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Ward Damon attorney Rana Gorzeck says Florida law should include more protection against code enforcement super liens on homesteads. **A4**



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BOARD OF CONTRIBUTORS: **Filing** stops owner from selling any property

How super liens prevent your Florida home from closing

Commentary by Rana M. Gorzeck

What is a super lien? Among Florida real estate attorneys, municipal super liens are notorious. But many property owners have never heard of them until it's time to sell their house.

A super lien begins when the city or other



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governmental entity discovers a violation on real property. A violation occurs for many reasons: failure to maintain the lawn, failure to remove garbage from the property, allowing construction without first obtaining a permit or creating a nuisance or an unsafe condition — in the city's opinion.

When the property owner does not cure the violation within a pre-set period of time, the city has the right to file a code-enforcement lien against the owner. What property owners may not know is that once a lien appears in the public records against them, the lien is filed not just against the property where the violation occurred, but against every property they own in the entire county where the violation arose. Once the now-powerful super lien is placed in the public records, a title defect appears upon every property they own in the same county.

As a result, the filing of a super lien will stop an owner from selling any real properties in the same county until the lien is paid. If ignored, a super lien's daily penalties are stiff — up to thousands of dollars per day. Payment of the super lien itself can be insurmountable. And in today's real estate market, it is not unusual for the super lien to exceed most of the equity in the property being sold.

What about a homestead? Is it protected from a super lien? Section 4, Article 10 of the Florida Constitution does protect a homestead from forced sale by a city, but not from title defects imposed by a city's super lien. So, at

this time the answer is "NO". If the property owners are unable to pay the super lien, they must hire an attorney to obtain release of the lien or negotiate the lien down to an affordable amount. The cost of removing the super lien can be high; closing costs increase and the time needed to negotiate a release could delay the closing.

Before closing, the property owners must first negotiate a release or "no action" letter from the city attorney. Often that means showing proof of homestead status and threatening a declaratory action against the city for a judicial determination that the homestead is protected under the Florida Constitution. While the city attorney might eventually relent and admit that a bona fide homestead is entitled to protection from the super lien based upon conclusive Florida cases on the issue, such a result is not guaranteed. Plus, the additional costs and delays can be deal killers.

Some have taken note of the inequity of imposing super liens upon homesteads and the accompanying costs incurred by Florida homeowners to remove super liens in order to close upon their homes. In the 2011 legislative session Sen. Jack Latvala, a Republican from St. Petersburg, proposed a cure to mitigate code-enforcement liens on homesteads. Proposed Senate bill 1072 would have added new language to Section 222.01, Florida Statutes and placed code enforcement liens on par with judicial liens on homesteads.

Section 222.01 now permits homeowners to extricate their homestead from judicial liens by filing a notice of homestead in the local court and waiting 45 days for a response from the judicial creditor. In many cases, the judicial creditor does not respond within 45 days and relinquishes its judicial lien. This is a simple remedy for the homeowner to avoid judicial liens on his homestead and can be accomplished during the pre-closing process at a fraction of the cost of a lawsuit. The proposed

senate bill would have permitted a similar remedy for code-enforcement liens.

Unfortunately, to the dismay of real estate attorneys and their clients selling homesteads, Section 222.01 was not expanded in 2011 to include code enforcement liens. At the last minute, the curative senate bill was "laid on the table", which means that another "similar" bill was substituted for bill 1072. Unfortunately, the substituted bill did not contain the original language allowing the expedited release of code-enforcement liens. In other words, it died in committee.

When asked about the future of bill 1072, the senator's office confirmed that the missing code-enforcement language would not be reintroduced in the upcoming 2012 legislative session by Latvala, but may be contained in bills to be introduced by other legislators, including Sen. Jeremy Ring, a Democrat from Margate, and Rep. John Wood, a Republican from Winter Haven. At this time, however, there are no proposed bills for 2012 appearing on the public records of the Senate or House supplying the missing code enforcement language proposed in 2011 by bill 1072.

Florida law should include more protection against code enforcement super liens on homesteads. The proposed changes in bill 1072 were supported by the homestead protection in the Florida Constitution. And the bill would have helped the already beleaguered economy by helping to eliminate homeowners' costly and time consuming fights against these super liens.

Rana Gorzeck is a partner at the law firm of Ward Damon in West Palm Beach. For the past 29 years, she has concentrated her practice in South Florida on real estate and construction law, business law and public finance.