

Legislature Pledges Allegiance to Flag

In Today's World, any Flag Bill is Going to Fly

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By **Joe Adams**

jadams@becker-poliakoff.com

TEL (941) 433-7707

FAX (941) 433-5933

As the old saw goes, fanciers of the law and sausage should watch neither being made.

At press-time, it appears that the slug-fest known as the 2003 Session of the Florida Legislature will adjourn on time, on Friday, May 2. What is unclear is whether the most significant bills affecting community associations will clear both legislative chambers, the Senate and the House, and if they do, whether they will be approved by the Governor.

Over the next several weeks, this column will focus on the results of the 2003 legislature. For community associations, the new laws (and the proposed laws which did not pass) can be dubbed the good, the bad, and the ugly.

Last week, we reported on the de-railing of efforts to eliminate licensure for community association managers. Today, we will take a look at a piece of no-brainer legislation, this year's "flag bill" for community associations.

While most support the right to fly Old Glory in our communities, it seems that legislators have been tripping over themselves to get "more patriotic" flag laws applied in associations. Between the World Trade Center tragedy and the current war in Iraq, even if there are legitimate comments about the scope of legislative proposals, no one seems to be willing to speak up, for fear of being painted as "anti-flag." Thus, it is a near certainty that any "flag bill" is going to fly.

This year's flag bill is found at House Bill 181 and Senate Bill 260, and has passed out of both chambers. There is little doubt that it will be signed by the Governor and will become law on July 1, 2003.

Currently, Section 718.113(4) of the condominium statute provides that any unit owner may display one portable, removable United States flag in a

respectful way, regardless of any declaration, rule, or other requirement dealing with flags or decorations.

The new law adds certain armed service flags as permissible flags that may be flown by unit owners. Specifically, provided that it is no larger than four and one half feet by six feet, flags representing the United States Army, Navy, Air Force, Marine Corps, and Coast Guard may be flown on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day.

So the next time someone in your condo says there ought to be a law, if they are talking about flags, there probably is.

Now on to reader mail.

QUESTION: I love your column, I never miss it. My question is what is the eighteen percent penalty fee allowed by the condominium law, is it for late payment of assessments? Also, have you ever heard of a "supervisory fee" that an association can charge to owners who rent their units, since the association must spend extra time and money looking after the investors' interests? - B.L. (via e-mail)

ANSWER: Thanks Mom, keep those e-mails coming.

The eighteen percent "penalty" you have referred to is the statutory rate of interest that can be charged when an owner does not pay their assessments on time, whether the regular (monthly or quarterly) assessment, or special assessments. In order for interest to be charged, the assessment must be "delinquent."

When delinquency occurs will depend upon how your condominium documents are written. Most modern documents only permit a ten day "grace period," al-

though older documents often permit lengthier grace periods. Also, the eighteen percent rate of interest is the “default” rate set by statute, and many older documents set a lower rate of interest, which would be applicable.

It is also important to note that if the condominium documents so provide, on top of interest, an association may charge an administrative “late fee” (different than interest) for delinquent payments. The late fee cannot exceed \$25.00 per installment, or five percent of the installment amount due, whichever is greater. In most cases, the administrative late fee is a substantially heftier incentive for timely payments than per-annum interest, even when interest is at eighteen percent.

With respect to your question about a “supervisory fee,” many condominium boards feel that rental units require more servicing, are responsible for more damage to common property (moving trucks, etc.) and have a greater financial impact on the community.

Whether that is true or not I will leave to others. However, the law is clear that no type of “renters’ fee,” even if authorized by the governing documents, is permissible. The association may charge a fee in connection with lease approvals (if permitted by the condominium documents) up to \$100.00 maximum per lease transaction. No other fee is permissible, nor are differential assessments for those who rent, “rental surcharges,” and the like. ⚖️

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.