



## Condo Board Meetings Must Be Posted in Advance

**Especially if the agenda includes possible termination of association's manager**

Fort Myers The News-Press, February 7, 2008

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**Q:** Must a meeting of the condominium board of directors be properly noticed when the intention is to discuss the performance and possible termination of the community association manager? There are no potential litigation issues involved. We would prefer that the existing manager not be aware of the discussion at this time. **C.H. (via e-mail)**

**A:** The law governing condominium associations states that notice of all board meetings must be conspicuously posted on the condominium property at least 48 hours preceding the meeting, except in an emergency. The notice must specifically incorporate an identification of agenda items. The only exception is when the board meets with the association's attorney with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice. Based on the facts you have presented, the board would be required to properly notice the board meeting to discuss the performance and possible termination of the manager. However, since notice only has to be posted on the condominium property, there would be no requirement that you send a copy of the notice to the manager, nor that the manager be permitted to attend. The only way that unit owners could be properly excluded from the meeting would be for the board to meet with the association's attorney,

and even then the matter must involve "pending or proposed" litigation, which is often an appropriate designation if an employment separation is expected to be adversarial.

Note that the law is different for homeowners' associations. Notice of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of the meeting, except in an emergency, similar to condominiums. However, in a homeowners' association, it is not necessary that the notice incorporate an identification of agenda items. Similar to board meetings in a condominium setting, homeowners' association board meetings are not open to all members when the board meets with the association's attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. In addition, the homeowners' association statute provides that the requirement that board meetings be open is inapplicable to meetings between the board and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters. Therefore, in a homeowners' association the board can meet in private to discuss personnel matters, but only if the meeting is with the association's attorney.

**Q:** I am a condominium unit owner and about two months ago I had water damage due to a faulty air conditioner. My insurance adjuster informed me that the association is responsible for all of the clean-up costs and that my insurance company will only pay for painting and any moldings that had to be replaced. My association has informed me they believe their liability is only for the outside of the building. Consequently, the clean-up and repair work was not done and mold has grown in the unit. Who is responsible for the cleanup? **D.W. (via e-mail)**

**A:** Your situation and the questions it raises is a very common scenario, and probably constitutes one of the most complicated discussions of Florida condominium law today. I do not believe the analysis is as simple as your insurance adjuster may have led you to believe. However, it is true that the Condominium Act requires the condominium association to carry casualty insurance to cover the unit, as initially installed by the developer, but with exceptions for certain items including wall coverings, floor coverings, fixtures, built-in cabinets, air conditioning units serving only one unit, and several other items of property specifically excluded in the Condominium Act.

One difficult question, which is the subject of ongoing dispute, is who should pay for damage when no insurance proceeds are available due to the existence of a deductible. I presume your association has denied liability because there are no insurance proceeds to pay for the repair due to the association's insurance deductible. In that case, the correct answer to your question, according to many practitioners, is found in the specific casualty repair provisions of your declaration of condominium. The Division of Florida Land Sales, Condominiums and Mobile Homes (the State agency which enforces the condominium laws) and certain insurance companies, however, maintain that the association must pay to repair any item of property that the association insures, without regard to whether insurance proceeds are actually received to pay for the repair of that item and without regard to what the declaration of condominium provides.

While the debate continues, there can be no doubt that the best course of action in the case of water damage is to clean up the damage as soon as possible. From the association's standpoint, it is almost certain that the common elements of the condominium, which the association is obligated to maintain and repair, have been damaged to some extent whenever any significant water damage has occurred. When mold is introduced into the equation, there is a possibility that other unit owners will be affected by the association's failure to promptly clean up the water damage. By moving swiftly to clean up the water damage and prevent mold, neither the association nor the unit owner prejudices its rights to later seek reimbursement from the legally responsible party. So, while I do not have an iron-clad answer as to who is responsible for the cost of the clean up and repairs in your particular case, I do advise that the clean up be performed as soon as possible after the water leak has occurred in order to avoid mold and other continuing damage.

Also, it is important to remember in these situations that the analysis of who is responsible to clean up and repair the damage does not focus upon who causes the damage, but rather upon what specific items of property were damaged. There is also a potential opportunity to seek reimbursement from a negligent party who causes damages, regardless of who takes the lead and cleans up the unit. In most cases, especially in water damage cases, the analysis of negligence and ultimate liability should be deferred until after the water is cleaned up and the possibility of continuing damage, including mold, has been eliminated.

**Q:** I manage a Florida condominium and this situation came up recently. An owner sold his unit but neglected to provide the new owner with a mailbox key. The new owner has asked the association to rekey the mailbox. The covenants do not mention anything regarding rekeying mailboxes. I thought that if a mailbox served one unit only, it was a limited common element and was to be repaired at the owner's expense, not the association's. **C.M (via e-mail)**

**A:** Portions of the condominium property not included in the “unit” are common elements. Limited common elements are common elements that are reserved for the exclusive use of a certain unit or units to the exclusion of all other units, as specified in the declaration of condominium. Some examples of limited common elements are assigned parking spaces, patios, and balconies.

The Condominium Act states that maintenance of the common elements is the responsibility of the association, and that the declaration may provide that certain limited common elements are to be maintained by those entitled to use them. If the declaration of condominium identifies an item (i.e., a mailbox) as a limited common element, and specifies it is to be maintained by the owner who is entitled to use it then that owner is responsible for its maintenance and repair. If the declaration of condominium does not identify an item as a limited common element and as the maintenance and repair responsibility of an owner, then it is the responsibility of the association.

You should review this association’s declaration of condominium to see if the subject mailbox is designated as a limited common element and that owners are responsible for the maintenance and repair of limited common elements serving their units. If so, the new owner will be required to pay

the expense of rekeying the mailbox. If not, then the association will be required to pay for rekeying as a common expense of the association.

## **TRADE SHOW**

The South Gulf Coast Chapter of the Community Associations Institute will be holding its 14th Annual Conference & Trade Expo 2008 today at the Seven Lakes Association Auditorium, 1965 Seven Lakes Boulevard.

More than 40 exhibitions will be providing products, services and information to residents of community associations.

The event is also at the North Collier Regional Park Exhibition Hall, 15000 Livingston Road, on Friday. The expo is open to the public from 10 a.m. to 3 p.m. in Fort Myers and 11 a.m. to 3 p.m. in Collier. Also, the public can attend an 8 a.m. “Conflict Resolutions” seminar presented by Joe Adams of Becker & Poliakoff, P.A. The three-hour seminar focuses on the role of the board of directors in creating and enforcing rules as well as how those rules ultimately impact unit owners in community associations. For more information, call 239-466-5757.

*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).*