

Board Must Learn how to Cover Assets

Fort Myers News-Press, January 5, 2003



By Joe Adams

jadams@becker-poliakoff.com

TEL (941) 433-7707

FAX (941) 433-5933

The next three months, the period roughly equivalent to the time-span between New Year's day and Easter marks the height of activity for local community associations.

Local rituals include snarled traffic and standing in line for everything. A ritual unique to the community association is the annual meeting. In my experience, the vast majority of associations hold their annual meeting in the months of January, February and March.

In addition to routine business conducted by associations, the primary purpose of the annual meeting is the election of directors. In a perfect world, every owner would take his or her turn at board service. For the uninitiated (and for that matter, even the experienced), serving on an association board can be a daunting task. In the next several editions of this column, I will pass on some tips for new board members which will hopefully be of assistance in effectively serving the community.

Today's tip: covering your assets. One of the biggest reasons some talented people refuse to consider board service is potential personal liability. Fortunately, Florida's Legislature has recognized that undue exposure to liability may dissuade owners from serving as directors of their respective community associations. The circumstances in which directors can be held personally liable are few and pri-

marily limited to cases of self-dealing, reckless conduct and conscious violations of the law. Directors, however, are still individually sued with some frequency, and, particularly in discrimination cases, there is precedent for pinning financial liability on the individual director.

The two primary sources of protection for the director, which should be reviewed independently on a regular basis, are the indemnification (hold harmless) clause in the governing documents of the association and the directors and officers liability insurance policy maintained by the association.

Indemnification is the obligation of the association to provide a defense to a director if the director is named in a law suit, and pay any judgment ultimately rendered or any settlement ultimately reached. Directors are well advised to insist that the board authorize the association's legal counsel to review the indemnity provisions in the association's governing documents and provide an opinion letter confirming that such provisions are protective of the directors to the fullest extent permitted by current Florida law. If the association's director indemnification obligation under its existing documents is not, the association's governing documents should be updated through amendment.

Directors' and officers' liability insurance coverage is a topic which in-

volves many legal and insurance technicalities which cannot be adequately covered within the space limitations of this column. Suffice it to say that some director liability policies are so filled with exclusions from coverage that they are nearly worthless. Consultation with the association's insurance agent and attorney in order to confirm that customary association risks are covered is a smart move.

Finally, every person who serves on an association board would be well advised to talk to their personal insurance agent about the existence or availability of personal umbrella coverage which may provide an additional safety net in the event of a claim arising out of service on the association's board. ⚖

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.