Statute of Limitations a Problem in Disputes

Florida Law Provides no Clear Guidance

FORT MYERS NEWS-PRESS MARCH 2, 2003

By **Joe Adams**
jadams@becker-poliakoff.com
TEL (941) 433-7707
FAX (941) 433-5933

An issue which persistently confuses condominium and homeowners' associations is how long an association can wait before taking action to enforce rules of the condo or HOA.

Legal concepts carrying mysterious sounding names like laches and the statute of limitations are used. In general, these concepts are the legal equivalent of those who snooze, lose.

The law encourages parties with disputes to assert their rights in a timely fashion. The failure to timely pursue legal rights can result in rights being barred by the statute of limitations. The statute of limitations is a legal deadline by which a claim must be filed with a court. Many cases are decided on the statute of limitations, and parties with bonafide rights are denied their day in court, because they waited too long to act.

The statute of limitations can be particularly problematic in community association disputes. Most times, boards will attempt to resolve problems informally, without intervention by lawyers. When the matter is placed in the hands of counsel, there is often a period of letter-writing and negotiation attempts before a lawsuits is filed. Obviously, any matter that can be resolved without litigation, should be. However, if a statute of limitations is looming in a matter, the association may have no choice but to file suit to stop the running of the clock.

There is no clear guidance in Florida's law as to the statute of limitations in many community association disputes. In general, the statute of limitations for actions based on written contracts is five years, and four years for most "torts" (such as trespass) and actions based on verbal contracts. Certain matters, including "specific performance of contract", carry a much shorter statute of limitation, one year.

In all cases, the statute of limitations does not begin to run until the claim "accrues", which is rarely easy determine, even for lawyers.

A recent case released from Florida's Fifth District Court of Appeal, which has jurisdiction over the Orlando area, sheds some light on the statute of limitations in association matters.

Vernon Daugherty owned a unit at the Sheoah Highlands Condominium in Seminole County. Mr. Daugherty sued the condominium association and its board alleging that the association failed to enforce the declaration of condominium, by permitting certain unit owners to erect screened enclosures on the common elements, contrary to the provisions of the declaration of condominium.

The trial court ruled in Daugherty's favor, and ordered two of the five screen enclosures removed.

The association appealed to the higher court, claiming that Daugherty's claim was barred by the statute of limitations and that the court did not have jurisdiction over the unit owners who had installed the enclosures, as they were not named in the suit.

The reviewing court agreed with the association's argument that the trial judge should not have ordered the enclosures removed, since the owners of the involved units were not named as parties to the action. However, the court found that the board had

failed to enforce the documents, and ordered that the association would be required to take legal action against the subject owners to enforce removal of the improper enclosures.

The statute of limitations issue was the central issue in the case. Three owners had enclosed the areas in question when Daugherty had purchased his unit in 1981. A fourth enclosure was built in 1996 and a fifth in 1998. The association's board had approved all five enclosures.

Finding that there was room for debate as to whether the one year or five year statute of limitations should apply, the court concluded that the five year statute was applicable. Therefore, Daugherty had no legitimate beef about the 1981 enclosures, but did take timely action regarding the 1996 and 1998 enclosures.

The court noted that the Fourth District Court of Appeal (which has jurisdiction of the Palm Beach - Broward County area) has ruled differently, under somewhat similar circumstances, potentially paving the way for a conflict between appellate courts, and an eventual review of the question by Florida's Supreme Court.

While associations should never be too quick to jump into litigation, this case points up the lesson that every potential legal dispute, as soon as it hatches, should be viewed by the association with an eye toward potential statute of limitations issues. In most cases this will require legal review, but is probably the proverbial ounce of prevention that will be worth a pound of cure.

Now on to readers mail

QUESTION: Is a Florida homeowner's association (HOA) required to have a licensed community association manager (CAM)? R.M. (via e-mail)

ANSWER: There is no requirement that an Association (whether condo or HOA) have a manager, although many (perhaps most) do, particularly larger associations.

If you have a manager, he or she must be licensed by the State if your association operates more than 50 units or has a budget in excess of one hundred thousand dollars. ⚖

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.