

Battle Over Regulation of CAMs far from Finished

Managers Keep Guard up after Latest Decision

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It appears that once again, licensing and regulation of community association managers (CAMs) has been saved from the axe.

As reported in a recent column (Florida May Stop Regulating Managers - April 6, 2003), the Governor and Department of Business and Professional Regulation had initiated a full-court press to eliminate CAM licensing and regulation.

According to Reg Billups, chairman of the CAM's governing body, though the pro-regulation proponents prevailed in this skirmish, the battle is far from over. Billups, a Fort Myers based timeshare executive, says: "The Legislature heard the voice of the consumers." However, in Billups' view, "managers can't let their guard down."

Travis Moore, the registered lobbyist for the Community Associations Institutes' Florida Legislative Alliance stated: "The Department has made it clear that everything is on the table again next year." In Moore's opinion, the only way to sustain the CAM program on a long-term basis is to ensure that it is economically viable (completely supported by fees from licensees) and that legislators understand the importance of licensure and regulation from the eyes of constituents, the association members and their boards.

As the old saw attributed to Mark Twain goes: "No man's life, liberty, or property are safe while the legislature is in session." While this may be true, it seems that CAM licensure is safe for another year.

Now on to reader mail.

QUESTION: Our condominium association recently had a large special assessment (over \$7,000.00 per unit) for painting and repairs. Included in this work

were painting and repairs to a free-standing structure containing eight garages, which are not owned in common, but by individual unit owners. After the work was completed, our board sent each garage owner a separate bill for the work performed on their garage. I own a garage. Does the association have the right to charge me for work done without my knowledge and consent, and am I being charged twice for the same thing? M.B. (via e-mail)

ANSWER: It depends. I assume that the garage structure is what is called a "limited common element." What this means is that although all unit owners actually "own" an undivided share of the structure, only eight units are given the right to use it.

The exclusive right of use to a limited common element is what is called an "appurtenance," and is part of the "bundle of rights" that is transferred along with the title to your unit.

The Florida condominium statute, at Section 718.113, addresses maintenance, repair, and replacement of limited common elements. The short answer is that the declaration of condominium can allocate limited common element maintenance in one of three ways.

First, the cost can be allocated to all unit owners, and the cost is shared by all (regardless of whether or not they have the right to use the garage).

Secondly, the declaration of condominium require only those who benefit from the use rights to be responsible for doing the maintenance work.

Thirdly, the declaration of condominium can require the association to maintain the structure, but only at the expense of the benefiting owner(s). This is sometimes referred to as a "limited common expense." If

your documents provide for this third option, then, assuming proper procedures set forth in the statute and administrative rules were followed, the board's actions were proper. Otherwise, they were not, as the expense would have been passed on to all owners, or it would have been your responsibility to do the work.

QUESTION: Our condominium association wishes to install a flagpole on the common elements. Would this require board action or a unit owner vote? R.R. (via e-mail)

ANSWER: Good question. Although the Florida condominium law permits unit owners to display the American flag on condominium property, there is no corresponding authority granted to the board of directors. As bizarre or unpatriotic as it may seem, the installation of a flagpole on common property would probably be considered a "material alteration or sub-

stantial addition" to the common elements. Under Florida law, the declaration of condominium must specify the procedure for altering or adding to the common elements. Most modern or updated declarations will give the board of directors a certain level of authority (typically a dollar amount or a percentage of budget) before a unit owner vote is required.

Some older documents are either silent on the issue of material alterations (in which case seventy-five percent of the entire voting interests must approve the alteration) or require a high percentage vote.

Your association's attorney should be able to quickly review the condominium documents and render an opinion on this. Even if a vote is required, I would think this to be one issue where obtaining unit owner support should not be too difficult. ☺☺

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.