



Giving Thanks in Times of Adversity

The Worst has Brought out the Best in Some

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Thanksgiving Day includes many traditions: stuffing ourselves with turkey, enjoying the company of family, and watching football. Of course, the holiday's roots reportedly go back to our pilgrim ancestors and their ideas about celebrating good fortune and sharing with neighbors.

The last two years have not been ones of good fortune for many in Southwest Florida, including residents in some condominium and homeowners' associations. Some communities' residents will face another Thanksgiving with no home in which they can entertain family, gorge on turkey, or watch football. Others are just bracing for the devastating impact of astronomical insurance cost hikes, major property tax valuation adjustments, and the cost increases that go along with living in a region with a tight labor market, compounded by high housing costs. Foreclosures are up by over fifty percent, perhaps with the worse yet to come.

Given the historic nature of the last two years' hurricane devastation, and our haywire real estate and insurance markets, it would be easy to put on a grumpy face and say that there is not much to be thankful for. However, the truth of the matter is that adversity brings out the best in good people, and our area is blessed with many good people. Here's just a few who deserve our thanks:

- **Association Boards:** Service on an association board can be a thankless task in normal times. Making major decisions about how to put the pieces
- **Homeowners:** In most communities facing adversity that I have worked with, boards have noted tremendous patience, support, and appreciation from the community's home owners. While there are always a few "me first" people in any setting, most have shown great support for their boards, in items ranging from rebuilding votes, to the prompt payment of necessary assessments for damage repair on insurance premiums. We should all be thankful for them.
- **Community Association Managers:** Whether employed as an on-site manager, or assigned to an account through a property management company, association management is a tough job

back together after a calamity such as a hurricane, or how to juggle the books to pay the insurance bills, can be daunting. As the old saying goes, you cannot please all of the people all of the time. Just try to please everyone when you are dealing with their most significant financial investment. Over the past couple of years, I have had the privilege of working with many association volunteers who have proven themselves more than capable for the challenge. I can name many people who, without an expectation of compensation or congratulations, have spent most of their waking hours dealing with association disaster recovery, trying to find ways to get the association the best value for its dollar, and addressing the myriad issues that go along with running an association. We should all be thankful for them.

in normal times. In many cases where there is high absentee ownership or seasonal occupancy, the manager is the “eyes and ears” for all of the owners. Of course, most of the property owners were in an understandable state of panic after the hurricanes of 2004 and 2005 hit, and have looked to the managers for information and assistance. Often for no additional compensation, so many managers have stepped up in a time of need. We should all be thankful for them.

- Mother Nature: Thanks for a quiet 2006 hurricane season.

- The Real Estate Market: As odd as it may sound, I think the recent downward adjustments in local real estate prices will ultimately have a positive effect. While some speculators will lose money, and many first time home-buyers will feel the pinch, a local economy cannot be sustained when average people cannot afford to buy a home.

While the scars of the 2004-2005 hurricanes will be seen for some time to come, and the pain of unpredicted cost increases will continue to sting, we will ultimately be stronger than we were before. We can all be thankful for that. ■

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.

Pest in Walls, Ceiling Likely Association's Responsibility

Question: I own a unit in a condominium. I have a pest problem – something rather large is crawling in the walls and ceiling of my unit. I have advised the president of my association, but she contends it is my problem to deal with. Is this accurate? M.M. (via e-mail)

Answer: Although you need to refer to your declaration of condominium for the exact demarcation between a unit and common elements, typically the spaces in perimeter walls and the spaces in attic areas are common elements, and any spaces in interior partition walls are part of the unit. The association is responsible for the maintenance, repair and replacement of the common elements, and owners are responsible for their units. The declaration of condominium might also contain additional, or more specific, maintenance, repair and replacement responsibilities for the association and owners, such as for limited common elements, parts of a unit that contribute to the support of the building, etc.

In the case of animals in the walls and attic spaces of a condominium building, it is nearly inconceivable that common elements are not somehow involved. Also, the animals are obviously gaining entry from the exterior of the building through some opening, and in almost every condominium the exterior walls of the buildings are common elements to be maintained by the association. In such a case, the association should become involved and address this problem, as it is likely the association's responsibility. A professional extermination company can be consulted to determine what type of pests are in the walls, how they got there, and be able to eradicate them and prevent others from gaining access into the condominium.

Question: I purchased a condominium in 1992 with the idea that I would live in it for several years and then rent it. Several years ago the board changed the rules and regulations to state that no dogs were

allowed. I have now located a tenant to rent my unit and they have a dog. Is my unit grandfathered to permit pets in light of the fact I bought the condo prior to the rule being adopted that prohibits dogs? D.W. (via e-mail)

Answer: Probably not. Many associations have adopted pet restrictions that "grandfather" a pet living in the unit at the time the rule is adopted, but provide that the pet cannot be replaced upon their passing. Further, many associations allow pets for owners residing in their units, but do not allow for renters to keep pets.

That said, in order for a board-made rule to be valid, it must meet several tests. The rule cannot contradict rights contained in, or inferable from, the condominium documents, the board must be granted rule-making authority in the condominium documents, the rule must be "reasonable", and it must be adopted in a procedurally correct manner.

Accordingly, if the rule meets these standards, it would be valid. If the rule is valid, you may have been "grandfathered" had you owned a pet at the time the rule was adopted, but that would not apply to pets coming into the unit after the adoption of the rule.

Question: We are having some problems at our condominium because a group of owners have decided that the board and other owners are not running the association correctly. The unhappy owners have requested that they be allowed to review all of the records of the association. They did not say what they were looking for and we suspect they are just on a fishing expedition to find anything they can, including information about the manager and employees who they apparently do not like. My question is what records is the association required to give to these owners? Anonymous (via e-mail)

Answer: The Condominium Act defines what constitutes the “official records” of the association, and also establishes the rights of owners to inspect and copy those records. The definition of “official records” (which you can find at Section 718.111(12), Florida Statutes) contains a detailed list of specific items, as well as a “catch all” item which includes “all other records of the association not specifically included in the foregoing which are related to the operation of the association.” In other words, “official records” includes just about everything.

The Condominium Act requires the official records to be made available to a unit owner within five working days after receipt of a written request by the board or its designee. The official records of the association are open to inspection by any association member, or the members’ authorized representative, at all reasonable times, and the right to inspect the records includes the right to make any copies, at the expense of the member.

The failure to provide access to the official records within ten working days after receipt of the written request subjects an association to a potential claim for actual damages, or “minimum damages” which are defined by the statute as \$50.00 per calendar day, up to

ten days, with the calculation beginning on the eleventh working day after receipt of the written request.

There are, however, some documents that are not accessible to unit owners, including records protected by the lawyer-client privilege or the work-product privilege; information obtained by the association in connection with the approval of the lease, sale, or other transfer of a unit; and medical records of unit owners.

The Homeowners’ Association Act also requires associations to allow the inspection and copying of official records. While a good portion of records inspection and copying in a homeowners setting is similar to the condominium setting, the records must be made available within ten business days after receipt of a written request, as opposed to five working days. The Homeowners Association Act excludes the same records from being accessible to members as the Condominium Act, but also denies access to disciplinary, health, insurance, and personnel records of the association’s employees.

license. If you plan on paying an officer or director of the association to act as your manager, that person would also need a license. ■

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