



Clayton & McCulloh
ATTORNEYS AT LAW

**C&M CHANGES BILLING STRUCTURE TO BENEFIT ASSOCIATIONS IN
MORTGAGE FORECLOSURE DEFENSE CASES**

Clayton & McCulloh (C&M) is pleased to announce that we are changing the billing structure for all *ongoing and new* mortgage foreclosure defense cases. We are now billing mortgage foreclosure defense matters on an hourly basis only; however, this will be significantly better for our client Associations than the previous \$250 flat fee. One reason is that the Association will still only be liable for the original \$250. The remainder of the attorneys fees will be on a contingency basis and will be paid from the amount that we recover on behalf of the Association. In other words, should C&M make no recovery on behalf of the Association, there will be no additional fees charged to or required to be paid by the Association.

Based on recent court decisions, C&M believes that there is now a substantial basis for C&M to claim, on the Association's behalf, the recovery of its prior and current legal fees, costs, late fees and interest incurred in the defense of mortgage foreclosure and during the previous collection stage of the case. Equally important, C&M expects payment for its extra work on these matters, as well as the Association's recovery, to come from the foreclosing bank or lender.

Please understand that C&M's ability to recover your prior and current legal fees, costs, late fees and interest will be of crucial significance to your Association, because C&M can now effectively prosecute these claims on the Association's behalf even though an intervening mortgage foreclosure action has been filed. Moreover, these new mortgage foreclosure defense and collection procedures also include notifying the new owner (*i.e.*, the person officially acquiring the foreclosed property and receiving ownership through the Certificate of Title) of the attorneys fees, costs, late fees and interest which are due. As such, C&M will continue to actively maintain the files and process payoffs in order to recover such sums as are properly due to the Association.

C&M's ability to claim attorneys fees, costs, late fees and interest is based on C&M's new approach and procedures. These new procedures are comprised of several parts. The first part involves preparing and filing an Answer in the mortgage foreclosure case. The Answer will include the reservation of the Association's rights and entitlement to be paid for attorneys fees, costs, late fees and accumulated interest. The second new Procedure is to demand payment of all previously incurred attorneys fees, costs, late fees and interest from the bank or other party who becomes the new owner. This demand for full payment will be made by C&M. Note that this will be the case even when the new owner is entitled to limit the liability for past due assessments, pursuant to F.S. §718.116 or F.S. §720.3085 (*i.e.*, the condominium and homeowner association statutes, respectively, which limit the amount of months in arrears the Association can collect for past due assessments). The third part is that C&M will handle payoffs with new owners just like in collection matters. This will assure that all sums owed will be demanded, not just the limited amount of delinquent assessments allowed by the statutes.

These new procedures and the ability to claim a substantial portion, if not all, of the previously incurred attorneys fees, costs, late fees and interest will result in recovery of considerable sums of monies, which have not been previously recoverable. This is expected to be true even considering the limitations imposed by the above referenced statutes.

The primary basis for this new approach to obtaining past attorneys fees, costs, late fees and interest is recent court decisions involving the said condominium and homeowners association statutes (*i.e.*, F.S. §718.116 and F.S. §720.3085). This approach differentiates between the obligation to pay for attorneys fees, interest, late fees and costs, as opposed to the obligation to pay for past due assessments, which remain limited by Statute. Other important arguments in favor of being able to collect attorneys fees, interest, late fees and costs also exist.

Should the first mortgagee or lender fail or refuse to pay the interest, costs, late fees and attorneys fees within the statutory 30 days after the Certificate of Title is issued to the new owner (following the judicial sale in the mortgage foreclosure case), then C&M will institute a second Lien Foreclosure action against the new owner for said unpaid funds. This would be true even if the new owner pays the reduced assessments due pursuant to F.S. §718.116 or F.S. §720.3085, Florida Statutes.

Accordingly, C&M will no longer be representing clients in mortgage foreclosure defense matters on the previous \$250 flat fee basis. C&M's representation of all new and ongoing mortgage foreclosure defense matters will be based on hourly fees, to be determined based on C&M's current standard hourly fees plus costs, subject to the above stated \$250 out of pocket fee limitation. As a result, the initial retainer of \$250 for C&M's new method of handling mortgage foreclosure defense cases is the same amount that the Association previously has been paying to be represented in these cases, but the extent of the Association's recovery is expected to be much greater.

C&M is so firmly convinced that Associations will reap the benefits and make a recovery using this approach, that we are limiting the Association's out of pocket fee obligations to the \$250 retainer. C&M will seek to recover (on a contingency basis) the balance of its attorneys fees from the new owner of the property in question. Importantly, Associations can now look forward to recouping sums previously thought to be uncollectible, including previously incurred attorneys fees, costs, late fees and interest. Accordingly, as C&M primarily derives its fees on a contingent fee basis from the funds paid by the new owner, should the Association settle the matter with the new owner without providing for payment of C&M's attorneys fees and costs, the Association would then be responsible for paying same.

In these tough economic times, each Association needs as large a recovery as possible in order to help fund its operations. C&M is pleased to be able to continue to seek ways to improve our services and results for our clients.

Should you be interested in finding out more about C&M's new procedures regarding mortgage foreclosure defense, please call Ms. Arlene Ring, Director of Client Services, at our main office.

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