



Knowledge of Condo Law Important

Fort Myers The News-Press, January 26, 2006

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

It is estimated that there are some 40,000 community associations in the State of Florida. If you figure that each association has an average of five board members (while some have three, many have seven and nine), two hundred thousand Floridians serve on the board of their community association at any given time. Accordingly, there is little doubt that over the next several months, tens of thousands of property owners throughout the State will be newly elected to their community's board of directors.

From the first day of service, directors take on fiduciary responsibility (one of the highest legal duties owed in the law) and are required to make decisions which may be unpopular, financially significant, and even decisions which may result in legal challenge. Since the vast majority of association directors serve voluntarily, without pay, it is certainly a tribute to the civic mindedness of those who are willing to step into the fray.

While there is no substitute for on-the-job training, or lessons learned from the School of Hard Knocks, there are numerous resources available for those who want to learn how to better do their job as a director. So, here's a look at some educational opportunities for newbies, and even seasoned veterans:

- **Books:** There are a number of books aimed at day-to-day association operations. In my opinion, the two best laymens' guides are written by Tallahassee attorney, Peter Dunbar. *The*

Condominium Concept and *The Florida Homeowners Association Manual* are both well-written primers that can provide guidance in many day-to-day association operational questions for condos and homeowners' associations respectively. Both books are readily available in most of the big box bookstores, and through internet book-sellers. Make sure you get the most recent edition.

- **Website of the Department of Business and Professional Regulation:** This site is geared toward condominiums and cooperatives. Go to www.state.fl.us/dbpr/lsc, and then click to the link for the Division of Florida Land Sales, Condominiums and Mobile Homes. From there, you can access various flow-charts, manuals, and forms, including: how to conduct the recall of a board; forms for filing complaints; a primer on how to conduct condominium elections; and a thorough guide to budgeting and reserves. There are also links to other sites which may be of interest or help, including the Florida Advisory Council on Condominiums, Florida's Condominium Ombudsman, and the DBPR's Arbitration Section.
- **This Column:** I have had the privilege of writing this column for The News-Press for over ten years. For the past several years, we have actually run two columns each week, an essay piece, and a separate segment devoted entirely to answering questions received from readers. We have archived

the columns going back to the year 2000, and they are available on the website of the law firm with which I am affiliated, Becker & Poliakoff, P.A. Go to www.becker-poliakoff.com. Click on publications, then articles, and scroll down to the list of articles.

- **Seminars and Classes:** The DBPR has contracted with Alexandria, Va.-based Community Associations Institute to deliver a series of courses for condominium and cooperative unit owners and board members. There are four basic courses, each of which is three hours or four hours in length. The four courses focus on: Operations (competitive bidding, letting contracts, managing your manager, etc.); Financial Issues (budgets, reserves, year-end financial reporting, etc.); Regulation (application of Florida statutes, state jurisdiction over disputes and condominiums, role of the various governing documents, etc.); and Conflict Resolution (development of rules and regulations, enforcing rules, alternative methods of dispute resolution, etc.). A listing of the course schedule is available on the DBPR website at www.state.fl.us/dbpr/lsc, click on “Information for Condominium and Cooperative Education.” There are numerous other courses and seminars sponsored by local law firms, accounting firms, management companies, community colleges, and other organizations. Most of these classes are advertised through press releases run in the Business Section of The News-Press, and I will also always mention them in this column if given advance notice and appropriate contact information.

- **The Florida Statutes:** Although volunteer board members are not expected to be lawyers, it is important to have a basic understanding of the legal framework for your association. The Florida Condominium Act is found at Chapter 718 of the Florida Statutes. The Florida Cooperative Act is found at Chapter 719 of the Florida Statutes. The Florida Statute applicable to Homeowners’ Associations is found at Chapter 720 of the Florida Statutes. Most associations are also governed by Florida’s Not-For-Profit law, which is found at Chapter 617 of the Florida Statutes. The Florida Statutes are available from a variety of sources, including several sites on the internet. I recommend www.leg.state.fl.us.

- **The Governing Documents:** Every association will have a set of legal documents that are key to understanding the respective rights and obligations of the members of the association and its board of directors. Most associations have four basic governing documents: a deed restriction (such as a declaration of condominium, declaration of covenants, master form of occupancy agreement, etc.); articles of incorporation; by-laws; and rules and regulations. Although viewed as lengthy legal boilerplate by some, it is my opinion that the governing documents are required reading for anyone sitting on a board who takes their job seriously.

These resources are by no means all that is available, we live in the information age, and information is available for those who invest a moderate amount of time and effort to find it. ■

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.

Notarization, More Than One Signature Usually Not Needed

Question: Our homeowners' association is considering some amendments at our upcoming annual meeting. Our bylaws only require ten percent for a quorum, and a simple majority to amend. Our covenants require seventy-five percent of all owners for amendments. Proxy votes are specifically permitted in our documents. I have two questions. First, is there any law that requires proxy signatures to be notarized? Secondly, does the law address how voting takes place when two peoples' names are on the deed, but only one signs the proxy? For example, if a home is owned by both the husband and wife, but only one of them signs the proxy, is the vote valid? S.T. (via e-mail)

Answer: Your association is fortunate that amendments to the bylaws are based upon those who take the time to vote, rather than the entire membership. The ten percent quorum requirement is, however, a bit on the low side, but not uncommon in large HOA's. Your board should discuss with legal counsel the concept of amending the declaration to also make it amendable based upon those who vote, instead of all property owners. If your association is like most others, you have a hard core percentage of owners who never vote, and they are basically voting "no" on declaration amendments that the rest of the community may want.

There is no requirement in the law that proxy votes be notarized or executed with any particular formalities, only that the proxy vote be signed. Please note that some Association documents do require amendments to be "acknowledged" (which means signatures must be notarized), or "executed with the formalities of a deed", which would require both notarization and witnessing of the signature, and all deed-holders to sign. However, in the absence of such a requirement, there is none imposed by the law.

In my opinion, unless your documents require "voting certificates", or require amendments to be executed with the formalities of a deed, any person whose name is on the title (i.e., on the deed) can bind the unit with a vote, by signing the proxy. Good luck.

Question: Are Florida condominium associations allowed to vote whether or not they want to fund reserves either totally or partially? Thanks for your help. T.C. (via e-mail)

Answer: Yes. The Florida Condominium Act requires an association to maintain certain reserve accounts, including reserves for roof replacement, building painting, pavement resurfacing, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The statutory reserve requirements, however, do not apply when a majority of the owners vote to either completely waive the reserves, or to only partially fund the reserves.

If no vote is held, the statutory reserves will need to be fully funded. Also, any vote to waive or reduce the reserves is only effective for one annual budget. Therefore, if an association wishes to waive or only partially fund the reserves year after year, a new vote will need to be taken each year.

If the association wishes to hold a vote to partially fund the reserves, I also believe that the association should provide supporting materials to the owners which make it clear which reserves would be reduced and in what amounts. For example, the supporting materials may include one reserve schedule showing the amounts in each reserve account if the accounts are fully funded, and include an alternative reserve schedule showing which reserve accounts are being reduced, and by what amounts. Another approach is to indicate an "across the board" reduction of all reserve accounts by a stated dollar amount or percentage.

Question: We live in a "55 and over" community and just had a "hardship" case come before the board. The grandparents of a 14 year old child, whose mother is deceased and father may be an unfit parent, live in our community and have been appointed guardians of the child. They have asked for a hardship exception to the rules. Our document book states that exceptions to the residency restrictions may be granted by the Board in its

sole discretion, based on hardship, provided at least 80% of the households are occupied by at least one person 55 years old or older. One board member believes we will lose our 55 and over status if we grant the exception. Any help would be greatly appreciated. J.C. (via e-mail)

Answer: As you may know, the federal Fair Housing Act generally prohibits discrimination on the basis of “familial status” (the residency of a person below the age of 18 with a parent or guardian). However, a community that complies with the requirements of the Housing for Older Persons Act of 1995 (HOPA) exception to the Fair Housing Act is permitted to deny residency in the community based on familial status without running afoul of state or federal law. The 80% guideline you refer to concerns meeting the HOPA requirements.

In addition to the guidelines regarding the 80% rule, I assume your Association also has a deed restriction that prohibits persons below a certain age (probably 18 or 16

years old) from residing in the community for more than occasional visits, regardless of whether they live with a parent or guardian who is 55 years of age or older. It is this restriction against minors that is relevant to the situation you described, not the 80% “over 55” occupancy requirement.

Whether you allow the 14 year old to live in the community or not has nothing to do with whether at least one occupant of each household is 55 years old or older. Therefore, permitting this 14 year old to live in the community will not have any effect on your compliance with HOPA, and will not cause you to lose your “55 and over” status.

However, permitting the child to live in the community may open the door for other owners to claim that they too have the right to have minors reside with them. These other owners may claim “selective enforcement” if minor children affiliated with their families are denied residency under circumstances they deem analogous to this one. ■

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.