



To: City of Coral Gables Mayor and Commissioners

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Unpaid Solid Waste Fees

Date: May 11, 2015

Pursuant to Chapter 54, Coral Gables City Code, unpaid fees related to the City's solid waste collection services are to be treated in the same manner as an unpaid special assessment. There is no Florida Statute that deals specifically with solid waste special assessments, thus we must look to parallel statutes for direction. One such statute, Sec. 153.67, F.S., which deal with liens imposed for failure to pay water or sewer fees, states that "any such action may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property." A five (5) year statute of limitations for the foreclosure of real estate mortgages is prescribed by Sec. 95.11(2), F.S. In *City of Riviera Beach v. Reed*, 987 So.2d 168 (4th DCA 2008), the Court applied the five (5) year statute of limitations prescribed for in Sec. 95.11(2), F.S. to special assessments for water, sewer, lot cleaning and demolition which are indistinguishable from solid waste special assessments.

Thus, it is the policy of the City to limit the collection of liens imposed for unpaid solid waste fees to five (5) years.

This policy, however, does not preclude the City from collecting on liens older than five (5) years, when the appropriate circumstances exist. In *Ware v. City of Miami*, 132 So. 2d 446 (3d DCA 1961)¹ the issue was whether special assessment liens more than twenty (20) years old were enforceable. At issue was Sec. 95.021², F.S., supra, which states that the final maturity of the obligation shall either be twenty (20) years from the date of such maturity, or if the final maturity is not ascertainable, then twenty (20) years from the record of the mortgage. The appellate court held that the provisions of Sec. 95.021 should apply where no other express provision has been provided.

Based on *Ware*, and since the provision setting out five (5) years is express as to foreclosure proceedings, but not necessarily as to collection of liens, it is possible that an action

¹ The Florida Statute that was analyzed by the Court stands repealed. Notwithstanding the repeal, *Ware* has not been overturned or received any negative treatment.

² Florida Statute § 95.021 was repealed in 1974.

on a lien up to twenty (20) years old could be upheld. Moreover, in situations where a judgment or order is imposed, such as in a code enforcement proceeding, Florida Statute § 95.11(1) expressly provides for a twenty (20) year statute of limitation. Therefore, the City reserves the right to proceed against properties with debts older than five (5) years, up to twenty (20) years, in cases where: (1) the property has been continuously owned by the same individual/corporation, (2) the individual/corporation has been notified of the outstanding debt, and (3) the individual/corporation has failed to comply after receiving proper notification.

Whether to proceed against properties meeting the above-enumerated criteria will be within the discretion of the City Attorney. Should the property owner provide credible evidence of an exigency that led to his/her inability to eliminate the debt, the City Attorney will consider such circumstances and deciding whether to proceed with the lien. Discretion is awarded to the City Attorney pursuant to Sec. 2-201(e)(6), City of Coral Gables Code, which states that the City Attorney has the authority “[t]o settle disputes and sign settlement agreements on behalf of the city consistent with settlement authority...” Pursuant to the authority granted to the City Attorney in Sec. 2-201(e)(6), he/she may also settle all liens, including those older than five (5) years and in doing so will consider: (1) the litigation risk, (2) the amount in controversy and (3) the culpability of the party.

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8), of the City Code, giving the City Attorney’s Office the authority to issue opinions and interpretations of the City Code.

Herbello, Stephanie

From: Leen, Craig
Sent: Tuesday, May 12, 2015 12:16 AM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigette
Subject: FW: CAO Opinion on Unpaid Solid Waste Fees
Attachments: CAO Opinion and Policy on Unpaid Solid Waste Fees.pdf

Please place in the opinion folder.

Craig E. Leen, City Attorney
*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com



CORAL GABLES
THE CITY OF GABLES

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Monday, May 11, 2015 7:24 PM
To: Commissioners
Cc: Swanson-Rivenbark, Cathy; Foeman, Walter; Ramos, Miriam; Figueroa, Yaneris
Subject: CAO Opinion on Unpaid Solid Waste Fees

Mayor and Commissioners,

As a follow up to discussions today, the City Attorney Opinion on Unpaid Solid Waste Fees is attached. It seeks to obtain collection of these liens consistent with Commission policy, while complying with applicable principles of law, and minimizing liability.

Please call me if you have any questions or would like to discuss.

Craig E. Leen, City Attorney
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City, County and Local Government Law*
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Celebrating 90 years of a dream realized.

Herbello, Stephanie

From: Leen, Craig
Sent: Monday, May 11, 2015 7:15 PM
To: Ramos, Miriam; Gomez, Diana
Cc: Figueroa, Yaneris; Herbello, Stephanie; Chen, Brigitte
Subject: RE: Policy re. time period for collecting solid waste liens
Attachments: CAO Opinion and Policy on Unpaid Solid Waste Fees.pdf

I hereby replace the prior opinion on this subject with the attached one pursuant to section 2-201(e)(1) and (8) of the City Code. Although the ultimate opinion/policy remains the same, the analysis has been amended.

Best regards,
Craig

Craig E. Leen, City Attorney
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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, April 29, 2015 5:16 PM
To: Ramos, Miriam; Gomez, Diana
Cc: Figueroa, Yaneris; Herbello, Stephanie; Chen, Brigitte
Subject: RE: Policy re. time period for collecting solid waste liens

I approve this opinion pursuant to section 2-201(e)(1) and (8) of the City Code and request that it be published as a County Attorney Opinion. Excellent work.

Craig E. Leen, City Attorney
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Email: cleen@coralgables.com



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Celebrating 90 years of a dream realized.

From: Ramos, Miriam
Sent: Wednesday, April 29, 2015 4:10 PM
To: Gomez, Diana
Cc: Leen, Craig; Figueroa, Yaneris
Subject: Policy re. time period for collecting solid waste liens

Diana,

Attached please find our policy and opinion regarding the period during which to collect liens imposed for unpaid solid waste fees. Please let me know if you have any questions.

Sincerely,

Miriam S. Ramos, Esq.
Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



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**CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE**

**OPINION AND POLICY REGARDING TIME PERIOD DURING WHICH TO
COLLECT LIENS IMPOSED FOR UNPAID SOLID WASTE FEES**

Pursuant to Chapter 54, Coral Gables City Code, unpaid fees related to the City's solid waste collection services are to be treated in the same manner as an unpaid special assessment. There is no Florida Statute that deals specifically with solid waste special assessments, thus we must look to parallel statutes for direction. One such statute, Sec. 153.67, F.S., which deal with liens imposed for failure to pay water or sewer fees, states that "any such action may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property." A five (5) year statute of limitations for the foreclosure of real estate mortgages is prescribed by Sec. 95.11(2), F.S. In *City of Riviera Beach v. Reed*, 987 So.2d 168 (4th DCA 2008), the Court applied the five (5) year statute of limitations prescribed for in Sec. 95.11(2), F.S. to special assessments for water, sewer, lot cleaning and demolition which are indistinguishable from solid waste special assessments.

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Based on *Ware*, and since the provision setting out five (5) years is express as to foreclosure proceedings, but not necessarily as to collection of liens, it is possible that an action on a lien up to twenty (20) years old could be upheld. Moreover, in situations where a judgment or order is imposed, such as in a code enforcement proceeding, Florida Statute § 95.11(1) expressly provides for a twenty (20) year statute of limitation. Therefore, the City reserves the right to proceed against properties with debts older than five (5) years, up to twenty (20) years, in cases where: (1) the property has been continuously owned by the same individual/corporation, (2) the individual/corporation has been notified of the outstanding debt, and (3) the individual/corporation has failed to comply after receiving proper notification.

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5/11/2015