COMMUNITY MATTERS

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News and Trends in Community Association Law

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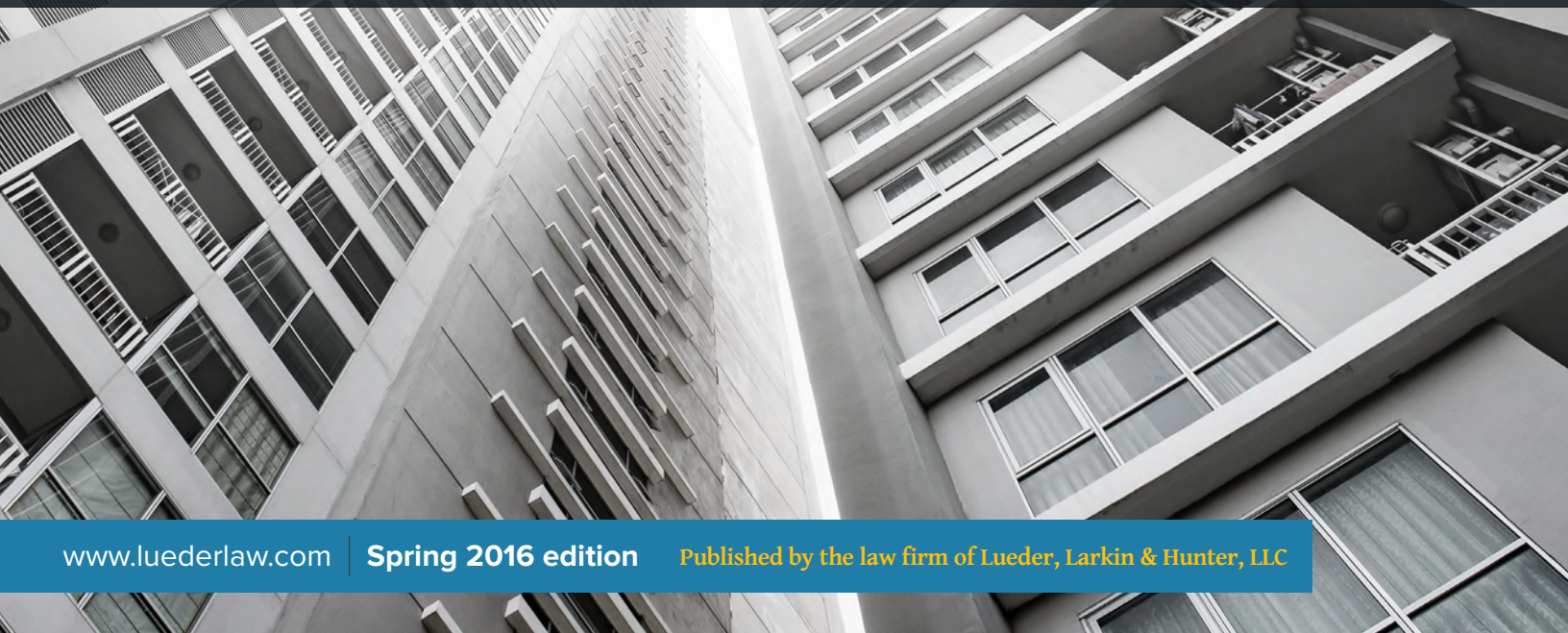

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Major Changes on the Horizon for Georgia Garnishment Laws

by | **Brandon D. Wagner, Esq.**

In the wake of the September 2015 *Strickland v. Alexander* court ruling which found Georgia's garnishment laws, as written, to be unconstitutional, the Georgia Legislature has revamped Georgia's garnishment laws in order to address the Strickland Court's concerns. Key changes to the garnishment laws are summarized as follows:

All garnishments against individuals are now limited to the lesser of 25 percent of the Defendant's disposable earnings during a work week or the amount by which the Defendant's disposable earnings for the work week exceed $217.00.

Funds or benefits from an individual retirement fund account, pension or retirement program are exempt from garnishment until distributed to the beneficiary thereof. Upon distribution, such funds are exempt from garnishment only to the extent of the limitations provided for in O.C.G.A. § 18-4-5.

When a plaintiff uses the incorrect form for a summons of garnishment of any type, the garnishment shall not be valid and the garnishee shall be relieved from all liability.

The plaintiff is now required to serve the garnishee as permitted in O.C.G.A. § 9-11-4 with a copy of the Affidavit of Garnishment, Summons of Garnishment, Notice to Defendant of Right Against Garnishment of Money Including Wages and Other Property, and Defendant's Claim Form. Not more than three days after service of the Summons of Garnishment on the Garnishee, the plaintiff shall also serve a copy of the Affidavit of Garnishment, a copy of the Summons of Garnishment, a copy of the Notice to Defendant of Right Against Garnishment of Money Including Wages and Other Property, and Defendant's Claim Form on the defendant by regular mail and registered mail, certified mail, or statutory overnight delivery, return receipt requested. A plaintiff may also serve the defendant via personal service by a person, not a party to the action, who is over the age of 18, an appointed private process server or by Sheriff or constable. No money or property paid or delivered to the court by the garnishee may be distributed, and no judgment may be entered against the garnishee, until ten days have passed from the date of service on the defendant and if the garnishee filed an answer, twenty days have passed since the filing of the garnishee's answer without a claim having been filed by the defendant or third party or after all traverses and claims have been adjudicated.

The time for banks to hold an account and file an Answer has now been reduced to not sooner than five days and not later than 15 days after the date of service of the summons of garnishment.

Garnishees are now required to serve a copy of their Answer on the plaintiff or the plaintiff's attorney and the defendant or the defendant's attorney. Service may be shown by written acknowledgement of the plaintiff/defendant or his/her attorney or by a certificate of service signed by the garnishee or his/her attorney.

At any time before a judgment is entered or property distributed, a defendant may become a party to the garnishment by filing a claim to the funds or property at issue and mandates that the court hold a hearing on such claim within ten days.

Any person may now file a third-party claim to funds or property at issue in the garnishment case.

The new law extends the time in which a garnishee may modify a default judgment entered against it as a result of its failure to file an answer to 90 days from the date the garnishee was served with notice of the default judgment.

The new garnishment law became effective on May 13, 2016. However, it may take some time for the courts to implement the new forms required by the revised garnishment statute. Please note that these are only a summary of the major changes related to the new garnishment law. Readers are encouraged to seek the advice of a licensed attorney prior to attempting to navigate the new garnishment procedures.

IT'S ALMOST HERE. JOIN US FOR OUR UPCOMING COMMUNITY ASSOCIATION LAW SEMINAR

TWO SESSIONS:

Saturday, August 6th: 9 am - 12 pm
CLICK HERE TO REGISTER

Tuesday, September 20th: 7 pm - 9 pm
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Buckhead Office
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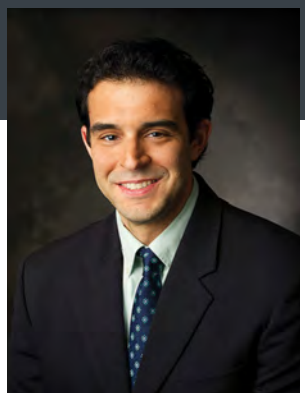
Bidding at Your Association's Foreclosure Sale: Going Once, Going Twice...



by | **Stephen A. Finamore, Esq.**

It is 9:45 A.M. in May, 2016. It is a sunny day without a cloud in the sky. A gentle breeze catches the American flag raised far above my head, whipping it back and forth against the metal pole. A crowd of people is slowly gathering. They murmur in anticipation of the day's event.

Some are wearing suits and others are dressed casually. A few are wearing large straw hats. Several of the more prepared are sitting in lawn chairs reviewing spreadsheets and newspaper listings. No, this is not the Kentucky Derby. I am standing in front of the DeKalb County Courthouse awaiting announcement of my association client's foreclosure sale. Most of the people in the crowd are there to bid on foreclosure sales conducted by mortgage lenders. All of the sales, including the association's, will begin at 10:00 A.M.

The association's foreclosure sale is very different than the lender's sale. Unlike the mortgage lender's sale, the association's sale will not result in unencumbered title to the property. This is because the association's lien, by statute, is inferior to other liens such as the first priority mortgage. Instead of a starting bid somewhere near the market value of the property, bidding for the association's sale will begin at $0.00.

The sheriff's deputy walks to the top of the courthouse steps and begins to announce the first sale. She has a soft voice, and it is difficult to hear among the crowd. The murmuring from fifteen minutes ago has escalated to an excited rumble, and people jostle toward the deputy. Some know what they are doing but others are just curious. I push my way to the front to secure a better position and make space for the board member who has decided to attend the sale with me. We listen carefully for the association's sale. This is it. There is no time for discussion about how much the association will be bidding for the property. Fortunately, we discussed bidding strategy in advance. Bidding begins.

Prior to the sale, we presented three basic options to the board. The first is to simply let anyone who bids on the property have it. The problem is that if someone only bids $100.00 that is all the association will receive for its lien. More importantly, the person winning for $100.00 may not know what he or she is getting, and, since the investment is minimal, may be willing to simply walk away from the purchase if it is not lucrative. Although the purchaser is responsible for assessments after the sale, collecting could be just as difficult as it was from the prior owner, and it could result in another foreclosure by the association.

The second option is to bid some minimum amount that would be high enough to discourage a casual (possibly incompetent) bidder. So, for example, assuming is the association secured a judgment against the non-paying owner of $10,000, the association could bid a higher amount, say closer to $3,000.00, and allow someone bidding more to take title by becoming the successful bidder at $3,000.00. The association gets $3,000.00 and the new owner is responsible for future assessments. Also, someone who has $3,000.00 at the time of sale will be more interested in the investment and may be more capable of paying future assessments. The problem with this option is that it leaves $7,000.00 uncollected.

The third option is to bid up to the full judgment amount. Taking the prior example, the association would bid up to $10,000.00 in smaller increments and either secure title in the property for itself, or allow someone bidding more than $10,000.00 to have it. The association would either get paid its full judgment or secure title to the property. In practice, this option increases the likelihood of an association taking title. In that event, the association can sell it (if there is equity) or rent it out to a tenant. Regardless, this option remains attractive because if the association prevails at foreclosure sale and secures title, the non-paying owner can be evicted.

The association instructed me to bid up to $6,000.00 of its $10,000.00 judgment. Bidding gets underway after I announce a minimum bid of $100.00. Bidding continues between several bidders, including the association. After a short while, the bidding is close to $6,000.00. The deputy asks, "Do I hear $6,000.00?" I exclaim, "$6,000.00!" Another bidder quickly responds with "$7,000.00!" I turn to the board member to confirm that I should stop bidding and she signals that bidding is to stop. No one bids higher than $7,000.00. "Going once…going twice…going three times…SOLD!"

Every sale is not the same and the association's counsel should be consulted to determine which strategy should be utilized.

Community Outreach
– Participation in 5th Annual Legal Food Frenzy

by | **Cynthia C. Hodge, Esq.**

In the Georgia legal community, many participate in the statewide competition known as the Legal Food Frenzy. This competition is in its fifth year, and our firm has participated for three (3) straight years now. The efforts help food banks across the state raise monies and collect pounds of food to ensure that struggling families, seniors, and children across Georgia have enough to eat this summer.

According to the state organizers, our firm accumulated a total of 13,855 pounds, which is roughly 102 pounds per person in our firm. These results rendered our firm 5th in the category of large firm in terms of pounds per person and 11th in terms of overall pounds. We improved our collection efforts by over 1,000 pounds from last year's competition results.

We delivered our donated items to the North Fulton Community Charities in Roswell, Georgia for immediate distribution to its patrons.

We could not have been successful without the assistance of some amazing partners and colleagues in this community service endeavor. A tremendous thank-you goes out to several amazing property management companies whose employees assisted in making food and monetary donations for the benefit of our firm's team this year, including (in alphabetical order):

Access Management Group
Beacon Management Services
CMA (Community Management Associates)
First Service Residential
Heritage Property Management Services, Inc.
Homeside Properties, Inc
HMS (Homeowner Management Services, Inc.)
Liberty Community Management

The efforts were tremendous this year, and I am excited to participate in the food drive/competition next year. It is wonderful to be able to make an impact that will affect the lives of so many.

Airbnb and Community Associations: **Is "Hosting" Permitted?**

by | **Haley J. Hancock, Esq.**

Imagine this: You walk to your mailbox to check your mail and you see a stranger leaving your neighbor's home. You know your neighbor is out of town for the weekend. The unfamiliar person locks the door to your neighbor's house, hops in their car, and leaves for the day. When your neighbor is back in town you ask about the stranger, and your neighbor tells you he is using Airbnb to make some extra cash by renting out his house on the weekends. If you think this could be a violation of your community's covenants, you may be correct.

Airbnb and websites like it are designed to facilitate communication between travelers looking for short-term accommodations and people who are looking to "host" by allowing guests to pay to stay in their home or condominium unit. "Hosting" can take on a variety of meanings: it could mean allowing someone to rent only a room in your home or condominium unit, similar to a conventional bed & breakfast, or it could mean allowing someone to have the whole house or condominium unit during their stay. In any case, short-term rental services like Airbnb are gaining popularity, and there may already be host-homes in your community.

If your community wants to prohibit the use of Airbnb and short-term rental services like it, it is important to first consult the covenants that are already in place for your community. Whether or not you can enforce a prohibition on Airbnb usage depends upon the express language found in your community's covenants. Some communities may already have prohibitions on business usage or the accommodation of transient tenants or occupants in their covenants which effectively prohibit the use of Airbnb and similar services.

Our firm recently handled a case for one such association. In that case, Fulton County Superior Court Judge Doris L. Downs ruled in favor of a condominium association client seeking an order prohibiting a unit owner from utilizing Airbnb. David C. Boy, IV and I argued on behalf of the association and raised the argument that the use of short term rental services such as Airbnb violated the prohibition on business use found in the association's covenants. The prohibition on business use is a common use restriction found in the covenants of many communities. Mr. Boy also argued that the use of Airbnb violated the prohibition on the accommodation of transient tenants or occupants found in the covenants. Judge Downs agreed with both arguments and noted that the use of Airbnb and similar websites is inconsistent with the residential character of the community.

Some communities may also have prohibitions on short-term leasing which would prohibit the use of Airbnb and similar services. Other communities may need to act quickly to amend their covenants to prohibit the use of these short-term rental services which will normally require the approval of the requisite proportion of the association's membership in accordance with the governing documents.

If you have questions about Airbnb, your community's covenants, the prohibition of short-term rental services like Airbnb, or amending your community's covenants to prohibit such use, please contact your community association attorney. If our firm represents your association, please contact us, and we will be happy to discuss your community's options.

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