

Law Offers Liability Protection

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As reported in this column previously, more than 350,000 Americans die of cardiac arrest each year. According to the statistics, every minute spent waiting for paramedics to arrive reduces the chance of survival by ten percent. By the time help arrives, it may be too late.

As a result of a big push by the American Heart Association, many community associations have considered the purchase of automatic defibrillators for on-site use. High-rise condo buildings and golf clubs typically express the most interest in acquiring the machines, which have also become commonplace in airports, hotels, and shopping centers.

As previously reported, Florida's Good Samaritan Act (Section 768.13(4), Florida Statutes) provides a limited degree of protection against legal claims arising out of the administration of defibrillation treatment. Apparently feeling that the law did not go far enough, Florida's Legislature then enacted the Cardiac Arrest Survival Act, which is found at Section 768.1325 of the Florida Statutes. This law went into effect in 2001. The Cardiac Arrest Survival Act provides broader liability insulation than the Good Samaritan Statute. There is essentially complete immunity from liability for a person who administers defibrillation treatment, without objection from the victim.

The owner of the defibrillation equipment (i.e. the association) also enjoys certain immunity from claims, although the immunity is not absolute. Among the exceptions to immunity are failure to properly notify local emergency services personnel of the acquisition of the device, failure to properly maintain the device, and failure to properly train those who use the device. Further, willful or flagrant disregard for safety is not immune from liability claims.

Obviously, one of the most important issues for consideration by the board is whether a claim will be insured, and whether the association has enough

insurance to meaningfully address a suit. According to the only pronouncement I have on this matter from Florida's Insurance Commissioner, they recommend that associations which own medical equipment purchase a separate medical malpractice coverage policy. Whether defibrillator claims will or won't be covered under the typical general liability policy apparently remains a moving target. I have heard of some major carriers which flatly state that there will be no coverage. Others say they will cover a claim, but if it is made, will drop the association's insurance. Others are reportedly looking at coverage more liberally now.

Fortunately, the Florida Legislature, which convenes on March 3, 2004, is considering two measures that would further provide sanctuary to defibrillator owners.

Senate Bill 404/House Bill 369, with a stated goal of encouraging training in lifesaving first aid, would set standards for the use of automated external defibrillators.

Of greater relevance to community associations are Senate Bill 1184 and House Bill 411. These measures would provide community associations with complete immunity from liability if the association offers periodic training in the use of such devices. Further, the proposal would prohibit an insurer from requiring an association to purchase a medical malpractice rider as a condition of the association's ownership of a defibrillator.

Defibrillators save lives. However, for better or worse, liability suits are a way of life in America. Until the Legislature can make the immunity absolute, it seems that associations should continue to use caution when considering the merits of purchasing an automatic defibrillator, and should definitely get all the facts before acting. This also seems like a good issue to bring up with your local legislator. ⚖️

Handicap Accommodation Request Touchy Situation

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QUESTION: Our board of directors passed a rule banning pets from our building. We are now faced with a situation whereby a resident has requested a “prescription pet” to help with an “emotional handicap.” Can you offer any references by which we could more fully research this topic and respond? J.C. (via e-mail)

ANSWER: Whenever a resident presents a “handicap accommodation” issue, even if it seems to be without merit, your association should consider that federal and state fair housing laws are involved. Handling these issues without seeking legal advice is a dangerous proposition at best. If you make the wrong call, the association could find itself on the losing end of a housing discrimination case. Defending these kind of cases can be a nightmare both emotionally and financially. Many government agencies (particularly with community associations) take a very tough stance and if your association wound up in such a case, it would be fighting against the government and its unlimited resources. Discrimination cases usually allow for prevailing party attorney’s fees for the plaintiff without such fees being available to the defendant. Many discrimination claims are not covered by insurance, and are also one of the few areas where association board members are routinely subject to personal liability. Therefore, although I would like to point you in the right direction to conduct your own research, the best advice I can give you in a situation like this is to contact a member of the Florida Bar who is experienced in these matters.

QUESTION: May a condo board reject a potential resident because of a criminal history? R.F. (via e-mail)

ANSWER: Your question cannot be answered without examining your condominium documents. Many condominium declarations provide that a potential resident must be screened by the condominium board. Documents often provide that persons convicted of crimes involving violence or felonies constitute grounds for rejection. I would say that a condo board seeking to reject a potential applicant due to minor misdemeanor convictions would be treading on thin ice. There are no cases where the Florida courts have explored the limits of an association’s authority in this area. In many cases, if a condominium association wishes to reject a potential purchaser, the documents

require the association to furnish an alternate purchaser or purchase unit itself.

QUESTION: I live in a condominium with my wife. My condo association is proposing an amendment which would prevent my wife and I from being able to have children and remain living in our home. They want the motion to implement restrictions allowing only two occupants in a one-bedroom condominium. Would not an amendment of this type essentially violate my rights? I.T. (via e-mail)

ANSWER: The law on this matter has been somewhat unsettled over the past decade. Generally speaking, it is illegal for a condominium association to pass a rule discriminating against residents on basis of familial status (having children), unless you live in a “55 and over” community. That being said, even if there is somewhat of a disparate impact upon families with children, housing providers may enact reasonable restrictions upon the number of persons who may occupy a unit. The Department of Housing and Urban Development has declared two person per bedroom restrictions as presumptively reasonable. However, in certain cases (for example where a den could be converted into a bedroom), the rule may be discriminatory.

QUESTION: My mother moved to Florida and was telling us that she is being made to pay \$8,000.00 to the condominium association for a “special assessment.” She said that it has to be paid in a lump sum. Is this legal? M.E. (via e-mail)

ANSWER: Your mother has apparently been asked to pay a special assessment to cover costs and expenses, which were not previously budgeted for. Special assessments are specifically permitted under the Florida Condominium Act, however, they must be enacted in accordance with the condominium’s governing documents. As long as the association has imposed a special assessment in line with the governing documents, it is most likely permissible.

QUESTION: Is it possible for us to make our entire condominium a non-smoking condominium, including inside the apartments? L.P. (via e-mail)

ANSWER: There are two kinds of regulations which govern condominiums. The first type is rules which are found in the recorded documents, which

are presumed to be valid by any court or arbitrator reviewing them. Rules and regulations enacted by the board of directors, on the other hand must pass the “rule of reasonableness.”

illegal. As I am certain you are aware, passions run high in the smoking debate and any board-made rule is certain to be challenged as unreasonable.

To my knowledge, there are no court cases which have dealt with this issue. Remember, your home is your castle and smoking is not

An amendment to the recorded documents, approved by the unit owners, may stand up in court (or you could be the test case). ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.