

## Legislature Already at it Again

### *Committee Targeting Community Associations*

FORT MYERS NEWS-PRESS SEPTEMBER 28, 2003



By **Joe Adams**

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (941) 433-7707

FAX (941) 433-5933

Although I have heard it expressed in different ways and attributed to different sources, there is an old saying that no person's life, liberty, or property are safe while the legislature is in session. Although Florida's legislature will not convene for another six months, it seems that its House of Representatives is already preparing to take a swing at condo association boards.

Under the benign designation as a "Select Committee" to review condominium issues, Speaker Johnnie Byrd has empanelled a group of legislators, primarily from South Florida (none from Southwest Florida) who are to report back to the House on the need for additional condominium legislation.

It appears that the genesis of this "select" committee is a dispute between a member of the legislature and his individual condominium association. Perhaps without realizing that most individual problems can be resolved "locally" (by amendment to the governing documents for the particular community), rumor has it that this committee is poised, Tallahassee-style, to kill the proverbial fly with nuclear bombs.

Among the ideas supposedly on the table are term limits for board members and requiring all association board members to file financial disclosure forms.

On the term limit issue, most of the associations I deal with have a decidedly difficult time in finding an adequate number of volunteers to operate the community. If someone wishes to volunteer their time and talents in this endeavor, and if their neighbors are willing to elect them, why should the Florida Legislature interfere? Keep in mind that the old days of general proxy voting are gone, and all elections are conducted by secret ballot, where everyone wishing to run is given an even-handed opportunity to do so.

On the question of requiring association board members to lay bare their personal finances, I will borrow a term from the younger generation: "HELLO???"

If you think it is difficult finding qualified people to serve your community now, wait until you tell them that their neighbor would like a peek at their balance sheet and tax returns.

Fortunately, we in Southwest Florida have some legislators who are key players in community association legislation, including Representative Dudley Goodlette who chairs the House Rules Committee and Representative Jeff Kottkamp who chairs the Judiciary Committee.

Stay tuned for further developments. *Now on to reader mail.*

**QUESTION:** May a unit owner contact the association's attorney about a questionable act by the board of directors? R.L. (via e-mail)

**ANSWER:** In a condominium or homeowner's association, the association attorney represents the corporation, not its board, nor its individual members. However this representation is traditionally channeled through the board of directors and authorized agents, such as management personnel. As a member of a condominium association, you are like a shareholder in a corporation. If you owned a number of shares in a publicly traded company, and you had questions about the conduct of the company's board, you would not have the authority to seek an opinion from the corporate counsel for the company. The same situation exists with a condominium board. I recommend that complaints to or about the board be put in writing and addressed to the board. If you feel counsel should be consulted on the issue, include that request in your written inquiry.

**QUESTION:** Our condominium documents are twenty-eight years old. I want to present to the board the idea of having them revised and brought up to date by a condominium attorney. My feeling is that this project needs to be done, no matter what the cost is. F.C. (via e-mail)

**ANSWER:** You are probably correct that it would be of substantial benefit to your association to update your condominium documents. If these documents are twenty-eight years old, there are likely a number of problems with them. First of all, the Florida Condominium Act has changed greatly in the past twenty-eight years. You may have provisions in your documents which are no longer enforceable. Additionally, a number of other laws which could apply to your community have changed.

For example, twenty-eight years ago, it was permissible for a condominium association which wished to

prevent families with children from living in the community to do so by mandating this in their governing documents. Since the enactment of the Fair Housing Amendments Act, if a community wishes to do this it must be designated as a "55 and over" community. The potential expense of defending a discrimination suit alone would outweigh, by an astronomical factor, the typical cost of updating your condominium documents.

Finally, if these documents are twenty-eight years old, I presume that they are the original documents drafted by the developer's attorney, for the developer. As you may well imagine, documents drafted by the developer's attorney for the developer are geared toward protecting the developer and not necessarily geared toward the effective day-to-day governance of your community. An attorney who focuses in community association law should be able to complete such an engagement for a reasonable price. ⚖️

---

*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](mailto: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](http://www.becker-poliakoff.com).*