

Technology can Lead to Problems

E-gatherings may be Violation of State Law

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By Joe Adams

jadams@becker-poliakoff.com

TEL (941) 433-7707

FAX (941) 433-5933

I once heard it said that if you ask three lawyers the same question, you will get three different answers. Recently, a question was posted on an e-mail list to which I subscribe, primarily comprised of attorneys throughout the State of Florida who focus their practice in condominium and homeowners association law. The question asked: can board members vote by e-mail and are e-mail communications subject to the “sunshine” requirements of the condominium statute? Predictably, every lawyer who expressed an opinion gave a slightly different opinion, each with its own twist.

The prevailing view seems to be that since e-mail communications are like writing letters (although much quicker), the sending of e-mails does not in and of itself constitute a “gathering” of a quorum of the board so as to constitute a “meeting.”

Presumably, a different result would apply if “real-time” communications (such as “Instant Messaging” or “Chat Rooms”) were involved. Is this a distinction with a difference? Undoubtedly, this is an issue which Florida’s Legislature will need to wrestle with over the next few years.

A related question involves the relatively common practice of a board president or association manager “polling” members of the board and seeking their opinions as a means of facilitating the association’s decision-making process, especially during summer months when many of the other board members are “up north.”

In many situations, the action in question lies within the executive authority of an officer or agent (such as the president or the manager), and seeking the support of other board members

through “polling” does not appear to violate any law, since board approval was not required for the action in the first instance.

On the other side of the coin, certain actions (such as adoption of a budget) clearly require approval of the board, as a voting body. In such cases, “polling” is probably not sufficient to enact the item, and may (or may not) constitute a violation of the governing statute.

Coincidentally, in the same week as the great debate about e-mails, the Division of Florida Land Sales, Condominiums, and Mobile Homes’ arbitration department issued an order addressing similar issues.

If a picture paints a thousand words, a direct quote from the arbitrator might be instructive as well. In his ruling against the association, the arbitrator said: [T]he board is shown to have been meeting informally and voting via the device of a written poll whereby each individual board member who is consulted on a particular matter outside a board meeting is allowed to vote on a particular matter that will come before the board at a future official meeting. In this manner, discussions and voting have occurred outside the context of an official open duly noticed board meeting. The board shall cease from conducting its informal polling and instead shall conduct its meetings in accordance with the statute and documents, with due notice, open to all unit owners. Board meetings are intended to embrace the discussion of matters coming before the board for consideration, deliberation, and an eventual vote, and the association shall honor the letter and spirit of the law. The board is a public body that is charged with having its deliberations and decisions made in the sunshine. A board can-

not conduct board business at meetings that are not duly noticed, for the sake of expedience. Also, a board cannot vote by proxy.”

So, if you ask three lawyers their opinion and get three answers, if one of them is a state condominium arbitrator, remember its his or her opinion that counts.

Now on to reader mail.

QUESTION: Would you please tell me the Florida Statute that states when a condominium association must have a paid manager? F.H. (via e-mail)

ANSWER: A condominium is not obligated to have a manager, although I would say that most do (either an on-site manager or a management company).

If the association operates more than fifty units, or has a budget in excess of \$100,00.00, any manager it hires must be licensed.

QUESTION: In one of your recent columns, you stated that condominium associations may charge a fee of up to \$100.00 per lease transaction, if

permitted by the condominium documents. Does that mean \$100.00 can be charged each year, or each time the lease is renewed, or is this just for the original lease? C.C. (via e-mail)

ANSWER: The fee cannot be charged for lease renewals, only the original lease. There is a question whether “repeat tenants” who occupy the unit on a “seasonal” basis (for example, a couple who stays in the same unit every March) can be charged processing fees. I believe that they can.

QUESTION: Could you please give me the correct address and phone number for the Bureau of Condominiums. G.L. (via e-mail)

ANSWER: The agency is no longer called the Bureau of Condominiums, it is called the Bureau of Compliance. The Tallahassee mailing address for the Bureau of Compliance is 1940 N. Monroe Street, Tallahassee, FL 32399-1031. The telephone is 850-488-7149. Also, check out the agency’s website at www.state.fl.us/dbpr/lsc/division. ⚖️

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.