

## Task Force to Debate HOA Regulation

*Carr's Effort Shows Desire to Resolve The Conflict*

FORT MYERS NEWS-PRESS, OCTOBER 12, 2003



**By Joe Adams**

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

TEL (941) 433-7707

FAX (941) 433-5933

In the past, this column has squared-off with Florida's Department of Business and Professional Regulation about proposed policies which those affected have thought ill-conceived. Deregulation of community association managers and past efforts by the DBPR to eliminate arbitration for routine condominium disputes also drew substantial opposition from various affected parties, including boards, individual homeowners, and managers.

It seems that the DBPR's recently-appointed Secretary, Dianne Carr, has made a conscious effort to change the way the Department does business with the industry it regulates, and seek balanced input from affected parties before decisions or policies are made.

For example, recently, at the request of Governor Jeb Bush, Secretary Carr appointed a Task Force on the need for additional homeowners' association legislation. I was privileged to have been appointed to that committee, which held its organizational meeting in Tallahassee on September 24, 2003. The group consists of people with widely differing points of view about different issues, which promises the opportunity for spirited debate. The Task Force's mission statement is: "The Homeowners' Association Task Force, a cross-section of representatives involved with homeowners' associations, was created at the Governor's request to harmonize and improve relations between homeowners, homeowners' associations and other related entities. The members will provide input and make recommendations for legislative change consistent with his vision for government and regulation."

The bottom line for the Task Force will ultimately boil down to whether government regulation of HOA's, similar to what occurs in condominiums, is

desired or desirable. The process should be interesting. Stay tuned for further developments. For those who will be affected, don't miss your chance to be heard.

*Now on to reader mail.*

**QUESTION:** I am a homeowner in what I believed until recently was a condominium association which should follow Florida Statute 718. But now, we have a new manager that believes we are actually a homeowners' association and should follow Florida Statute 720.

We are a community built in eleven phases. We have eleven condominium associations and a master association called the "Community Association" with a representative from each condominium association on the board of directors. The Community Association's budget exceeds one hundred thousand dollars.

Are we not governed by Florida Statute 718? Are we not supposed to have a licensed manager? I eagerly await your response. D.A. (via e-mail)

**ANSWER:** If you are confused as to whether your community is governed by Chapter 718, Florida Statutes which is applicable to condominiums, or Chapter 720, Florida Statutes, which is applicable to homeowners' associations, you are not alone. This issue has vexed community association lawyers and the state agency with regulatory authority over condominiums for more than a decade.

Based upon the ruling of the appeals court in a 1988 case called Downey v. Jungle Den, the Florida condominium statute was amended in 1991 (and

again in 1992) to re-define “condominium associations” to include not only traditional associations, but what are commonly called “condominium master associations.”

It sounds to me as though your association is a “condominium master association” and is therefore governed by the Florida Condominium Act, Chapter 718. Unfortunately, the law applicable to condominiums does not neatly fit the operation of condominium master associations. There are numerous instances where the provisions of the condo act simply do not work, including elections, recalls, authority for cable television expenses, the right to adopt hurricane shutter specifications, and a host of other items.

In 1998, the Department of Business and Professional Regulation empanelled a Study Group to specifically review this issue. Although a very detailed “master condominium association” bill was produced from the Study Group, the proposal ultimately died on the vine.

Your association is well advised to have a competent community association attorney express an opinion with respect to this issue, as it can have substantial impact on your operational procedures.

On the manager issue, no association is required to have a manager. However, if you do have a manager (regardless of whether you are a master condominium association or an HOA), that manager must be licensed if your association has a budget of more than one hundred thousand dollars, or administers more than fifty units, which appears to be the case on both counts. Good luck.

**QUESTION:** Is it illegal to have “for sale” signs on condominium common areas? If so, to whom do you report the violation if talking to the realtor doesn’t work? B.H. (via e-mail)

**ANSWER:** Nothing in the condominium laws, or any other law I know of, prohibits the placement of “for sale” signs on a condominium’s common area. However, either through recorded documents or a board-enacted rule (assuming the documents properly delegate rule-making authority to the board), an association could prohibit the placement of such signs, and most in fact do.

The violation of a covenant or rule should be reported to the association’s board of directors or the manager, preferably in writing. The board can thereafter take appropriate action to address the matter. ⚖️

---

*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).*