

## Free Course on Condo, Co-Op Laws

*State Agency Proposing Few Changes in Sprinkler Rules*

FORT MYERS NEWS-PRESS DECEMBER 11, 2003



**By Joe Adams**

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

TEL (941) 433-7707

FAX (941) 433-5933

For procrastinators and others who did not get the word, a four-hour seminar on condominium law and operations is being held today in Fort Myers.

A free course on Florida condominium and cooperative association regulation will be held on Thursday, December 11, 2003 from 12:30 pm to 4:30 pm at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Ft. Myers, FL (across from Bell Tower Shops). The course will be taught by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida's Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes. I am the assigned course instructor.

The course focuses on how federal and state statutes and regulations impact associations. Participants will review guiding documents such as Florida statutes and legislation including the Condominium Act and Cooperative Act, the Fire Safety Act, and the Florida Administrative Code. The course will also touch on federal laws such as the Fair Housing Amendments Act of 1988, the Housing for Older Persons Act of 1995, the Telecommunications Act of 1996, and the Fair Debt Collection Practices Act.

Registration is not required, walk-in registrations are accepted

Please note that this course does not count for manager CEUs. Speaking of manager education and regulation, many will be pleased to learn that the Department of Business and Professional Regulation has advised industry lobbyists that it does not intend to seek legislation attempting to deregulate community association managers in the 2004 Legislative Session.

Various CAM groups and other interested parties have apparently been successful in convincing the Department that some level of oversight is appropriate for people who often handle millions of dollars of other peoples' money. It remains to be seen whether the current regulatory council will be the preferred method of oversight of CAMs, or whether movement to another agency, or private outsourcing is considered the most effective means of regulation.

Readers of this column will also recall that the Florida Condominium Act was amended during the 2003 Legislative Session addressing the retrofitting of fire sprinklers in condo buildings of 75 feet or more. The new law permits the unit owners in the affected condominium, by a two-thirds vote, to "opt out" of the retrofitting requirement as pertains to the units (apartments). Retrofitting cannot be waived for common areas.

The new law also requires state monitoring of retrofitting activity. The Department of Business and Professional Regulation has promulgated a proposed rule which would require each association that votes to forego retrofitting fire sprinklers to file a form with the state within 60 days of recordation of the retrofitting waiver certificate.

The proposed rule also provides that there is no limitations on the number of times an association may conduct a vote to waive the fire sprinkler retrofitting requirement. The rule is still in draft form and is subject to public comment. Interested parties can review the rule at [www.state.fl.us/dbpr/lsc/condominiums](http://www.state.fl.us/dbpr/lsc/condominiums) and then clicking on notice of the proposed rule, 61B-23.002. ⚖️

## Strong Letter May get Owner to Provide Key

FORT MYERS NEWS-PRESS DECEMBER 11, 2003

**QUESTION:** I am a board member for a fourteen-unit condominium association. We have one unit owner who recently changed the lock on his door and refuses to provide the board with a key for access in case of an emergency. Our rules clearly state that the board shall be provided with a pass key to all units. What can we do now? P.G. (via e-mail)

**ANSWER:** The Florida condominium statute specifically provides that the association has an irrevocable right of access to units at reasonable hours, and at all hours in the event of an emergency.

Although the statute does not specifically require owners to give the association a key, the state's condo arbitrators have consistently upheld such rules as being valid.

The first step is for the association to send a "cure letter" to the unit owner. This letter gives the owner the opportunity to "cure" (or correct) his violation. The letter must also advise the owner of the potential consequences of not complying. This letter should be prepared by your association's legal counsel.

In many cases, a strong letter from a lawyer will solve the problem. If not, the next step is to go to arbitration.

If the association prevails in arbitration, it will be entitled to recover any attorney's fees it incurs in connection with the association's action to enforce compliance.

**QUESTION:** We have lived in our new condo for three years and we are noticing deterioration of the steps going up to the second floor. They are starting to rust and also some of them have slight shaking or movement when someone goes up the stairs to the units. Could you tell me what the statute of limitations are on a structure roll defect such as this? I was told that it was five years, but this is hearsay. K.M. (via e-mail)

**ANSWER:** In general, condominium structures are covered by a warranty of fitness and merchantability imposed by the condominium statute. Accordingly, these warranties are often referred to as "statutory warranties."

Statutory warranties begin with the issuance of a certificate of occupancy (C.O.) for the building. As to the developer, the warranty is three years from C.O. or one year from transition of control (turnover), whichever is later, but in no event longer than five years from the C.O. As to the general contractor, subcontractor, and other responsible parties, the statutory warranty is three years from C.O.

The warranty period is not to be confused with the statute of limitations. The statute of limitations is the time-frame in which a suit must be brought to address legal rights. The statute of limitations in Florida for construction defect claims is four years from when the claim "accrues."

In condominiums, no claim of the association "accrues" until turnover, and that is the general yard-stick for computing the statute of limitations. There is also an exception for "latent defects," which are defects not readily discoverable in the exercise of due diligence. In most cases, the statute of limitations for claims involving latent defects is four years from discovery of the defect, or four years from when it should have been discovered.

Therefore, it sounds as though your association may still have legal rights. I would strongly urge you to consult with an attorney and an engineer to review the situation. The first few years after construction are often the only "bite at the apple" that the association and unit owners usually get. The engineer should review the stair problem, and should also review the other structural, mechanical, and electrical components of the building to ensure that your construction meets applicable building codes and industry codes of good design and workmanship.

Your attorney will advise you on the precise statute of limitations and also assist in providing the statutorily-required notice which must now be given to developers regarding construction deficiencies, which was enacted by the Florida Legislature in the 2003 Session. He or she should also review the offering documents for any special clauses involving warranty claims.

In most cases, responsible developers will attempt to resolve bona fide problems in their product without need for litigation or excessive attorney's fees. Good luck. ⚖️

---

*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).*