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## ATTORNEY'S FEES - CAN I RECOVER THEM?

By: Roger H. Miller  
May, 2007



Most clients believe at the outset of representation that they can recover their attorney's fees from the opposing party in the event of a lawsuit. This may or may not be true. In Florida, a party to a lawsuit is generally only entitled to recover attorney's fees if the contract or statute, under which the suit is brought, provides for the recovery of attorney's fees. It comes as a surprise to many clients that there is no universal rule that entitles them to recover their attorney's fees if they prevail in litigation.

In the context of a real estate transaction, the contract itself must provide for the recovery of attorney's fees in the event a party defaults under the contract; otherwise, attorney's fees will likely not be recoverable. Florida Statute § 713.29, for example, is a statute that provides for the recovery of attorney's fees in the enforcement of a construction lien under Chapter 713 of the Florida Statutes. If the lienor is successful, it will be awarded its attorney's fees. Conversely, the homeowner will be awarded fees if the homeowner prevails.

Attorney's fees in litigation can sometimes exceed the amount that is in dispute; therefore, whether or not fees are recoverable is one of the threshold questions that must be answered before deciding on a course of action. The contract and any statutes that may apply to the dispute must be analyzed to determine if attorney's fees may be recoverable. If a contract and/or statute provides for the recovery of attorney's fees, the complaint or counter-claim must request that the court award attorney's fees.

While the vast majority of civil cases settle before a trial or final hearing is ever held, if judgment is entered in favor of a party, the party requesting attorney's fees will need to prove entitlement to those fees under a contract or statute. In cases with multiple legal theories and counter-claims, a party may prevail on some theories, but not on others. The court will need to determine which party was the prevailing party on



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the “significant issue” of the case. The court must then determine the amount of attorney’s fees to award to the prevailing party. The prevailing party will need to show that the amount of the attorney’s fees sought is reasonable, which is usually accomplished through testimony by another attorney who has no interest in the outcome of the case. Typically, the court has considerable discretion in awarding attorney’s fees, especially as to the amount. There is no guarantee that the court will award a party all of the attorney’s fees expended, even if the evidence shows that the amount was reasonable.

A party seeking an award of attorney’s fees must not only plead for attorney’s fees in the complaint, counter-claim or answer, but must also file a motion for an award of such fees no later than thirty (30) days after the filing of the judgment or dismissal. Failure to file the motion for attorney’s fees within such time will result in the loss of the prevailing party’s right to an award of attorney’s fees.

Even after a party has pled for, proven and obtained a judgment for attorney’s fees, the party then has to collect on that judgment from assets of the party against whom the judgment was entered. Thus begins the next chapter in litigation entitled “Judgment Collection,” which is beyond the scope of this article. Please see the Farr Law Firm newsletter “So You’ve Obtained a Judgment – Now What?” for more information on judgment collection.

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