



# THE FLORIDA BAR

651 EAST JEFFERSON STREET  
TALLAHASSEE, FL 32399-2390

JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

850/567-5600  
WWW.FLORIDABAR.ORG

November 25, 2009

Loyd Tarver  
180 Cullman Avenue  
Santa Rosa Beach, Florida 32459

Re: Unlicensed Practice of Law Investigation of Loyd Tarver; Case No. 20100021(01B)

Dear Mr. Tarver:

The Florida Bar has investigated a complaint alleging that you engaged in the unlicensed practice of law by drafting claims of lien for unpaid assessments and satisfactions of lien. This matter was investigated at the staff level.

As I understand, you are the Community Association Manager for Escada Block A Homeowners Association. You monitor the payment of homeowner dues and report delinquencies to the Board of Directors. You are also responsible for initiating collection activities if directed by the Board. While you may engage in ministerial tasks related to the association's collection activities, you may not hold yourself out as capable of handling legal tasks including the drafting of claims of lien or satisfaction of liens. This is the practice of law.

The Florida Supreme Court has a well established test of whether an activity is the practice of law. In The Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), judges vacated on other grounds, 373 U.S. 379 (1963) the Court found that setting forth a broad definition of the practice of law was "nigh onto impossible" and instead developed the following test to determine whether an activity is the practice of law:

... if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

The Florida Supreme Court has addressed the unlicensed practice of law in the context of community association law. In 1996, the Florida Supreme Court issued its Advisory Opinion in The Florida Bar re: Advisory Opinion—Activities of Community Association Managers, 681 So. 2d 1119 (Fla. 1996). I have enclosed a copy of this opinion for your review.

COPY

Please be advised that Community Association Managers are not permitted to draft claims of lien or satisfactions of lien. Although claims of lien and satisfactions of lien appear deceptively simple and are among the most common documents drafted for the community association, claims of lien and satisfactions of lien actually require legal analysis of the community association's legal rights arising out of the governing documents and the Florida Statutes, as well as a determination of the correct legal description and an analysis of record title ownership of the property in question. An improper or unlawful claim of lien or satisfaction of lien may subject the association to a lawsuit for among other possible causes of action, slander of title.

Enclosed is an original Affidavit which we offer to you in an effort to conclude our unlicensed practice of law investigation amicably and without resort to Supreme Court litigation. You will note from reading the Affidavit that you are not required to admit to any wrongdoing on your part. We seek only your assurances that you understand the implications of your previous conduct and agree not to engage in any activities which constitute unlicensed practice of law under existing decisions of the Supreme Court of Florida.

I urge you to discuss the contents of the Affidavit with your attorney. I will be happy to talk with your attorney or you, if you desire not to seek counsel, concerning the subject matter of the Affidavit if any questions exist.

We need to have the Affidavit returned no later than twenty (20) days from the date of this letter. If you or your attorney have any questions, please feel free to contact us.

Sincerely,

Monica Armster Rainge  
Bar Counsel  
UPL Department, Tallahassee

MAR/mdw

Enclosure

cc: Patricia L. Combs (w/out enclosure)