there's no such thing as a minor disagreement. Normally, owner-to-owner disagreements between neighbors in a homeowners' association or condominium association fall outside of the association's authority or jurisdiction, but not necessarily when the disagreement reveals a more-sinister motive: discrimination. HOAs and condos are subject to the Fair Housing Act ("FHA"), [...]

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Mike Hunter's practice is focused on community and condominium association law, and he is the chair of the firm's Community Associations practice group. The group collectively represents more than 700 homeowners' associations in North

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