



## Good Luck to New Condo Ombudsman

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Florida's first condominium ombudsman, Virgil Rizzo, was recently replaced by Danille Carroll, a reported newcomer to the world of community associations. The Office of the Condominium Ombudsman was created by a law passed by the Florida Legislature in 2004. Florida is the only state in the nation with a position of this nature, although Nevada does have an ombudsman with relatively limited jurisdiction over disputes in homeowners' associations.

Rizzo's hard charging and sometimes in-your-face style earned him both immediate fans and critics. Rizzo came into office with no experience in condominium matters, except for a long-fought battle between him and his own condominium association. Some argued that Rizzo's personal history with his association sowed the seeds of a perceived anti-board bias.

Supporters argued that Rizzo leveled the playing field in a system where individuals with beefs against their associations have little in the way of meaningful redress against boards who hold the power of the purse through their assessment authority. Rizzo's tenure was marked by an emphasis on the role of the ombudsman in the conduct of condominium association elections.

Although the Ombudsman's office is administratively supported by the Florida Division of Land Sales, Condominiums and Mobile Homes, Rizzo was at frequent loggerheads with that agency and outwardly

critical on several occasions. As an official who served solely at the pleasure of the Governor, Rizzo apparently saw his role to require swimming against the current, something all would agree he showed no hesitation to do.

The debate over Rizzo's handling of the affairs of that office, which ultimately led to his removal from it, rekindles a discussion that has been going on in Florida for the past 43 years, since the Florida Condominium Act was first written. Namely, what should the role of government be in private affairs that arise from contractual agreement, or involve interpersonal or political disputes? Without a doubt, even before the creation of the Office of the Condominium Ombudsman, Florida's regulatory system offered more free resources to unit owners who had problems with their association than any other state in the nation.

Unfortunately, the model of the law which has developed focuses on enforcement of the law in a penal manner, primarily through the threat of the levy of fines against associations by the state. Some argue that punishment is the only deterrent, and that the current law does not go far enough, and indeed should result in individual fines against directors when the statute is violated.

Most seem to agree with the notion that volunteer service on an association board should not be dissuaded by a legal environment that places directors

at individual financial risk for honest mistakes. Rather, education of both board members and individual unit owners of their respective rights and responsibilities will help board members do their jobs better, and manage unit owner expectations to remind us that not every grievance is the government's job to solve.

Theoretically, the 2004 law that created the Office of the Condominium Ombudsman was supposed to move things in that direction. The law

contemplates the ombudsman serving as a "neutral resource" for both directors and unit owners, to encourage and facilitate voluntary meetings before disagreements turn into full scale legal battles, and to spread the word about available educational resources. Perhaps the job of trying to please all of the condo people all of the time, or even some of the time, is more than any one person or agency could hope to accomplish. Good luck to Ms. Carroll in giving it a go! ■

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*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](mailto: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](http://www.becker-poliakoff.com).*

## Association Documents Usually Limit Investments

**Question:** Our condominium association has the money from its reserve accounts invested in insured certificates of deposit at a local bank, as well as having some of the money in a money market account at the bank. Are we allowed to put the reserve funds in other types of investments, such as Treasury Bills and AAA rated insured municipal bonds? I was informed by a property manager many years ago that the State of Florida limits the types of investments that can be made. However, I have been unable to find such a regulation. N.N. (via e-mail)

**Answer:** The statutes that apply to a condominium association, which are the Florida Condominium Act and most likely the Florida Not-for-Profit Corporation Act, do not contain any provisions addressing this issue. However, it is commonplace for the governing documents of an association to contain a provision that describes the permissible investments for association funds. In fact, it is not unusual for the governing documents to limit an association to holding association funds in federally insured bank accounts. If your association documents contain such a provision, it will be necessary to comply with those limits strictly, or to amend the documents in order to deviate from the required investment method.

Notwithstanding any provisions in the governing documents, directors have fiduciary duties when handling and investing association funds. As a general rule, a director must invest association funds in the manner that a prudent person would handle the money of another. The most conservative advice, and the advice that I often give, is that the association funds should not be invested in any manner that puts the principal at risk. In fact, when an association places its money in conventional bank accounts, it is our advice that if the total amount of

association funds is large enough, the association spread its money around to different banks in order not to exceed the \$100,000 FDIC limit that exists for each customer at each bank.

With respect to the question of whether Treasury Bills are a prudent investment, while there is some theoretical risk of default, it is unlikely. However, with respect to AAA rated insured municipal bonds, that risk of default may be somewhat greater than that associated with Treasury Bills. If principal is ever lost, you can expect a possible claim against the board by a member.

**Question:** I am one of five members of a homeowners' association board. Three years ago I was a member of a five member condominium board, and at that time I saved all of your Q & A articles, but have since thrown them all out. My question is, if two members of a board meet outside of a meeting and discuss association business, is this legal?

**Answer:** Both the Florida Condominium Act and the Florida Homeowners' Association Act contain provisions that require Board meetings to be preceded by some form of notice to the members, and, with limited exceptions, to be open to the members. Other than the limited exceptions, any instance in which a quorum of the board gathers in person or by conference call and association business is discussed constitutes a board meeting. Generally, an association's bylaws establish that a majority of the board constitutes a quorum. In such a case, two members of a five member board are free to meet and discuss association business without running afoul of the law.

If you discarded your copies of my past articles, you can access them at <http://www.becker-poliakoff.com/publications/articles.htm>.

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Included in this archive is the seven-part series on “Sunshine Law” that appeared from January 20, 2005 through March 3, 2005.

**Question:** Does Florida law guarantee a member of a homeowners’ association a right to speak on any topic at a meeting of the association’s board of directors? L.B. (via e-mail)

**Answer:** The rights of members to speak at homeowners’ association meetings vary depending on the type of meeting involved. In the case of a meeting of the entire membership, Chapter 720, Florida Statutes, sometimes unofficially referred to as the Homeowners’ Association Act, states that each member has a right to attend member meetings and speak on all items opened for discussion or included on the agenda. The Act also states that a member has the right to speak for at least three minutes

on any item, provided that the member submits a written request to speak prior to the meeting.

In the case of meetings of the board of directors, the members have a right to speak for at least three minutes on any matter placed on the agenda by petition of the voting interests. There is no requirement that a member be permitted to speak on any topic. Also, the association may adopt written reasonable rules governing the frequency, duration, and manner of members making statements, including a sign-up sheet for those wishing to speak.

You should also review your association’s governing documents as they may contain additional provisions regarding the right to speak at meetings. In an effort to promote participation, many boards of directors choose to have a set time on each agenda where members may speak on any topic, but Florida law does not require it. ■

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