

Additionally, when unit owners make an inquiry of the board of directors by certified mail, even if the board of directors believes that it is a mere nuisance, the board of directors must respond within thirty days of receiving the inquiry (there can be extensions granted under certain circumstances). Should the board fail to do so and litigation ensues, the association will be unable to collect its attorney's fees from the unit owner (even if the unit owner loses the suit). At worst, if the board is found to be knowingly and willfully ignoring the requests, there could be harsher penalties, as Mr. Walters and Mr. Carabetta learned the hard way.

The Florida Condominium Act has, for a number of years, contained a provision which allows the Division to fine directors for "knowing and willful" violations of the law. It is generally believed that "knowing and

willful" is a difficult standard to prove. I am often asked by people, hesitant to serve on boards, about potential personal liability. In general, my reply is that Florida's law uses an "empty head, clean heart" standard. Stated in more direct terms, directors can make bad decisions, perhaps downright stupid ones, and should not unduly fear the specter of personal liability or fines.

However, when the director has a personal interest in the outcome of the actions of the board, the line has been crossed.

Since this case is still in the status of a "recommended order," it is not necessarily over. However, the enforcing agency's view of conflicts-of-interest situations is quite clear. Forewarned is forearmed. ⚖️

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.

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