

LEGAL



Postmarks

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

The United States Postal Service recently changed how it applies postmarks. Under the new rule, a postmark is now defined as confirming only the date when the piece of mail was first accepted by automated processing at a processing facility and is not the date the piece of mail was deposited in the United States mail. As such, in many cases the piece of mail will not be accepted at the processing facility until a day or more later than when the piece of mail was originally deposited in the United States mail. Therefore, one cannot rely on the postmark to show the date the piece of mail was actually deposited in the U.S. mail.

This is important to Condominiums because there are notices and other communications which must be mailed by the association by certain dates. While Chapter 718, Florida Statutes,

does not specifically reference postmarks as the determining factor for the date something is mailed, parties often rely on the postmark as evidencing the date the piece of mail was placed with the United States Postal Service. While the statutes require that the timely mailing of certain notices be evidenced by executed affidavits of mailing, there is no express affidavit requirement for demand letters, fining notices, and other mailings routinely made by community associations. In those instances, where the evidence of timely mailing needs to be demonstrated, the association should either take their piece of mail to the post office and ask that it be postmarked there in person, or stamped with a certificate of mailing. Alternatively, the association could also execute an affidavit of mailing for those other items where such

affidavit is not explicitly required by the statute.

As such, community associations should be aware of the change in the post office's postmark rule and take appropriate steps to ensure that any piece of mail that is sent by the association which must be sent timely is properly evidenced by either a postmark applied in person at the post office or by a properly executed affidavit of mailing. Should any association have further questions about how to comply with the mailing requirement under the new rules, they should consult with their legal services provider.

Should we have an attorney?

Why do we need an attorney; everyone in our building gets along. That is a mantra I hear repeated time and again by Board members. My recommendation

is to keep an attorney on retainer. You may not need an attorney today, but we've had Associations that find themselves suddenly in urgent need of legal services from issues like whether they can deny the sale of a unit, getting threatening letters from attorneys, getting sued, how to handle records requests under the new laws, etc. It is much easier to be able to reach out immediately, than to have to go through the process of establishing your association with a law firm before you can get the counsel you need.

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