



Condo Associations Must Make Records Available

Board can set up rules on inspections

Fort Myers The News-Press, May 4, 2008

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Q: I am on the board of directors of my condominium association and we recently had an owner contacting us almost daily requesting information and documents from the association. I believe this owner is planning to run for the board shortly and is trying to get up to speed on all of the issues involving the condominium association. Unfortunately, the owner's actions are adversely affecting our property manager who is being asked to make copies and locate information and is not able to perform his other duties because of these requests. I understand that the association must make records available to all owners, but are there any limits on that requirement that will allow our manager to get his job done? **B.L. (via e-mail)**

A: As you may know, the Florida Condominium Act is in many respects consumer protection legislation for the benefit of unit owners. One important section of the Condominium Act establishes the requirement that the association maintain official records, and make those records available for member review. The Condominium Act lists a variety of specific records that are required to be kept, but then adds a general requirement that "all other records of the association not specifically included in the foregoing which are related to the operation of the Association" must also be maintained. In other words, every scrap of paper concerning the

association's operation is arguably required to be kept as an "official record".

The official records of the association are open to inspection by any association member, or their designated representative, upon written request. Once a written request is made, the association must make the records available for inspection within 5 working days. Failure to provide an opportunity to inspect the records within 10 working days after receipt of a written request creates a rebuttable presumption that the Association willfully failed to comply with the statute. In such cases, even if actual damages cannot be shown, the unit owner may make a claim for statutory damages of \$50.00 per day, for a maximum of 10 days (\$500.00).

There are some limitations built into the statute, and the board has the authority to adopt rules which can manage issues such as the manager being overwhelmed by repeated records requests from one member. Importantly, the statute only requires the association to make the records available for inspection by an owner or an owner's authorized representative. Often, owners will call the manager or make a written request and insist that records be copied and mailed or copied and made available for pick up. There is no requirement that the board or manager go through the files, make requested copies and send them out

or make them available for pick-up. The owner only has a right to come and review the files himself or herself.

In some cases, it may be to the mutual benefit of the association and the member to make a copy, particularly where the request is for a very specific document. However, if a member submits a request to review “all documents concerning” a certain matter, then there is an inherent danger to the manager or the board providing those copies, because if they fail to include a document that the owner later claims he or she asked for, that failure may be viewed as a willful failure to comply with the statute.

For those open-ended document requests, it is advisable that the documents simply be made available, and that the manager and board do not attempt to select the appropriate documents in accordance with the request. Even then, the manager or a board member should supervise the records inspection.

The Condominium Act permits the association to adopt reasonable rules regarding the frequency, time, location, notice, and manner of records inspections and copying. While the Condominium Act does not contain specific reference to what rules are reasonable, the Florida Homeowners’ Associations Act does provide that the rules can limit inspection to one 8 hour business day per month. It is generally believed that it is reasonable to limit record inspections to one time per month per member in a condominium as well, especially if the member is given a full 8 hour day during which to conduct the inspection.

The requirement to keep official records and to make them available on relatively short notice highlights the need for associations to make record retention and inspection procedures a priority in the day-to-day operation of the association. One critical aspect of the record retention and inspection procedures is the need to segregate confidential documents from public documents. The Condominium Act does permit the association to withhold from member review any lawyer-client privileged document, and also any record protected by the work-product privilege, which typically

arises in conjunction with litigation. In addition, any information collected by the association in connection with the approval of the lease, sale, or other transfer of the unit as well as any medical records of unit owners are confidential and should not be opened for member review. The Homeowners’ Association Act also includes personnel records of association employees, as an additional confidential category of records in the HOA context.

Q: My condominium association’s bylaws indicate that only private automobiles and passenger type vans with no signage on the vehicle are permitted in the community. No inoperable vehicles, vehicles without a license plate or trucks are permitted in the association unless they are stored within an enclosed garage. My question regards the prohibition on trucks. Is a small pick-up or a half ton pick-up classified as a truck? What is considered a truck? **D.S. (via e-mail)**

A: This is a question which has been posed on many occasions, particularly as the automotive industry has successfully marketed, and the public has accepted, pickup trucks, SUV’s, and “cross-over” vehicles as common means of personal transportation. Some owners in “no truck communities” argue that their “illegal” vehicles are in better condition and cost more than many automobiles which are permitted in the community, with little to no restriction.

There are some statutes that may help identify what qualifies as a “truck”. The Florida Uniform Traffic Control Law set forth in the Florida Statutes defines a truck as “any motor vehicle designed, used, or maintained primarily for the transportation of property”. Another section of the Florida Statutes deals with motor vehicle licenses and further defines “truck” to mean “any motor vehicle with a net vehicle weight of 5,000 pounds or less and which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.”

Given the language contained in the Florida Statutes, small pick-ups and half ton pick-ups would likely be classified as “trucks”. Conversely, an “SUV”, although often built on a pickup truck chassis, would not seem to qualify as a “truck”.

To address the issue based on modern life, and to avoid uncertainty, I think associations should clarify their vehicle restrictions to provide clear definitions of what is, and is not, prohibited in the community.

Q: Please explain how the law allows board members to receive payment for their duties. Our condominium association documents provide that if the board votes for a fellow member to be paid, no other action is needed. I was under the impression that board members were required to serve as volunteers and in order to be paid they needed to hold a community association manager license. **J.C. (via e-mail)**

A: The Florida Condominium Act provides that the board shall serve without compensation unless otherwise provided in the association’s bylaws. So long as your association’s bylaws provide that board members can be paid, it is allowed. You say the condominium documents require a board vote to do so, and that procedure must be followed. If the owners do not want to allow board members to be paid, the bylaws would have to be amended.

Another issue, however, is whether a board member who is being paid is involved in “community association management”, and

therefore, required to be licensed by the State. A person is deemed to be performing “community association management” when they perform certain functions for an association or associations containing more than 50 units (pending legislation, recently approved by the Florida Legislature and waiting to be signed into law by the Governor, will reduce this to 10 units) or the associations have an annual budget or budgets in excess of \$100,000.

“Community association management” means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for payment: controlling or disbursing funds of a community association; preparing budgets or other financial documents for a community association; assisting in the noticing or conduct of community association meetings, and; coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the above-referenced management services is not required to be a licensed community association manager.

The requirement for licensure will depend upon exactly what the paid board member is doing, and whether it falls within those services for which licensure is required by the statute.

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.

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