

Bill Assumes Many Boards are Corrupt

FORT MYERS THE NEWS-PRESS, APRIL 1, 2004



By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column continues a review of one of the strangest pieces of proposed legislation affecting condominium associations to ever have been considered by the Florida Legislature.

Past editions have looked at the Bill's desire to take away voting rights, disenfranchise owners from serving on the board, impose term limits, and take away association rights to amend documents regarding rentals. (See *Bill Would Limit Some Voting Rights*, March 11, 2004; *Term Limits Appear Too Restrictive*, March 18, 2004; and *Legislature Tackles Aggressive Agenda*, March 25, 2004.)

Today's twist, the proposal to create an "ombudsman" which might be more appropriately characterized as the Wolf in Sheep's Clothing. Webster's Dictionary defines an ombudsman as a "government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials."

Under the "all association boards are corrupt" philosophy of House Bill 1223/Senate Bill 2498, the ombudsman would possess Gestapo-like authority that would have made Senator Joe McCarthy salivate.

The primary purpose of the ombudsman is to "assist any unit owner in the operation and filing of a complaint" against their association.

In addition to other powers, the ombudsman could conduct "surprise" inspections of condominium associations and rummage through their books and records. Call me old-fashioned, but I thought our forefathers spilled their blood over two centuries ago to stop the abuses that inevitably flow from unbridled governmental power.

The proposal also grants the so-called ombudsman the authority to prefer criminal charges against condominium association directors. While the small percentage of association directors or managers who steal should obviously be prosecuted by appropriate authorities, the clear flavor of this Bill is that rampant corruption is part of Florida's current condominium governance culture.

Perhaps the most Orwellian proposal is a clause that would permit the ombudsman (an un-elected, unaccountable agent of government) and the agency which employs him or her, to remove directors from office for the act of "electoral fraud," which is nowhere defined in the statute. Petty details like due process of law apparently will not stand in the way.

Miraculously, this Bill is still alive and well in both chambers of the Legislature and will likely become law unless the silent majority rises to be heard. If you don't take the time to protect yourself now, don't complain when your resident condo commando has a free prosecutor to drag your association through the mud. ☹

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.

Lee County Presents Fair Housing Forum

FORT MYERS THE NEWS-PRESS, APRIL 1, 2004

On Thursday, April 8, the Lee County Office of Equal Opportunity, in conjunction with the city of Fort Myers Community Redevelopment Agency, will present a forum called "Simplifying Fair Housing Issues."

The seminar will run from 8:00 a.m. to 10:30 a.m. at the Royal Palm Yacht Club, 2360 W. First Street, Fort Myers. Attendance is free, but registration is limited to 110 participants. Reservations may be made by calling the Lee County

Office of Equal Opportunity at 335-2221 and placing your reservation with Sandra.

Presenters will include attorney Michael Whitt and Kami Corbett and Cecile Johnson from the Lee County Office of Equal Opportunity. I will also speak on "55 and over" housing. Topics will include the "Three A's" - ADA, Accessibility, and Accommodations. Reservations will be closed when 110 registrants have been confirmed. ♪

To Qualify as Association, Two Tests Must be Met

FORT MYERS THE NEWS-PRESS, APRIL 1, 2004

QUESTION: *I am a newly elected member of a homeowners association. We are set up as a not-for-profit corporation. Membership in the association is mandatory, and if you do not pay assessments, the association can file a lien against your home. Does this bring us under Chapter 720 of the Florida Statutes? Also, there are weekly meetings at the clubhouse with a quorum of directors attending, along with the manager. The board will not post notice of these meetings, and claim that they do not have to because there is no agenda for the meeting. What is your opinion.* S.P. (via e-mail)

ANSWER: To qualify as a "homeowner's association" under Chapter 720 of the Florida Statutes, your association must meet two "tests." First, membership in the association must be mandatory. Secondly, if a parcel owner does not pay assessments, the association must have the right to file a lien for nonpayment. Accordingly, your association is governed by Chapter 720.

Under the statute, notice of any meeting of the board must be properly posted, and parcel owners must be permitted to attend (except attorney-client privileged meetings). The fact that no agenda has been prepared for the meeting does not change the application of the law. Your board should conform its practices to the law.

QUESTION: *At a recent board meeting, allegations were made by a unit owner who claimed that improper favors were given to board members by the manager. These accusations were included in the draft of the minutes but subsequently "expunged" when the minutes were adopted by the board. The reason given is that the accusations were too "inflammatory." Was the board acting correctly in doing so?* J.M. (via e-mail)

ANSWER: In general, minutes of a board meeting should reflect what was done, not what was said. Therefore, remarks from the floor are typically not included in a properly kept set of board minutes.

If a homeowner has made charges against members of the board which, if false, could prove defamatory, I would typically recommend not publishing those accusations in the minutes. Otherwise, the association could be subject to liability.

QUESTION: *The declaration of covenants for our homeowner's association states that two-thirds of the members must approve "capital improvements." However, the law defines a "quorum" as thirty percent of the "members." Which controls?* R.H. (via e-mail)

ANSWER: A quorum is the minimum number of voting interests which must be represented at a meeting in order for business to be lawfully

conducted. As you have noted, Florida's law applicable to HOA's states that thirty percent is an adequate quorum.

However, the governing documents may also require higher levels of approval for various types of action. For example, the clause you have cited appears to state that approval for a "capital improvement" requires approval from two-thirds of the total voting interests (there is typically one voting interest per parcel). Therefore, you would need the larger number of votes for that item to succeed.

QUESTION: *Does the president of our board have the authority to meet with the management company representative without inviting any of the board members?* P.U. (via e-mail)

ANSWER: There is no prohibition in the law against meetings between the board president and the management company representative. In fact, that would be a common occurrence. Most associations designate a single point of contact with the management company, and that is usually the association's president.

Obviously, the president could not make decisions with the manager that would otherwise require action of the board of directors.

QUESTION: *I recently inherited a condominium unit from my mother. The condominium is a "55 and over" condo. I had been living there with my mother for over four years prior to her death, and am now age 51. The association says that I cannot live there alone. What is the law on this issue?* J.D. (via e-mail)

ANSWER: It depends on how your association's "55 and over" clause is written. The law only requires that eighty percent of the units be occupied by one person age 55 or older. The remaining twenty percent is typically set aside as a "cushion" to address hardship situations, including the death of a non-age qualifying spouse, inheritances, purchase of a unit for caretakers, and the like.

Your case would appear to present a classic "hardship" situation and you should ask the board if the association has a hardship application procedure. ⚖️

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.