

Don't be Confused by Year-end Financial Reports

Condominium Law More Complicated than HOA

FORT MYERS NEWS-PRESS MARCH 30, 2003



By **Joe Adams**

jadams@becker-poliakoff.com

TEL (941) 433-7707

FAX (941) 433-5933

One of the most confusing areas of condominium and homeowners' association operations involves the association's year-end financial reporting requirements. As is usually the case, the law for condominiums is substantially more complicated than the HOA counterpart.

In all associations the first source which must always be consulted is the community governing documents. For example, if the association's bylaws require a year-end audit, an audit must be performed, regardless of the law. Stated otherwise, the law sets forth minimum requirements which must be met, and the governing documents can always impose stricter requirements.

A condominium association's required year-end financial report depends on the magnitude of the association's annual revenues (including regular assessment income, special assessment income, and other forms of income). For associations exceeding the \$400,000 mark, a year-end audit is required. For associations between \$200,000 and \$400,000 the required year-end report is known as a "review". For associations with revenues between \$100,000 and \$200,000, a "compilation" is the type of report required. For associations with less than \$100,000 in revenue, and associations serving less than 50 units, a simple statement of revenues and expenses, prepared in accordance with good accounting practices (often called an "in-house" financial report), is what is required.

The timing for the completion and delivery of the year-end report is also somewhat complicated. Again, the bylaws may impose different standards.

In general, the association is obligated to prepare and complete, or contract for the preparation and comple-

tion of, the year-end financial report within 90 days of the close of the fiscal year. Since most associations use a fiscal year ending December 31, that deadline is a day or two away.

If the report is prepared by an outside party, such as an accountant, the association must deliver the report within 21 days of receipt of the "final" version (as opposed to "draft" version) of the report. Under all circumstances, the report must be delivered to the unit owners within 120 days of the close of the fiscal year.

By virtue of an amendment to the condominium law a couple of years ago, the association is no longer obligated to mail out copies of the year-end report. Rather, delivery of the report can be accomplished by providing each owner with mailed or hand delivered notice that the report has been completed, and that it is available from the association, free of charge, at the owner's request.

Condominium associations may, before the end of the fiscal year, vote to waive the year-end reporting requirements set forth in the law. The waiver requires a majority vote. For example, an association whose receipts require an audit, may vote only to have a review, a compilation, or an in-house report. However, even if a waiver vote is taken, some level of financial year-end reporting (an in-house report at the minimum) must be made available for the members within the statutorily prescribed time frame.

The law for homeowners associations is decidedly simpler. Pursuant to Section 720.303(7) of the statute applicable to HOAs, the year-end report, essentially equivalent to the condominium in-house report, must be made available to the members within 60 days of

the end of the fiscal year. Similar to condominium procedures, the HOA need not mail out the report, but only provide notice that it is available, within 5 working days, free of charge.

Now on to reader mail.

QUESTION: I am member of a homeowners' association. Recently, we received a notice from our association's manager stating that when we purchase insurance for our home, the association's name must also appear on the policy as part owner of the policy. Since the individual home owners pay for the insurance, wouldn't giving the association a copy of the policy be enough to prove that the house is covered by insurance? - B.M. (via e-mail)

ANSWER: The answer to your question depends upon the community's governing documents. If there is no provision in the documents so requiring, I do not believe there is a basis for the association to require that you name it as an "additional insured" under your insurance policy.

However, many governing documents for homeowners associations do require naming the association as

an "additional insured". In most cases, the requirement will be found in a deed restriction, such as a declaration of covenants. Such requirements are most frequently found in attached structures, such as townhouses, villas, and other forms of single family home ownership involving common walls or roofs.

In my opinion, the association would have an insurable interest in the premises, and this would validate a requirement in the governing documents that the association be named as an "additional insured." Such a clause would most typically come into play in the unfortunate event that some calamity (fire, hurricane, tornado, etc.) caused damage to more than one home. In party wall or party roof situations, unless there is a mechanism for ensuring that all of the owners are adequately insured, it may be impossible to have the building re-built, such as in a case where only three of the four adjoining owners carried adequate insurance.

You should speak with your insurance agent, I would not think it to be a big deal to name the association as an additional insured on your policy. ☺

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.