



Top 10 Association Mistakes

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Serving on the board of your condominium association can be a rewarding experience. In addition to helping protect your investment, volunteering for the board provides civic involvement opportunity, and can even forge life-long friendships.

However, the operation of community associations in Florida has become big business. Even though directors are typically not paid for their efforts, many actions or inactions of an association can result in legal liability. In my experience, most mistakes made by associations do not result from ill intentions, but rather lack of knowledge.

Today, and in next week's column, we will look at what I categorize as the top ten mistakes made by association boards:

- **Posting Notice Of Board Meetings:** Since 1992, Chapter 718 of the Florida Statutes (commonly called The Florida Condominium Act) has required that condominium association boards adopt a rule specifying where notice of board meetings are to be posted. This requirement of the law is probably honored more in the breach. While most associations routinely post notice of board meetings in a conspicuous location on the condominium property, as required by law, many do not have a formal written rule specifying where the notices are to be posted. Adopting such a rule is simple enough, and can be done at a regularly noticed meeting of the board of directors.
- **Hurricane Shutter Specifications:** For at least a decade, The Florida Condominium Act has required that the board adopt hurricane shutter specifications. An association cannot prohibit a unit owner desiring to install hurricane shutters from doing so, but can require installation in conformity with the specifications. The board's specifications must comply with current building codes, and may regulate aesthetic requirements, such as color and shutter type. In most disputes involving hurricane shutter installations I have seen, a prime factor in the dispute is the association's failure to adopt the legally-mandated shutter specifications. Obviously, an association contesting a unit owner's installation request, when those specifications are not in place, faces an uphill battle. Additionally, as building codes have changed substantially over the years, associations with outdated hurricane shutter specifications should update them as well. I recommend that the association enlist the services of an engineer or other qualified consultant (and not just rely on boilerplate specifications given out by shutter companies), to address issues such as how the shutters are attached to the building, prevention of structural damage during installation, and the like.
- **Official Records Access:** In recognition of the quasi-governmental authority of associations, The Florida Condominium Act affords unit owners in condominiums (or their designated representatives) broad rights to inspect (and copy) the official records of the association. Unit owners desiring to inspect records do not need to demonstrate a proper purpose

for their request, nor do they even need to tell the association why they want to look at the documents. The law contains fairly strict deadlines for production of official records, after receipt of a written request from a unit owner. In general, the documents must be made available for inspection (and if desired, copying at the expense of the requesting owner) within five working days of receipt of the written request. After ten working days, a rebuttable presumption arises that access has been wrongfully denied. Penalties for noncompliance include statutory minimum damages of \$50.00 per day (up to \$500.00) and actual damages. Further, the association could be cited by the state regulatory agency if records are not timely produced. The association is under no obligation to mail records to unit owners, only make them available for inspection and copying where the records are kept. The board is authorized by the law to adopt reasonable rules regulating the frequency and manner of records inspections. As is the case with hurricane shutter specifications, the board's failure to have a records inspection rule in place can wreak havoc when a dispute arises with a community resident.

- **Certified Mail "Inquiries" From Unit Owners:** In apparent reaction to a perception that some associations ignore their members, the law was amended a number of years ago to require an association to provide "substantive response" when it receives an "inquiry" from a unit owner by certified mail. In general, the response must be provided within thirty days of receipt of the inquiry, although this deadline can be extended to sixty days if the matter has been referred to legal counsel for an opinion, and the unit owner is notified of that within the requisite thirty-day time-frame. Failure to comply with an owner's rights subjects the association

to citation by the State. Perhaps more significantly, the statute imposes an additional penalty for non-compliance. If the association does not timely comply with a certified mail inquiry response, the association will be precluded from recovering attorney's fees should litigation arise regarding the subject of the inquiry, even if the association is the prevailing party (in which case, it would typically be entitled to the recovery of its attorney's fees). Again, the law empowers the board to adopt reasonable rules regulating unit owner inquiries. Such rules may include a requirement that inquiries be limited to one per month. The failure of associations to comply with unit owner rights arising from certified mail inquiries is a common, and costly mistake.

- **Signing One-Sided Contracts:** Each year, condominium associations in Florida contract for billions of dollars worth of goods and services. Association contracts range from minor purchases to multi-million dollar construction projects. Most purveyors of these goods and services encourage associations to use their "simple" forms, which they often represent "have been reviewed by an attorney." In most cases, contractors' one or two page "proposals" do nothing to protect the interest of the association. Issues ranging from insurance to indemnification, from warranties to dispute resolution, are rarely covered (or if they are, are covered to the benefit of the contractor) in these "simple" forms. While associations have a legitimate desire to control costs affiliated with legal review by the association's counsel, if the contractual relationship turns sour, this is often a penny-wise, pound-foolish decision.

Next week, we will conclude by rounding out the list with five more boo-boo's that often come back to haunt associations. ■

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.

Telephone Conferencing to Board Meetings is Legal

Question: I am a president of my HOA and also a snowbird (middle of May to end of December). A board member is questioning the legality of my attending meetings via speakerphone. I have read that this is permissible, but cannot find your article pertaining to this subject. I would appreciate any assistance you might give. R.S. (via e-mail)

Answer: Notwithstanding the much publicized population boom in Southwest Florida, community associations, particularly condominium associations, still involve substantial numbers of seasonal residents. Indeed, most associations could not operate without “snowbirds” serving on their boards. Most community associations (condominium associations, cooperative associations, and homeowners’ associations) are chartered as not-for-profit corporations under the law of Florida. As such, in addition to their own regulatory statute (Chapter 718 for condominiums; Chapter 719 for cooperatives; Chapter 720 for homeowners’ associations), most associations are also governed by Chapter 617 of the Florida Statutes, known as the Florida Not For Profit Corporation Act.

Section 617.0820(4) of the not-for-profit law specifically provides that a director may participate in meetings of the board of directors by telephone. However, the law further requires that a speaker-phone (or similar device) be available at the official location of the meeting, so that any owners in attendance can hear what each director has to say, and each director on the telephone can hear comments made at the meeting site.

An issue that commonly arises is whether a board must permit directors to participate telephonically when a quorum will otherwise be available physically. The

law provides no guidance on this point. In my opinion, associations should, at the expense of the association, make telephone conferencing available for directors who cannot attend meetings in person, but who wish to participate.

Question: A “carte blanche” proxy is placed with our annual meeting notice package each year. The proxy does not state what it is to be used for. The condominium association president went out and solicited proxies from owners who could not attend the meeting because they live out of state. Only eleven of the eighteen owners were present, and most of the proxies were held by one individual. Is it legal to have a “carte blanche” proxy? V.E. (via e-mail)

Answer: I presume you are referring to a general proxy when you use the term “carte blanche” proxy. The Florida Condominium Act specifically provides that owners may not vote by general proxy, but may vote by a “limited” (sometimes called “directed”) proxy, where they can vote yes or no for each item slated for vote at the meeting. The Condominium Act also contains a short laundry list of specific items that owners might vote on for which limited proxies must be used, and also contains a “catchall” provision indicating that limited proxies are to be used for any matter which the Condominium Act requires or permits a vote of the unit owners.

Essentially, a general proxy cannot be used for any item where a vote is taken, except “non-substantive” items (such as approval of minutes). General proxies can also be sued to establish a quorum for the meeting. Additionally, neither general nor limited proxies may be used in the election of board members. ■

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