CENTER FOR CALIFORNIA HOMEOWNER ASSOCIATION LAW

HUNTINGTON V MINER IMPACTS ASSESSMENT COLLECTION

An Orange County Appeals Court affirmed Monday (Jan 13) that state law "compels" California's 50,000 homeowner associations to accept the partial payments that homeowners try to make in order to pay down assessment debt. "Compel" is the court's word indicating that associations don't have a choice – and that association debt collectors can't interfere in the process.

The opinion declared that homeowners can make payments (1) directly to the association and not the HOA's debt collector (2) at any point during the collection process and (3) payments do not have to include collection costs.

The court acknowledged that it was breaking new legal ground with the ruling.

The partial payments issued has boiled ever since Congresswoman Jackie Speier authored legislation, when she was in the State Assembly, prescribing how homeowner payments are to be applied: FIRST to assessments owed until they are paid in FULL and only afterwards to collection costs.

However, association lawyers and debt collectors have argued, since the 1997 law went into effect, that the law applied only to associations and not to third parties like themselves who collect homeowner dues on behalf of associations.

Mondays' ruling – 17 years later -- clarifies that not only are associations "compelled" to accept partial payments from homeowners but that those payments do not have to include collection costs.

The ruling will have a huge impact on association debt collectors, most of whom are lawyers or subdivisions of law firms. They market their collection services to associations as "no cost" services, meaning that the costs of collection will be borne by the homeowner. The debt collector then uses the association's lien authority to secure not only assessments owed but all the collection costs claimed by the debt collector whether or not the costs are legitimate. California law puts no caps on the collection costs that the company can charge.

The standard contract between the debt collector and the association bars all communication between the homeowner and the association once the account has been turned over to the collection firm. Homeowners who send assessment payments to the association are turned away, their payments rejected, and told to deal only with the collection company.

Paying down the assessment debt is critical to the homeowner, because state law lets the association foreclose on the home if the debt reaches $1800 or if it has been owed for more than 12 months. The minimum bid at the foreclosure auction is the amount owed the association and the debt collector, typically between $3500 and $5000, i.e. the bid bears no relation to the market value of the home.

The Court broke new ground with the ruling, stating that "***This case presents an issue on which this court has found little published authority: whether a homeowner's association must accept and apply partial payments that reduce delinquent assessments owed but not any other amounts due, such as late fees, interest, and attorney's fees and costs. We conclude the Davis-Stirling Common Interest Development Act (the Act) compels a homeowner's association to do so."***

The Orange County Appeals Court issued its first ruling on ***Huntington v Miner*** in September 2013, finding in favor of Orange County homeowner Joseph Miner The association's law firm and debt collector, Feldsott & Lee, also of Orange County, challenged the ruling and asked for a second review by the three-judge panel.

CCHAL petitioned the Court with a five-page *amicus* letter asking it to let its opinion stand and to certify it for publication. The letter comprised the legislative history of the assessment collection and foreclosure issue.

On Monday, Jan 13, the Court issued its new – and even stronger – ruling clarifying that state law compels associations to accept homeowner partial payments and that those payments do not have to include collection costs.

The Court's Minute Order also states that it was certifying the opinion for publication "at the request of the Center for California Homeowner Association Law."

CCHAL is able to monitor court rulings like Huntington and to write petitions, because of the support of our generous Contributors, which is why we are notifying them first of this critical court ruling.

For technical reasons (having to do with our server), we have not been able to post Huntington v Miner on the CCHAL website. However, if you are a CCHAL Contributing Member in good standing, send an email to info@calhomelaw.org and we will email the complete ruling to you along with appendices and Minute Order.

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