

Holiday Bonuses Raise Issues for Some

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The holidays and year's end involve many customs in business and society. One such custom is the so-called "Christmas Bonus."

Unlike most businesses, community associations confront unique issues when addressing the issue of bonuses, which occasionally create a stir within the community, and unfortunately, sometimes create bad feelings with employees when handled improperly.

The most straightforward, but occasionally controversial aspect of bonus administration is between the board of directors and the association's employees. In such situations, it is like any other employer-employee relationship. The employer (association), through its board, determines if a bonus program is an appropriate management tool. In cases where a bonus program exists, bonuses are given to employees both in recognition of past contributions, and as an incentive to do a good job in the future.

One challenge that is somewhat unique to associations involves the fact that an association must budget for its planned expenditures. When a management level employee is involved in developing the budget, which is often the case, this results in the potential recipient of a bonus having a hand in determining how much should be set aside. This problem is usually addressed by the manager limiting his or her input into bonus budgeting for other staff members, with the board determining whether allowance needs to be made in the budget for the executive manager's bonus.

Another challenge involves the fact that because the budget is usually developed a year in advance of the possible bonus, there is no way to determine how

the board in office at bonus-time will feel about the employees' performance, and whether (or in what amount) bonuses will be paid. This can create management issues because when a set amount has been budgeted for a bonus, human nature is that the employee comes to count on it in making their personal financial plans.

Another difficult issue which often arises in the association context involves cases where owners within the community also wish to personally acknowledge the efforts of association employees. On-site managers, custodial employees, maintenance personnel, and association office staff are the typical types of employees who receive private gifts from the members.

When individual home owners bestow such gifts directly upon those association employees they feel deserving, problems can arise for the association. This is especially true when in situations where those giving the gifts are rewarding personal services the employee has done for the individual, rather than their good work for the association, where associations permit employees to do "off-duty" work for individual owners. Management problems can arise in these circumstances when concerns exist over whether the employee is performing personal owner services on company time.

In my experience, most associations do not have a policy regarding individual owner gifts to employees. However, some associations have established guidelines limiting, prohibiting, or somehow controlling gifts from owners to managers and employees.

Although an association probably cannot legally prohibit an association member from giving a gift to whom they please, the association could, through ap-

appropriate personnel means (written agreement, employee manual, etc.), prohibit employees from accepting gifts from individual owners. Unfortunately, this policy creates problems of its own, making the board seem draconian, or like Scrooge.

Some associations try to strike a balance by permitting home owners to contribute to a voluntary fund (which is additional to any bonus program the association may or may not have) and then having the anonymous contributions remitted to the employee

through the association, or where more than one employee is involved, permitting the board to split up the pot.

Between the financial woes brought by the 2004 hurricanes and tourist industry worries, many local employers have made drastic cut-backs. Many workers who service community associations are worried. For those who can afford to do so, sharing a bit of your good fortune with those who help make your life easier is a nice thing to do, provided that you do it within your community's guidelines. ♪



Question: Our condominium has a unit that is owned by five families. None of them reside in the unit, but they all live in the vicinity. What can the association do to protect abuse of parking spaces and the use of common areas by a large number of people. Is there anything the association can do to prevent this type of occurrence or ownership in the future? S.W. (via e-mail)

Answer: Whether your association can address current problems will depend on the language found in your declaration of condominium and rules and regulations.

Most “boilerplate” condominium documents contain vague references to “single family” use requirements for condominium units. In the absence of a well-drafted definition, just about any use that is not commercial will pass the “single family” test.

If your board is given the authority to adopt rules and regulations, then the board could look at rules, which it would need to apply to all owners, restricting the number of parking spaces a single unit could use, the maximum number of people from one unit who could use a common area facility at the same time, and the like.

The situation you have described is known as “fractional ownership”, and is becoming an increasingly popular means of property ownerships in desirable resort locations, such as ski areas, or here in Southwest Florida.

In my opinion, the association could amend the declaration of condominium to prohibit future fractional ownership. For example, a common clause would require that units be owned by a single individual or married couple. Since most associations wish to permit flexibility for estate and tax planning, artificial entity ownership is usually also permitted in those clauses, including trusts, corporations, family partnerships, and the like. In cases where ownership of the unit is through an artificial entity, the owners are required to designate a “primary occupant” who must be a natural person.

If your association adopts such an amendment to the declaration of condominium, which your attorney should be able to assist with, you will be able to avoid a repeat or escalation of the concerns often affiliated with fractional ownership.

Question: In one of your recent columns, you stated your opinion that associations should not make their meeting minutes available to the general public. You stated that you felt it would be appropriate to post minutes in “a secure setting, such as a community website.”

Our community has a website that requires a user name and password to get past the home page. The user name and the password is the same for everyone in the community, and has been published in our newsletter. Would you consider that a “secure community website?” R.H. (via e-mail)

Answer: Yes.

Although the site is certainly not “secure” in the eyes of a computer hacker, the association has made reasonable efforts to ensure that the general public

cannot access the content, which I believe would be sufficient to retain any organizational privilege claim that may otherwise exist.

Question: The board of directors for our condominium association devotes countless hours to helping protect our investment. Most residents feel that our board does a marvelous job. We are discussing whether to reduce or waive the monthly condo maintenance fees for those who serve on our board. Is this legal? J.T. (via e-mail)

Answer: It is legal, although not something I would do lightly.

First, the association needs to review its bylaws. The Florida condominium statute states that directors serve without compensation unless otherwise provided in the bylaws. Most bylaws provide that directors serve without pay, but are entitled

to reimbursement for out-of-pocket expenses (for example, if a director has to make a long-distance telephone call involving association business). Most attorneys write bylaws this way so that if the directors are going to be paid, it takes a conscious decision by the unit owners to authorize pay, that is through the bylaw amendment procedure.

Although I am not aware of any court cases directly on point, I also think that once directors start getting paid, they may be held to a higher standard of care, and possibly take on more liability than is the case with volunteer board service.

Finally, if the functions performed by the board for compensation also constitute acts which involve “community association management”, there is also a question whether the directors would need to become licensed as managers under Chapter 468 of the Florida Statutes. ⚖️

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.