



From: Alexander L. Palenzuela

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Memo On Liens For Unpaid Code Enforcement Fines; Citing Trucks On Swale Where Truck Does Not Belong To Adjacent Property Owner

Date: December 13, 2012

Extent of code enforcement liens

The lien for code enforcement fines is broader under state law than under the Code of the City of Coral Gables ("City"). Pursuant to Sections 101-64, 101-168, and 101-187 of the City Code, the lien for code enforcement fines attaches **either** to the land on which the violation exists or, if the violator does not own the land, to any other .real or personal property owned by the violator. Under Section 162.09(3), Florida Statutes, the lien attaches to **both** the land on which the violation exists **and** to any other real or personal property owned by the violator.

If the reason for this difference between the City code and state law is to prevent a lien from attaching to the landlord's property, when a tenant or third party actually caused violation, then the same goal may be achieved by only citing the other parties, and not the landlord. Since there does not seem to be a valid reason to favor a violator who owns the land over one who does not, the City may choose to amend its ordinance to broaden the impact of its lien and so that all violators are treated equally.

Another reason to increase the scope of the lien is that a code enforcement lien only encumbers **any non-exempt** property of the violator. *Fong v. Town of Bay Harbor Islands*, 864 So.2d 76 (Fla. 3d DCA 2003). Under the current City code provision, there is no lien if the land where the violation occurred is exempt as the violator's homestead - a common occurrence. However, if the real property loses its homestead status, or the violator sells his homestead and does not use the proceeds to purchase another homestead within a reasonable time, then the lien would attach to the real property or the proceeds of sale. *Id.*

If the violator is a tenant who illegally parks a truck on someone else's property or in the right of-way, the result is the same under the City's ordinances and state law. There would be a lien on all of the tenant's real and personal property. The outcome is the same for an out-of-town violator or a violator who does not own property in Miami-Dade County.

Of course, the City must record its lien in a county where the violator is known to reside or own property in order to have a lien that actually encumbers any property. The City Code and Section 162.09(3), Florida Statutes, are both silent on whether a lien recorded in one county attaches to property located in another. Nevertheless, by drawing an analogy to judgment liens, it is clear that the lien only attaches to property located in the county where the lien is recorded. (Sec Section 55.10, Florida Statutes)

Reporting of unpaid fines to credit bureaus

The City may try to increase the likelihood of compliance with an order requiring payment of code enforcement fines, especially where the lien does not encumber any assets of the violator, by reporting the unpaid fines to a credit bureau. While there appears to be no authority specifically stating that code enforcement fines may be reported, the Fair Credit Reporting Act defines credit bureau as an agency that regularly reports on public record information. Generally, public record information is interpreted to refer to bankruptcy records, foreclosure records, tax liens, monetary court judgments, and in some states, past due child support. Code enforcement fines clearly fall under the definition of public record information and are similar to some of these other types of debts. Therefore, credit bureaus should be able to report unpaid fines.

As a practical matter, however, the City may find it impractical or impossible to report delinquent code enforcement fines. For example, Equifax will not allow the reporting of what it terms "non-traditional" types of data such as: traffic fines, parking tickets, criminal fines, delinquent property tax liens, municipal water/sewer liens, and criminal judgments. Code enforcement fines seem similar to these other, so-called, non-traditional types of data that Equifax refuses to report. Even if Equifax agreed to report code enforcement fines, it imposes additional restrictions that may make it impractical for the City to report. For example, Equifax requires reporting of a minimum of 500 accounts and that the reports be kept current.¹ Perhaps for either of these reasons, Miami-Dade County's Credit and Collections Department does not report any of the county's debts to credit bureaus.

¹ While I contacted the other two major credit bureaus to determine whether they report code enforcement fines, Experian requires that a City employee contact them directly to request and file an application before they will respond and Transunion has not yet responded.

Hernandez, Cristina

From: Leen, Craig
Sent: Wednesday, December 26, 2012 3:39 PM
To: Hernandez, Cristina
Subject: FW: Memo on liens for unpaid code enforcement fines
Attachments: memorandum on code enforcement liens.pdf

Importance: High

Please place the email below and attachment into the opinion folder.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Wednesday, December 26, 2012 3:37 PM
To: Ortiz, William
Cc: Tompkins, Jane; Thornton Richard, Bridgette; Osle, Zilma
Subject: FW: Memo on liens for unpaid code enforcement fines
Importance: High

Will,

Please see the attached memorandum, which addresses in part the issue about citing trucks on the swale where the truck does not belong to the adjacent property owner. The concern from Code Enforcement was that the citations/notices would be unenforceable if the truck owner/driver did not reside in the City. This memorandum indicates, however, that any liens resulting from such violations would attach to the property of the truck owner/driver, including to property outside of this city or county (as long as the lien is recorded in the county where that property is located). I agree with outside counsel on this point.

Also, please see the amendment proposed to the City Code (suggested in the memorandum). It would broaden the lien provisions in the City Code to the full extent of state law. Such an amendment would be useful in situations where the violating property is a homestead property, as the code enforcement could attach to other real and personal property owned by the violator.

Please let me know if you have any questions.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264

Email: cleen@coralgables.com

From: alp@alp-law.com [<mailto:alp@alp-law.com>]
ent: Wednesday, December 26, 2012 2:09 PM
To: Leen, Craig
Cc: Thornton Richard, Bridgette
Subject: Re: Memo on liens for unpaid code enforcement fines
Importance: High

Dear Craig:

Please find attached the final version of the memorandum.

Thanks!

Very truly yours,

Alexander L. Palenzuela
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Miami, FL 33131-3213
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Memo

To: Craig Leen, City Attorney for the City of Coral Gables

From: Alexander L. Palenzuela *ALP*

Date: December 13, 2012

Re: Liens for unpaid code enforcement fines

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