

Task Force Still Has Work to Do

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On November 14, Governor Jeb Bush's Task Force on Homeowner's Associations completed the third of its six scheduled meetings. The fifteen Task Force members were appointed by Department of Business and Professional Regulation Secretary Diane Carr. Carr's marching orders from the Governor in appointing the Task Force were to find "a cross-section of representatives involved with homeowners' associations... to harmonize and improve relations between homeowners, homeowners' associations and other related entities."

In addition to three delegates representing the interests of homeowners, the group consists of representatives of the development industry, resort and timeshare interests, attorneys, realtors, and an expert in alternative dispute resolution. I was privileged to have been appointed to the Task Force representing the Community Associations Institute, an Alexandria, Virginia-based non-profit organization, whose membership consists of a broad-based consortium of homeowners, community association managers, attorneys, insurance professionals, accountants, association directors and officers, developers, vendors of goods and services, and public officials.

With half the meetings under its belt, the Task Force has spent fifteen hours in session, debating issues ranging from the right to fly the American Flag to the ability of HOA members to remove their elected officials from office.

Although the Task Force will not issue its report to the Governor until January or February, and several issues have not even yet been addressed, here's a look at the decisions which have been made:

Flying the American Flag There is unanimous support for the proposition that members of all

community associations should be afforded liberal rights to fly the American Flag and even other types of flags, such as certain armed-services flags. Of course, the devil is in the details. Does a homeowner in a deed-restricted community have a right to install a hundred foot flag pole in his or her front yard? Does he or she have the right to install a spotlight so that the flag can be illuminated at night, even if the light disturbs the next door neighbor? What about affixing flags to property that is maintained by the association, and not the homeowner? Hopefully, the group will be able to hash out these items.

Recall: There appears to be unanimous support for the idea that HOA members, like their counterparts in condominiums, should be able to recall directors by majority vote. There also appears to be broad support for including more user-friendly procedures in the law, and perhaps some form of resolving recall disputes short of court action.

Disclosure: Again, there is near unanimous agreement that having potential buyers be informed of the obligations that go along with membership in an association is a good idea. Unfortunately, the most recent legislative effort to beef up HOA disclosures has created as many uncertainties as it has solved. The consensus of the Task Force is to see the law favor disclosure in a meaningful fashion.

Voluntary associations: The actual genesis of the Task Force was the Governor's veto of a measure passed by the Legislature which would have permitted special taxing districts to enforce covenants and restrictions where mandatory membership associations do not exist, basically imposing a governmentally-created association. The Task Force is in unanimous agreement with

the Governor's philosophy which led to the veto, that being that obligations of an association should not be imposed on someone who has not agreed to it.

It seems that the most controversial topic facing the Task Force is whether HOA's should be regulated by a governmental agency like condominiums are. Stay tuned. ☺

Members Should File Petition About Holiday Gift Surcharge

QUESTION: The General Manager of the association which administers our recreational facilities (master association) has charged our accounts for an employee-Christmas fund. If we choose not to donate, we are supposed to write a letter; and the account is then credited. What is your opinion of this? R.S. (via e-mail)

ANSWER: That is a new one on me.

Many country club communities do "pass the hat" to show staff year-end appreciation for a job well done.

However, placing a charge on a member's account which is not authorized by the bylaws or the member himself seems to be a practice that most people would find objectionable. If other members feel like you do, I would recommend that you present a petition to your association's board, and ask the board to instruct the manager to change his practice.

QUESTION: In regard to your recent column involving personnel and employee issues, is an oral or written performance evaluation of an employee part of the "official records" of the association? K.M. (via e-mail)

ANSWER: I do not believe that oral reports, unless they are documented in some type of written form, constitutes "official records."

In condominiums, it is clear that written performance evaluations are part of the official records. In HOA's, where the list is more restrictive, a performance evaluation is not part of the official records.

QUESTION: Our association is demanding a \$2,000.00 deposit before any work can be performed in an owner's unit. The check will be cashed by the association, and the monies returned after the work is completed if no damage is done by the contractor. My contractor has liability insurance and I think this is unfair. The cost of remodeling my bathroom has gone from \$3,500.00 to \$5,000.00 overnight. What do you think? G.O. (via e-mail)

ANSWER: That is an interesting question, and is not addressed in the condominium statute.

Obviously, I do not know what your community's governing documents say, and those documents need to be consulted as the primary source of authority.

If the declaration of condominium confers the right to charge the deposit, then there is little doubt that it would be upheld.

If the deposit is enacted through a board-made rule, I believe the board would be required to demonstrate reasonableness of the deposit. Certainly, a deposit nearly equal to the contract price seems high. However, if the contemplated work includes your contractor excavating common elements, \$2,000.00 worth of damage can be done to association property at the drop of a hat.

Short of challenging the validity of the rule (which will probably cost you more than the amount of the deposit), you might want to ask your contractor if he would put up the deposit, or defer getting paid the deposit amount until he has finished the work and the association has signed off, agreeing there is no damage.

QUESTION: My mother just moved into a Florida condo unit. She was greeted by a lump sum assessment for \$8,000.00 for "under funding." Can this be true? M.E. (via e-mail)

ANSWER: Your mother's story is one I hear every day.

Presumably, the "under funding" arises because your mother's association has not kept a proper level of what are called "statutory reserves" over the years. It's like the grinning transmission mechanic in the commercial, you can pay him now or you can pay him later.

Many associations have measured the success of their boards on whether they can keep maintenance fees low. Where this mentality exists, reserve funds are usually the first to go. Florida law requires than an association's most recent

year-end financial report must be made available to a purchaser as part of their disclosure documents. Although water over the dam in your mother's case, her experience is an object lesson for those considering buying a condominium unit. Look at the financial statements and particularly the reserves. Ask the selling unit owner to provide you with minutes of board meetings so you can see what maintenance projects have been under study, and whether funding exists for the projects.

In all likelihood, unless the seller of the unit failed to disclose a known fact to your mother in connection with her purchase, she will need to find a way to pay the assessment.

QUESTION: Does the Florida Condominium Act or any Florida law prohibit one from being the manager of the condominium where they live. S.F. (via e-mail)

ANSWER: No. However, if the condominium consists of more than fifty units, or has annual receipts in excess of \$100,000.00, the manager must be licensed whether they live there or not.

I am aware of some associations where the manager lives in the complex, and in fact some communities provide housing for the on-site manager as part of their

compensation package. This usually does not present serious problems, as long as the manager does not mind being summoned at all hours of the night, when there is a water leak or someone has lost their keys.

I have seen a few situations where the manager also serves on the board of directors. In general, although not illegal, this is a bad idea.

QUESTION: In regard to one of your recent columns, the board of our homeowner's association has concluded that it can meet in "executive session" to discuss personnel matters. I disagree with the board's interpretation. Can you clarify this matter? K.M. (via e-mail)

ANSWER: Your board should re-read the column. As stated in that report, there is no exception for "executive session" meetings for HOA boards.

The only exception for board meetings from the "sunshine" requirement is when the board is meeting in closed session with the association's legal counsel, regarding proposed or pending litigation.

The same rule applies to condominium associations. ⚖️

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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