



Mold Bill Becomes Law July 1

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

As mentioned in my previous column (Bill puts focus on mold inspections, June 7), the State of Florida has been grappling with the appropriate standards for licensing mold “assessors” and “remediators” since 2004.

Senate Bill 2234, adopted by the 2007 Florida Legislature as the latest effort on that front, was signed by Governor Crist on June 27, 2007, and became the law on July 1.

SB 2234 provides various definitions. “Mold Assessment” is the process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location and extent of amplification of mold growth of greater than ten square feet.

“Mold Remediation” is defined to mean the removal, cleaning, sanitizing, demolition or other treatment including preventative activities of mold or mold contaminated matter of greater than ten square feet that was not purposely grown at that location.

Unlike the previous state of affairs (where no education or training was required to perform mold assessment or remediation), the new law will

require mold assessment or remediation professionals to possess at least a two year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field. The education must be obtained from an accredited institution. One year’s documented field experience is also required.

The law requires mold assessors and remediators to maintain general liability, and errors and omissions insurance coverage in an amount of not less than one million dollars.

The law also requires that all contracts for mold assessment or remediation services to be in writing (which includes electronic versions) and the contracts must be signed, or otherwise authenticated by the parties, in order to be valid.

There are several exemptions in the law regarding the requirement of licensure for mold remediators and assessors. These include:

- A residential property owner who performs mold assessment/remediation on his or her own property.
- A person who performs mold assessment/remediation on property owned or leased by that person, the person’s

employer or an affiliate of the employer, as long as the persons are not engaging in the business of performing mold assessment for the public.

- A full time employee engaged in routine maintenance of public and private buildings who does not otherwise hold himself/herself out for hire.
- Division I and Division II Contractors licensed under Chapter 489 of the Florida Statutes.

- Engineers licensed under Chapter 471 of the Florida Statutes.

The new law will provide for the regulation of mold assessors and remediators by the Florida Department of Business and Professional Regulation. The law is codified at Part XVI, Chapter 468 of the Florida Statutes.

Although now the law, there is a “phase in” provision, and the law becomes of full force and effect on July 1, 2010.

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.



Financial Report Due Annually to Membership

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Q: I live in a homeowner's association. Can you tell me what type of financial report must be sent out to each owner every year? J.S. (via regular mail)

A: In a homeowner's association setting, the association must prepare an annual financial report within 60 days after the close of the fiscal year. The association must either provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

The type of financial report that must be prepared is based upon the association's total annual revenues. An association with total annual revenues of less than \$100,000.00 must prepare a report of cash receipts and expenditures; an association with total annual revenues of \$100,000.00 or more, but less than \$200,000.00 must prepare compiled financial statements; an association with total annual revenues of at least \$200,000.00 but less than \$400,000.00 must prepare reviewed financial statements; and an association with total annual revenues of \$400,000.00 or more must prepare audited financial statements.

An association in a community of fewer than 50 parcels, regardless of the association's annual

revenues, may prepare a report of cash receipts and expenditures in lieu of other types of financial statements, unless the governing documents provide otherwise.

You should note that if approved by a majority of the voting interests, the required financial report can be "waived down" to a lesser requirement.

In a condominium association setting, within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association must prepare and complete, or contract for the preparation of, a financial report for the preceding fiscal year. Within 21 days after the financial report is completed by the association or received from a third party, but no later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association must mail or hand deliver to each unit owner a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the owner, without charge, upon receipt of a written request from the unit owner.

The types of financial reports that must be prepared by condominium associations are the same as referenced above for a homeowner's association, and the statutory requirements can also

be “waived down” if approved by a majority of the voting interests.

Q: Is it wise, and ethical, for a board member of a condominium association to be on one or two other condominium boards? Could there be a sharing of confidential information that should not occur? B.A. (via e-mail)

A: Your question raises the issue of a board member’s fiduciary duty to the association. One duty of a director is to maintain confidentiality of association affairs, as appropriate. Any disclosure of confidential information by a director that causes harm or damage to an association could give rise to a legal cause of action against the director.

With respect to voting and taking action as a director, a board member meets his or her fiduciary duty by either remaining independent and objective when voting on matters of association business, or by fully disclosing any known conflicts to the other board members, and abstaining when appropriate.

You may know that the Florida Condominium Act requires all board members to vote on all matters, except when a conflict of interest is asserted. A conflict of interest generally exists when a board member cannot reasonably vote independently of his or her own self interest, or independently of the interest of another person or entity with which the board member has some relationship. In the end, it is each board member’s obligation to identify and disclose conflicts of interest. If a director

reasonably believes that he or she can vote in the best interest of the association and independently of potentially conflicting interests, then he or she may do so. However, the law requires that the director disclose any potential conflict of interest to the other board members.

The Florida Not-for-Profit Corporation Act, which also governs most condominium associations, provides that any contract or transaction that is approved by a board consisting of one or more directors who has a conflict of interest is still valid if the conflict is disclosed or known to the remaining board members, the contract or transaction is fair and reasonable to the corporation at the time that it is authorized, and the vote or consent sufficient to pass the measure or approve the contract is obtained without counting the vote of the director who has a conflict of interest.

In summary, I do not believe simultaneous service on multiple condominium boards creates, in and of itself, a conflict of interest that prohibits simultaneous service. All directors must maintain confidentiality when appropriate. Certain issues may arise from time to time that will cause a director who serves on two boards to carefully consider his or her relationship to each of the associations, and at that time, the director must carefully determine his or her ability to vote independently and in the best interest of the association. Also, a director should always disclose any conflicts of interest.

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