

There are Reasons to be Thankful this Holiday

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Thanksgiving Day includes many traditions: stuffing ourselves with turkey, enjoying the company of family, and watching football. Of course, the holiday's roots reportedly go back to our pilgrim ancestors and their ideas about celebrating good fortune and sharing with neighbors.

2004 was not a year of good fortune for Southwest Florida, including its condominium and homeowners' associations. Many of our communities' residents will face a Thanksgiving with no home in which they can entertain family, gorge on turkey, or watch football. In fact, insurance money for alternative housing arrangements is beginning to run out for many who were dispossessed by the hurricanes.

Investors in resort condominiums in areas like Sanibel and Captiva face a Thanksgiving holiday with no guests renting their units to help pay mortgages, taxes, and association assessments. In fact, many can also look forward to empty rooms for the Christmas holidays and the "high season" months thereafter following, while the rebuilding goes on.

Given the historic nature of this year's hurricane devastation, it would be easy to put on a grumpy face and say that there is not much to be thankful for. However, the truth of the matter is that adversity brings out the best in good people, and our area is blessed with many good people. Here's just a few who deserve our thanks:

- **Association Boards:** Service on an association board can be a thankless task in normal times. Making major decisions about how to put the pieces back together after a calamity of this magnitude can be daunting. As the old saying goes, you cannot please all of the people all of the time. Just try to please everyone when you

are dealing with their most significant financial investment. Over the past several months, I have had the privilege of working with many association volunteers who have proven themselves more than capable for the challenge. I can name many people who, without an expectation of compensation or congratulations, spend most of their waking hours with association disaster recovery. We should all be thankful for them.

- **Homeowners:** In almost every hurricane-ravaged community I have worked with, boards have noted tremendous patience, support, and appreciation from the community's home owners. While there are always a few "me first" people in any setting, most have shown great support for their boards, in items ranging from rebuilding votes to the prompt payment of necessary assessments for damage repair. We should all be thankful for them.
- **Community Association Managers:** Whether employed as an on-site manager, or assigned to an account through a property management company, association management is a tough job in normal times. In many cases where there is high absentee ownership or seasonal occupancy, the manager is the "eyes and ears" for all of the owners. Of course, most of the property owners were in an understandable state of panic after the hurricane hit, and have looked to the managers for information and assistance. Often for no additional compensation, so many managers have stepped up in a time of need. We should all be thankful for them.
- **Mother Nature:** As strange as it may sound, I think it can be said that our area was lucky that we only suffered the damage we did. First, Florida's three major hurricanes which followed

Charley all had a bead on Southwest Florida at some time or other. Thankfully, they all chose to go somewhere else. As to Charley itself, we can be thankful that the storm's fast-moving nature prevented the significant flood surge predicted by many scientists. Although the damage received was certainly bad enough, a ten or fifteen foot

storm surge through populated areas of Southwest Florida would have increased property damage, and perhaps loss of life, several-fold.

While Charley's scars will be seen for some time to come, we will ultimately build back better than we were before. We can all be thankful for that. ⚖️



Question: We have a large condominium association. Our annual meeting takes a very long time because of the length of time it takes to open the election envelopes and verify the information on them. Is there anything we can do to speed up the process? L.U. (via e-mail)

Answer: The Division of Florida Land Sales, Condominiums, and Mobile Homes, has adopted a rule allowing an association to verify outer envelope information in advance of the meeting. The rule allows the board of directors to appoint an "impartial committee." The appointment of the impartial committee should be at a properly noticed meeting of the board. The impartial committee can meet prior to the annual meeting, but on the same date as the annual meeting. The meeting of the impartial committee to verify outer envelope information must be noticed 48 hours in advance and must be open to all unit owners. The term "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;
2. Officers;
3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope must be checked against the list of qualified voters. The voters must be checked off on the list as having voted. The ballots, however, cannot be opened and counted until the annual meeting.

Question: Our condominium association's recorded documents are silent with regard to whether owners

or tenants may have pets. The board has adopted a rule stating that tenants may not have pets. Is this valid? T.G. (via e-mail)

Answer: First, you must look at your condominium documents to determine whether the board of directors is authorized to adopt rules and regulations involving use of the units (apartments). Some condominium documents allow the board of directors to make and amend rules and regulations. Others require rules and regulations to be approved by the owners.

If the board has the authority to adopt rules and regulations regarding unit use, a board-enacted rule will be considered valid if it does not conflict with either an express provision of the declaration or a right "reasonably inferable" therefrom.

Also, the rule must be reasonable. If the recorded condominium documents are silent with regard to pets, then a rule allowing owners to have pets, but not tenants is valid probably if the Board has a reason to support the rule. The issue has not been addressed by the courts, but similar rules have been upheld in the state's condominium arbitration program.

The condominium statute also requires written notice of any board meeting at which amendments to rules and regulations regarding unit use will be considered to be mailed or delivered to the unit owners and posted conspicuously on the condominium property not less than fourteen (14) days prior to the board meeting.

Question: My condominium association says that I have to give them a key to my unit in case they need to go into my unit while I am not there. The condominium documents also say that I am supposed to give a key to the association, but I am not sure if they have the right to require a key or go inside of my unit without my permission, or while I am not there. E. O. (via e-mail)

Answer: The provision in your condominium association's documents that requires you to provide a key, as well as the Association's request that you provide the key, are both valid. Section 718.111(5) of the Condominium Act states: "the association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units."

As you can see, the Condominium Act specifically gives the association the irrevocable right to access your unit for the purposes described in the referenced section. The association's requirements that you provide a key are valid, and the statute does not require that you be present, or give permission, for the association to enter your unit for the purposes stated in the statute. Of course, the association must exercise its right of entry in a responsible manner and take steps to ensure that the key you have given is protected from unauthorized use. ⚖️

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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