

MATTHEW L. WINTON PLLC

THOMPSON & WINTON PLLC

State-wide legal services for
residential and commercial
condos and HOAs

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Legal Service for Community

HOA/Condo Lien Law - Overview

- Statutes

60 O.S. 501 et seq. – Unit Ownership Estates Act [Condos]

- *Section 524*: note particulars (priority, rent)

60 O.S. 851 et seq. – Real Estate Development Act [HOAs]

- *Section 852*: note particulars (Foreclosure by rule? Monetary penalties?)

- Cases

Warwick Estates Ass'n v. Anderson, 1989 OK CIV APP 65 (Constructive notice; lien collections)

Falconhead v. Fredrickson, 2002 OK CIV APP 67 (Non-REDA HOA collection on an open account affirmed)

CIT Bank v. Heirs of McGee, 2019 OK CIV APP 36 (Another Falconhead case; covenants are inchoate lien claim; priority)

Bluff Creek Townhomes, Inc. v. Hammon, 2019 OK CIV APP 59 (A UOE subject to 60 O.S. 852?)

HOA/Condo liens are not MMLs or are they? CIT ¶13 confusion

Particular Lien Issues – Who Signs?

- Hypothetical – H&W own a Lot together and are selling the Lot. Can H sign the deed at closing on behalf of W?
 - Hypothetical – LLC engages attorney to provide various real estate related legal services. Can attorney sign a mortgage on behalf of LLC?
 - If the answer to both hypotheticals is “No,” can an agent sign a condo or HOA lien on behalf of a condo or HOA?
 - Consider if management contract includes “debt collection” services
 - Consider too whether the applicable covenants require liens to be signed by a specific condo or HOA officer.
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Agent-signing of Condo/HOA Liens

1. **16 O.S. §3.** Allows for an attorney-in-fact to sign instruments affecting real estate.
 2. **16 O.S. §20.** Requires a power of attorney to be recorded along with a conveyance or any instrument affecting property, including releases.
 3. **16 O.S. §79.** Provides significant penalties for slander of title, including costs, attorney's fees, and treble damages.
 4. **16 O.S. §85.** Provides significant penalties for filing false affidavits, which may apply to false liens. Penalties include actual damages, costs, attorney's fees, and punitive damages.
 5. **TES 6.7.** Title Examination Standard 6.7 provides that conveyances of record for 5 years without a recorded power of attorney are effective to vest title, but the standard does not speak to other interests in property.
 6. **TES 12.3.** "Cures" a managing agent signing defect, so any lien that was improperly signed and filed by a managing agent would be "cured" 5 years after recording for defect, but not for other infirmities such as violation of FDCPA, Bankruptcy Code, and slander of title.
 7. **TES 12.5.** Speaks to corporations issuing powers of attorney for agents to sign instruments affecting property; 5 year curative language, which again would cure recording defects but not other infirmities such as violation of FDCPA, Bankruptcy Code, and slander of title.
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Lien Issues – Re-filing and Statute of Limitations.

- 12 O.S. 95(A)(1) – 5 years on a written contract
 - 12 O.S. 95(A)(2) – 3 years on unwritten contract or statutory liability
 - Is the SoL three or five years? FPOA v. Fredrickson says it's one or the other!
 - Debt is aged 5 years - Filing/re-filing a lien does not extend SoL
 - Tolling the SoL:
 - Getting any payment towards the debt
 - Settlement agreement
 - Filing suit
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Another Lien Issue – What Debt May be Secured? FDCPA Considerations

- What debt may the condo/HOA lien secure? Regular assessments, special assessments, reserve assessments, transfer fees, interest, costs, attorney's fees?
 - The ubiquitous "\$25 late fee"
 - Covenant-based monetary penalties v. Rule-based monetary penalties
 - 60 O.S. 852(C): No lien may be placed or mortgage foreclosed unless the homeowner was informed in writing upon joining the owners association of the existence and content of the owners association restrictions and rules, and of the potential for financial liability to the individual owner by joining said owners association.
 - FDCPA: No demand for fake debt (Late fees, SoL, made-up admin charges)
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More Lien Issues: Bankruptcy

- Bankruptcy - 11 USCA §101 et seq. The purpose of bankruptcy is to give a debtor a “fresh start,” which is why the Code provides for an automatic stay of collections activities at the filing of a bankruptcy petition. Code provides significant punishments for creditors who violate a debtor’s bankruptcy rights. Sending demand letters, filing liens, and otherwise attempting to collect pre-petition debt in a bankruptcy violates the Code.
 - The condo/HOA lien is a contractual and statutory lien – it is non-dischargeable. HOA/Condo lien reduced to judgment is still non-dischargeable
 - Questionable whether enforcement action may be taken on non-dischargeable debt despite Stay – better safe than sorry approach.
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Representing clients with HOA and condo issues
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