

Association Honors are Handed Out

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

There are approximately two million condominium residents in the State of Florida. Since homeowners' association populations are not tracked by the government, there is no reliable count on the number of HOA residents in Florida. Most experts place the HOA resident population at several million. Many estimate that at least forty percent of residents of single family dwellings in Florida belong to some type of mandatory membership community association.

Community association management and operations in Florida is a multi-billion dollar industry. Those who provide goods and services to associations include accountants, attorneys, insurance agents, property managers, telecommunication providers, landscaping contractors, engineers, surveyors, computer software vendors, banks, and virtually every type of construction contractor, including general contractors, roofers, painters, restoration companies, disaster response companies, and many more.

The development of community association laws and practices involves balancing the competing interests of many parties. Balance must be struck between consumer rights and a developer's ability to engage in lawful development and sales activity. Balance must be achieved in disclosure laws and the rights and obligations of real estate agents. There remains an ongoing debate about the relationship between community associations and local governmental entities, where association services overlap governmental services, thus resulting in potential double taxation of community association residents.

Of course, there is no greater focal point on interest-balancing than in the area of homeowner rights and responsibilities versus the powers and duties of members of their boards of directors.

All of the professions and trades which supply goods and services to community associations have their own trade groups to address matters peculiar to their industry. Insurance agents have their associations, attorneys have their Bar committees, contractors have industry trade groups, and so it goes for all who do business within the world of community associations.

Unlike providers of goods and services who have a profit motive, associations themselves typically do not have the financial or logistical resources to speak as a single voice.

Recognizing the need for such an entity, the Community Associations Institute was formed in Alexandria, Virginia some thirty years ago. CAI has 55 chapters in the United States, with 7 chapters in Florida alone.

Because of our heavy condominium and HOA development, the local chapter of CAI has been one of the country's most stable and well-performing chapters. The local chapter, known as the South Gulfcoast Chapter, boasts some 385 members, including 180 associations and 175 managers.

The Chapter's general focus is on education of community association members, both owners and board members, as well as manager education. The Chapter hosts numerous educational seminars throughout the year, and is the contract provider with Florida's Department of Business and Professional Regulation for condominium education.

Each year, the South Gulfcoast Chapter of CAI honors those who have stood out in the local community association scene. On December 4, 2004, the Chapter hosted its Annual Awards Dinner, and recognized the following people for their contributions:

- **Volunteer of the Year:** The members of the Chapter's Governmental Affairs Committee were feted for devoting countless hours to efforts involving condominium and HOA legislation. Included on the committee are local attorney Richard D. DeBoest II and Community Association Manager Bill White.
- **Manager of the Year:** This year's award was given to Kyle Kinney of the Pelican Bay Foundation in Naples. Kinney was recognized for displaying a consistently high level of professionalism, diplomacy, and work ethic in representing the interests of some 14,000 families in the Pelican Bay Development.
- **Board Member of the Year:** Pelican Bay was well represented in 2004. Honors for board member of the year went to Pelican Bay Foundation President, Gerhard Seblantigg, in recognition of outstanding service to his Community.
- **Vendor of the Year:** Co-awards were given to Robert L. James on behalf of R.L. James, Inc. and Chri-sann O. Folk on behalf of Time-Warner Cable.
- **Legislator of the Year:** Last but not least, a member of our local legislative delegation received CAI's statewide award for "Legislator of the Year." This year's award went to J. Dudley Goodlette (R-Naples), for his tremendous efforts during the 2004 Legislative Session. Among Representative Goodlette's many efforts on behalf of community associations in 2004 was key assistance in the passage of a bill which made it easier for community associations to purchase automatic external defibrillators, by providing greater legal immunity for associations. Representative Goodlette's efforts will likely have a direct hand in saving someone's life some day.

Associations, managers, board members, homeowners and vendors interested in CAI membership should contact the Chapter's Executive Director, Bob Podvin, at 239-466-5757. ☞



Question: Our condominium association bylaws say that we can have between three and nine board members. Is it true that the Florida Statutes says that if a specific number of board members is not spelled out, the number of board members must be five? J.S. (via e-mail)

Answer: Chapter 718 provides that the bylaws are required to describe the form of administration of the association, including the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any of the officers and boards. The statute goes on to state that in the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units. An arbitration decision decided by the State's Division of Florida Land Sales, Condominiums, and Mobile Homes, held that if the bylaws only provide a range of numbers, then the number of board of directors must be set at five. However, the arbitrator indicated that

the bylaws could be amended to provide for a specific number other than five or a procedure for setting the number of board members. For instance, some bylaws state that the board of directors will be composed of a number within a certain range, but the number would be determined either by the board of directors or by the owners. In that case, whatever number is set by the board or the owners would control.

Question: In a recent article, you stated that with respect to financial reporting requirements, the governing documents for the association may impose more stringent requirements than what is required by law. Our bylaws state that "in accordance with Section 718.111(13) of the Condominium Act, not later than sixty (60) days after the close of each fiscal year, the board as per the Florida Statutes shall distribute or otherwise make available to the owners of each unit a report showing in reasonable detail the financial condition of the association." Am I correct in concluding from your article that the sixty days in our bylaws prevails as a requirement for the statement to be available? B.M. (via e-mail)

Answer: The language in your bylaws refers to the requirement in the statute prior to it being amended a few years ago, that required the financial report or financial statement to be provided to the owners

within sixty days following the end of the fiscal year or calendar year or annually on such date as otherwise provided in the bylaws of the association. It is unclear from the wording of your bylaws whether it was the intent to make the deadline consistent with the statute as amended. You should also look at the amendment section of your bylaws to see if it incorporates changes to the statute. If so, the new (more liberal) deadlines in the statute probably apply. If not, you are likely stuck with the 60 day deadline.

Question: I am having a difficult time with my homeowner's association as each and every "discussion" has taken place via e-mail. In fact, the board has not once voted on any issue or had any discussion on issues. Our meetings are mainly proclamations of decisions already made by the board. I am assuming that the board is discussing items without a quorum (one board member talks to another, and then to the other, etc.). I have scoured the Florida law and assume it has not caught up with the technology, but I may be wrong. I would appreciate any help you could give me. K.L. (via e-mail)

Answer: Although board members can certainly communicate with each other via e-mail (as well as in person or over the phone), the problem arises when e-mail is used to conduct board business instead of holding a properly noticed board meeting, or to decide the issues in private prior to an official board meeting. Board meetings must still be noticed, must be open to the owners, and minutes must be taken (and retained as official records of the association).

The allure of using e-mail as a means of communication and decision making between board members is evident. E-mails are quick, easy, and convenient.

E-mail cannot be used as a means to circumvent the requirements in the statute to make decisions required to be made by the board at properly noticed board meetings. However, there are also cases where a decision requires executive action (through the

president or manager) and not formal action of the board. In such cases, I think it is acceptable for the president or manager to keep the rest of the board informed by e-mail, and to solicit their opinions in the same manner. Obviously, there is a fine line and a potential for abuse. This is one area where the law needs to catch up with technology.

Question: I live in a private golf and country club that is operated by a master homeowners association. Can the board refuse to reveal the salary of the employees of the club, including the Club Manager and Grounds Superintendent? M.M. (via e-mail)

Answer: The law was changed for HOAs governed by Chapter 720 effective October 1, 2004.

Prior to October 1, only those items specifically mentioned in the statute were considered "official records" of the association. Accounting records were amongst the "official records" defined in the old law, with some debate as to whether payroll records would be included.

The change to the law substantially broadened the concept of "official records" in HOAs, and basically included all records of the HOA as "official records", unless subject to one of the enumerated exceptions in the law.

One of the enumerated exceptions is employee records and personnel records, which are not available for inspection. I happen to have been the draftsman of this proposal on behalf of the HOA Task Force, and can tell you that it was intended to protect employee privacy rights. In my opinion, the exclusion applies to salary records, and they therefore are not available to inspection by Club members, assuming you are in an HOA governed by Chapter 720.

Conversely, if your association is a "master condominium association" governed by Chapter 718, there is no similar exemption in the law and payroll records would be available for inspection. ⚖

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.