

1. Requested Motion:

Meeting Date: 6/20/11

Approve full/partial Release of Lien relating to Code Enforcement Case no. CE 10-0291 for BAC Home Loans Servicing

Why the action is necessary: The Town recorded a Code Enforcement Lien with respect to code violations on property located at 390 Jefferson Court, Fort Myers Beach, FL. The property owner, at the time the violations occurred and when the lien was recorded was BAC Home Loans Servicing, LP. BAC Home Loans Servicing, LP has entered into a contract to sell property located at 3405 SE 11th Avenue, Cape Coral FL. Since code enforcement liens are valid against any and all property owned by the violator, BAC Home Loans Servicing need to obtain either a full or partial release of the Town's lien in order to provide the purchaser of the Cape Coral property with clear title.

What the action accomplishes: Authorizes the Mayor and Town Clerk to execute a full or partial Release of Lien.

2. Agenda:

3. Requirement/Purpose:

4. Submitter of Information:

Consent
 Administrative

Resolution
 Ordinance
 Other

Council
 Town Staff
 Town Attorney

5. Background: The Town recorded a Code Enforcement Lien against BAC Home Loans Servicing, LP, as the result of a code violation for property located at 390 Jefferson Court, Fort Myers Beach, FL. The subject property has been brought into compliance, but there remains outstanding costs incurred by the Town to mow and clear debris from the property in the amount of \$1,075.21 and a fine in the amount of \$10,700. The Code Enforcement statute (Chapter 162, Florida Statutes) provides that only the governing body can compromise and release a code enforcement lien. The Town can either release the lien entirely, or provide a partial release that will only release the Cape Coral property from the effect of the Town's lien. A copy of the Code Enforcement Lien is attached.

6. Alternative Action:

7. Management Recommendations:

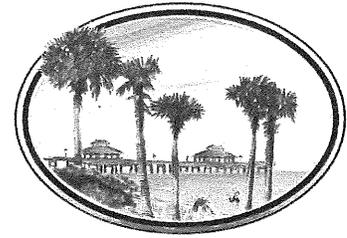
8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|---|---------------|------------------|-----------------------|--------------------------------|-----------------------------|------------|
|  | | | | | | |

9. Council Action:

Approved Denied Deferred Other

MEMORANDUM



Town of Fort Myers Beach

TO: Mayor and Town Council Members
FROM: Terry Stewart, Town Manager 
DATE: June 10, 2011
RE: RELEASE OF LIEN REQUEST CASE #CE 10-0291,
390 Jefferson Court

Active Lien amount: \$10,700 Town Hard Costs: \$1,075.21

For the Council Meeting of June 20, 2011 the Council will be asked to consider a request for mitigation of or total forgiveness of an active lien against the above named property. The purpose of this memorandum is to provide you with a recommendation from staff to assist you in your final decision on this matter. The Agenda Blue Sheet and accompanying documents provides some detail that is helpful so I will not repeat all of that information in this memo.

The general policy of staff will be that no lien mitigation request will be placed on the agenda unless the code violation causing the lien(s) has been corrected. Staff has confirmed that the violation(s) in this case no longer exist. It is important to note that the Town has hard cost for mowing and cleanup of the property.

My recommendation for mitigation in this case is that you approve a Release of Lien upon payment to the Town in an amount not less than \$4,700. This includes the full amount of the Town's hard costs and a reduction of approximately sixty six percent (66%) in the active lien amount. I strongly urge the Council not to approve a total forgiveness of this lien. This case is not one of those where the liens existed prior to the loan company taking possession. BAC owned the property at the time the violations were written. Our Code Officer Shane Hidle informs me that between the time the violation(s) was written and the date of the Code Enforcement hearing where this case was heard and ruled upon by the Magistrate, property owner BAC was non-responsive. They did send an attorney to represent their interest at the hearing. After the hearing, the property owner was non-responsive once again and has remained so up until the time they entered into a contract to sell a property located in Cape Coral. (Code liens are valid against any and all properties owned by the violator.) In order to facilitate the sale of the Cape property, a release of lien must be received for the lien against the property at 390 Jefferson Court.

PARCEL #: 29-46-24-W1-0110B.0100

THIS SPACE FOR RECORDING

BEFORE THE SPECIAL MAGISTRATE OF
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA :

Petitioner,

CASE NO.: 10-0291

vs.

BAC HOME LOANS SERVICING, LP
Respondent.

CODE ENFORCEMENT ORDER

THIS CASE was first heard by the undersigned Lee County Hearing Examiner at a public hearing on OCTOBER 20, 2010, after which an Order was entered which found that a violation existed on the subject property and required the Respondent, BAC HOME LOANS SERVICING, LP, as the responsible person or entity to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine.

On DECEMBER 22, 2010, written competent and convincing evidence was provided that the violation had not been abated in accord with the above Order, and the Special Magistrate therefore finds and decides:

1. That the above-noted Order has not been complied with; and
2. That the violation of the Town of Fort Myers Beach Land Development Code (LDC) Sections 6-5 still exists on the subject property.

IT IS ORDERED that Respondent pay to the Town of Fort Myers Beach a fine of \$50.00 per day, beginning on OCTOBER 29, 2010, and continuing for each and every day that the aforesaid violation exists and continues on the property locate, as reported by the Petitioner at 390 JEFFERSON CT., Fort Myers Beach, FL 33931.

Upon recording in the Public Records, this Order shall constitute a lien for the fine amount against all real and personal property of Respondent, including, but not limited to, the above-referenced property and subsequent foreclosure of such lien may result in the loss of such property. The prosecution costs awarded herein may also become a lien against Respondent, upon recording, pursuant to Chapter 162, Florida Statutes.

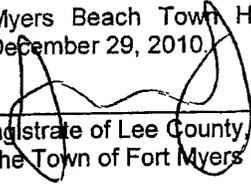
RESPONDENT MUST CONTACT TOWN OF Fort Myers BEACH CODE ENFORCEMENT AT 239-765-0202 TO REQUEST A REINSPECTION FOR DETERMINATION OF COMPLIANCE. RESPONDENT IS ADVISED THAT NUMEROUS PHONE CALLS MAY BE NECESSARY TO ENSURE CONTACT WITH THE CODE ENFORCEMENT OFFICER.

Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Please include a case number on the check.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Lee County, Florida on December 29, 2010.



Special Magistrate of Lee County, Florida
in and for the Town of Fort Myers Beach

REHEARING: If the property owner disagrees with the Special Magistrate's finding herein that the violation has not been properly abated, the property owner has twenty (20) days from the date of this Order to request a rehearing. The request must be made in writing to the Town of Fort Myers Beach Code Enforcement Office and will be scheduled, if possible, on the next regularly scheduled hearing. Evidence and testimony presented at the hearing will be limited to the facts and arguments necessary to prove the violation was abated in accordance with the requirements of the Order finding the first violation. Any Order resulting from the rehearing may be appealed to the Circuit Court as set out below.

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach. The appeal must be limited to appellate review of the record created before the Special Magistrate and filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by interoffice mail or hand delivery to the Town of Fort Myers Beach and Attorney for the Town of Fort Myers Beach and by U.S. mail to:

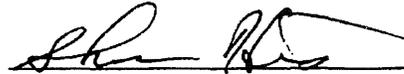
BAC HOME LOANS SERVICING, LP
c/o Lourdes Clerge, Esq.
Marshall C. Watson, P.A.
1800 NW 49th Street
Ft. Lauderdale, FL 33309



Assistant to the Special Magistrate for the Town of
Fort Myers Beach, Florida

FOR RECORDING ONLY

I HEREBY CERTIFY that as agent of the Town of Fort Myers Beach Code Enforcement Division, the office to whose custody the original is entrusted, this is a true and correct copy of the document maintained on file in the Code Enforcement Records of the Town of Fort Myers Beach, Florida.

A handwritten signature in black ink, appearing to read 'Shane Hidle', written over a horizontal line.

Shane Hidle
Code Enforcement Officer
Town of Fort Myers Beach

Terry Stewart

From: Gloria Tate [gloria@rasorealty.com]
Sent: Tuesday, June 07, 2011 3:15 PM
To: Marilyn Miller - Fowler White
Cc: JGarvin@firstam.com; Terry Stewart; Shane Hidle; Walter Fluegel
Subject: RE: Partial Release of Lien/3405 SE 11th Ave, Cape Coral

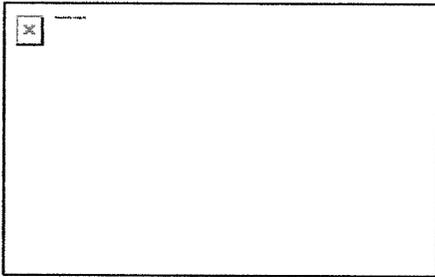
Thank you very much for the information. As per the Asset Manager for Bank of America Jen, please send this to the title curative as soon as possible.

Mr. Stewart, please add this item to the agenda for your June 20th council meeting. It is unclear at this moment who will be there to represent the owner of the property, which by this research Marilyn has provided is not Bank of America who is my client, but I hope to have that all figured out by the time you have your meeting.

If you have any questions or concerns, please email me.

Thank you to all the staff of the Town of Fort Myers Beach, you have been so helpful and professional in this very unusual (for me) situation.

Gloria



Gloria Raso Tate, Realtor
www.gloriatate.com

gloria@rasorealty.com
239-851-6324

It's tangible, it's solid, it's beautiful. It's artistic, from my standpoint, and I just love real estate. Donald Trump said it and I agree!

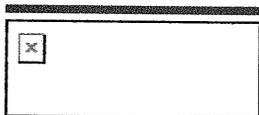
From: Miller, Marilyn [mailto:Marilyn.Miller@fowlerwhite.com]
Sent: Tuesday, June 07, 2011 2:50 PM
To: 'Gloria Tate'
Cc: 'JGarvin@firstam.com'; 'Terry Stewart'; 'Shane Hidle'; 'Walter Fluegel'
Subject: Partial Release of Lien/3405 SE 11th Ave, Cape Coral

Gloria:

As the Town Attorney for Fort Myers Beach, I have been asked to respond to your inquiry about obtaining a partial release of a code enforcement lien for the above-referenced property. The two Code Enforcement Orders that are showing up in the title search are for the same Fort Myers Beach property (390 Jefferson Ct.) that was, at the time of the violation, owned by BAC Home Loans Servicing, LP. BAC Home Loans Servicing, LP quitclaim deeded the Jefferson Ct. property to Federal National Mortgage Association in March of this year, but that has no legal effect on the lien itself, but would make it more difficult for the Town to foreclose on its lien against that particular property. As you know, code enforcement liens attach not only to the property that is in violation, but to any and all property owned by the violator, which is why the title company needs to obtain a partial release for the Cape Coral property that is under contract. At this point, the Town has had to expend funds to mow and remove debris from the Jefferson Ct. property. Those costs total \$1,075.21. In addition, the fine of \$50/day has been running since October 29, 2010 and, as of 5/31/11, totals \$10,700.00. The property has recently been inspected and is in compliance, so the fine does not continue to run. If the owner of the Jefferson Ct. property can provide evidence to the Town's Code Enforcement Division that the property was brought into compliance on a date earlier than 5/31/11, the fine can be reduced. Such evidence would be something like an invoice from a locksmith showing that the locks were changed or a sworn statement by a property manager or realtor stating the date on which the property was properly secured.

If the Town's costs and the fines are not going to be paid by BAC, then the only way to obtain a partial release of lien for the Cape Coral property is to go before the Town Council. Unfortunately, Chapter 162, Florida Statutes, dictates that the only way to compromise or release a code enforcement lien is to obtain approval from the governing body, which in this case is the Town Council. The Fort Myers Beach Town Council only meets twice monthly and their next meeting is June 20, 2011 at 6:30 P.M. I've attached, for your convenient reference, a copy of Attorney General Opinion 2002-62, which opines that only the governing body of a local government can authorize the release of a code enforcement lien. If the closing date is firm, then the only thing I can suggest is to hold the amount of the lien and costs in escrow until the matter can be heard by the Town Council. If you would like to have the Council consider a partial release at its June 20 meeting, please let Terry Stewart know by the end of this week because that is when items are due for the next Town Council agenda. Please also be aware that there are no Town Council meetings for the month of July, so the next meeting after this next one will not be until the first Monday in August.

If you have any questions concerning the foregoing, please do not hesitate to contact me.



Marilyn W. Miller

2235 First Street
Fort Myers, Florida 33901
Direct: 239 985 4807
marilyn.miller@fowlerwhite.com

Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message. If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.
