

COMMUNITY ASSOCIATION LAW ALERT

8/18/14

Important Information Regarding Depositing Checks

If your Association receives a partial payment that includes a restrictive endorsement similar to "paid in full" or "full and final satisfaction," you should contact our office to confirm whether you should deposit the check or return it to the owner. If you deposit a check with a restrictive endorsement as described above, you may be waiving the Association's right to collect the remaining balance due to the Association.

On Friday, August 8, 2014, the Second District Court of Appeal issued a decision in the case of *St. Croix Lane Trust & M.L. Shapiro, Trustee v. St. Croix at Pelican Marsh Cd'm. Ass'n., Inc.*, Case No. 2D13-3636 (Fla 2nd DCA, Aug. 8, 2014) wherein the Court ruled against the Association and found that the debtor's payment constituted full satisfaction of the debt. The total amount claimed due by the Association was over \$38,000.00. The debtor made a payment in the amount of \$850.00 accompanied by a restrictive endorsement (letter from the debtor's counsel) which included a statement that the payment was in full settlement of the claim. The Association applied the \$850.00 payment as a partial payment pursuant to Florida Statute. Despite language in the Condominium Act regarding application of partial payments (i.e., a partial payment must be applied first to interest, then late fees, attorney's fees, costs and finally to delinquent assessments, notwithstanding a restrictive endorsement), the District Court found that when the Association deposited the debtor's check, such deposit operated as an "accord and satisfaction." The District Court ruled that the Association waived all rights to the remaining amounts owed.

The rationale behind the District Court's ruling would similarly apply to homeowners and cooperative associations. Therefore, we advise caution to community associations when depositing partial payment checks.

Please contact the following Roetzel attorneys for further information:

Ashley D. Lupo
239.649.2736 | alupo@ralaw.com

Sean M. Ellis
239.338.4245 | sellis@ralaw.com

Steven M. Falk
239.649.2718 | sfalk@ralaw.com

Jennifer A. Nichols
239.649.2724 | jnichols@ralaw.com

This Alert is informational only and should not be construed as legal advice. ©2014 Roetzel & Andress LPA. All rights reserved.
For more information, please contact Roetzel's Marketing Department at 330.849.6636.