



ASSOCIATION LAW GROUP

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February 17, 2012

Re: Open Response Letter Regarding HB 319

You may have recently received an open letter from Becker & Poliakoff endorsing Rep. Moraitis' bank bailout provisions to HB 319. Our firm also represents hundreds of community associations and condominiums throughout the State of Florida and felt it important to set the record straight for Legislators who care about their constituents living in such communities and condominiums. First, despite the assertion that it represents significant numbers of associations and purports to be a community advocacy group, the reality is that Becker also represents lenders such as Bank of America and HUD, as evidenced on the attached redacted demand letter it recently sent to one of our association clients, one of the largest communities in Miami-Dade County with over 3,100 homes and 10,000 residents. In Becker's letter, their client HUD demands that the association remove ALL amounts due under the current state law that Rep. Moraitis is attempting to further modify to the benefit of foreclosing banks, even after Bank of American and HUD failed to pay their fair share of assessments for over 15 months after taking title to the property, to the severe detriment of the association and all homeowners in the community. Even worse, Becker's client subsequently sued the association claiming sovereign immunity in a way that the community association will likely receive nothing. We believe this obvious dual representation of both associations and banks at the same time makes Becker's input on these legal issues suspect at best.

Frankly, it is our opinion that their open letter attempts to confuse the Legislature into believing that Rep. Moraitis' bank bailout provisions are reasonable and needed to stop lawyers from collecting more fees, while professing to state that they would rather see associations receive more money. At the same time, there is no proposal in their letter of any new legislation whatsoever under HB 319 that would actually result in associations receiving more money and/or encouraging banks to expedite their foreclosures. The letter also ignores the fact that the same Moraitis amendments are also clearly exempting banks from having to pay even late fees and interest which would obviously go directly to such associations. Such late fees and interest are amounts that even Rep. Moraitis agrees should be paid by all successors in title other than banks. Another thing the letter fails to point out is that the recovery of attorneys fees under such provisions of law do not provide more amounts to attorneys (who get paid either way), they simply avoid associations and the rest of the homeowners from coming out of pocket for such already expended legal fees and costs to pursue the banks' original defaulted borrowers, who in many cases stopped paying association maintenance fees years ago. In other words, the fees and costs have already typically been incurred by associations by the time banks take title through foreclosure and associations are already liable to their attorneys for all such fees and costs or have already paid such amounts. If such fees and costs are then unrecoverable as Rep. Moraitis proposes, it would threaten to completely undermine an association's ability to even file a lien and pursue the original delinquent owner in the first place for fear of having such already expended fees and costs wiped out by foreclosing banks.

Therefore, the real question is whether the Legislature intends for associations to be able to recover their safe harbor amount of assessments (*i.e.*, the lesser of 12 months of past due assessments or 1% of the original mortgage), plus the reasonable fees and costs expended to pursue such amounts, or whether the Legislature intends to have such 12 months or 1% be completely eaten up by such already expended attorneys fees and costs, at which time associations

would likely end up with no net benefits and additional balances due to their attorneys. Additionally, as the Legislature is well aware, we have courts to determine the reasonableness of such attorneys fees and costs, so the idea that attorneys charge too much is not only ironic and hypocritical coming from a large firm, but we believe is also a smoke screen to distract from the real issue of simply bailing out banks from having to pay such amounts.

It is also interesting that Rep. Moraitis, Becker, and its lobbying arm CALL keep repeating that they would rather see associations get more money than attorneys get fees, and yet none of them have done anything to suggest new provisions to the laws which would actually result in associations receiving any more money under the safe harbor statutes. For example, you will notice that in the letter it suggests that associations should get double the amount from foreclosing banks (*i.e.*, 24 months of assessments or 2% of the original mortgage) and even goes as far as to suggest associations should have “super lien” priority over banks, but no such language appears anywhere in the Moraitis amendments to HB 319, which bill instead clearly further limits the recovery of late fees and interest to such associations.

We challenge Becker to stand behind its assertions and suggest that Rep. Moraitis immediately add language to HB 319 that will actually help the bottom lines of financially struggling associations during the midst of the worst foreclosure crisis in U.S. history, which was caused in large part by the irresponsible lending practices of the same banks that continue to take title to such defaulted units and yet are being given even more legislative breaks and bailouts through proposed legislation like HB 319. As such, we strongly suggest the Legislature at least grant associations all of their late fees, interest and double the safe harbor amount (*i.e.*, 24 months or 2%) as Becker, CALL and even Rep. Moraitis suggest they would like to see. Alternatively, we would like to see the Legislature really come to the aid of the millions of homeowners living in financially struggling communities and condominiums by providing associations a super lien priority over banks like Becker is suggesting in its open letter. At the very least, we believe the Legislature should limit the amount of time banks can take to complete their foreclosures in order to be eligible for such safe harbor protection, in order to avoid their flagrant stalling of foreclosures, in some cases for years in an effort to take the maximum advantage of such legislative exemptions (*i.e.*, at least require banks to complete their foreclosures within 12-18 months in order to be eligible).

This is a critical issue that cannot wait for subsequent Legislative sessions and should not be distorted or swept under the rug by firms like Becker, while millions of your constituents are struggling just to keep their homes and their heads above water. Such homeowners should not and cannot bear the burden of another bank bailout and be responsible to pay amounts associated with units that such banks take title to simply because banks, their lobbyist, and attorneys have influence over such decisions. Our firm is proud to be playing a large part in financially resuscitating hundreds of struggling not-for-profit associations throughout Florida and we will continue to fight for all amounts legally due to our clients no matter how tough such battles become. As such, we would be glad to assist in drafting language that seeks a compromise in which Becker, CALL and Rep. Moraitis say they support, but refuse to put forth, before it is too late for our clients and millions of others in Florida who will be severely impacted by these proposed bank bailout provisions to HB 319. We hope you will stand with your constituents and modify HB 319 in a way that makes sense for all homeowners. Thank you for your time and consideration.

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TAMPA BAY

WEST PALM BEACH

Re: Association
Property Address:
FHA #
ALG Account #

Dear Messrs

My Firm represents the United States Department of Housing and Urban Development ("HUD") regarding the above referenced property.

U.S. & GLOBAL OFFICES

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*by appointment only