

Resolutions Can Assist Associations

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This column was written and first published in 2003, and received more comments than any other column I have written in ten years.

The New Year marks a chance to reflect on past successes and failures. Of course, the customary way to shoot for success in the upcoming year is the New Year's Resolution. Here are ten proposed New Year's Resolutions for community associations, five for owners and residents, five for the Board.

For the owners and residents:

- Remember that the association is not a landlord and the board members are not the building superintendent. They are volunteers. They are human beings who will make mistakes.
- Volunteer to do one thing for your community during the upcoming year. Whether it is typing up an edition of the community's newsletter, or soliciting bids for some planned project, every little bit helps.
- The next time you get upset about something that has happened at the association, wait twenty-four hours to address it. It is amazing how a night's sleep sometimes puts a new perspective on things.
- Follow the rules. There is at least one rule in every community that some resident despises, or thinks is silly or outdated. However, that rule may be very important to your next door neighbor.
- Sit down and read the association's governing documents. In the flurry of activity involved in buying a new home, very few people have the time or inclination to read through a thick stack of condominium

or homeowner's association governing documents. One of the most common complaints I hear from boards when a dispute erupts in a community, is that the problem would have never happened if the owner would have read the documents.

Now, for the board:

- Remember that an owner questioning what is being done, or suggesting another approach, is not necessarily an attack on the board. Great ideas sometimes come from the most unexpected sources.
- Try to create an environment that encourages community participation. Sometimes it is easier and faster to just do things yourself. However, the more your association is perceived as a partnership, the smoother things will go.
- Read your governing documents. Owners are not the only ones guilty of not knowing the community's governing documents. If there are archaic or un-enforced rules, it is time to look at changing them.
- Review all of your relationships. Take a look at each vendor providing goods and services to your association. Are they meeting your expectations? Keeping in mind that you often get what you pay for, the cheapest is not always the best.
- Don't sweat the small stuff. While board members should take their obligations seriously, some things just are not life and death matters. Keeping things in proper perspective and good balance (admittedly easier said than done), makes board service much more rewarding.

If you are like most of us, you will probably break most of these resolutions, but at least it is worth a try. ☺



Question: I live in a condo located in the Florida Panhandle. Our area was hit very hard by Hurricane Ivan. My personal condominium unit (which is on the building's third floor) sustained little damage. However, the top floor and the ground floor of the building were extensively damaged. Just as I was getting ready to move back in, the association turned off the power to the building and also turned off the water. Apparently, the contractor who is performing the repair work has threatened to walk off the job if any residents move back into the building. We are told that the work may take up to six months. I am at a loss as to what to do. In am told that I cannot get alternative living insurance and do not qualify for aid. What is your opinion? N.S. (via e-mail)

Answer: Your story is, unfortunately, not uncommon.

The Florida condominium law does not contain much in the way of guidance as to the scope of a board's authority when dealing with a calamity of this magnitude.

In my opinion, if adequate facts exist to justify the association's decisions, a court would be likely to uphold the board's ban on occupancy of the building. Although your particular apartment may be habitable standing alone, you must go to and from the apartment, which can present dangers with heavy construction going on.

I would recommend that you ask the board to formally declare the units uninhabitable and unsafe for occupancy. Your insurance company may then take a more favorable view of that situation, and you should also reinvestigate whether federal assistance may be available.

Question: I live in a subdivision with about sixty homes. We have a voluntary association which administers one common area, a boat basin. Our deed restrictions were recorded in 1967 and our

association has been inactive for a number of years. What would be involved in making our association active? B.J. (via e-mail)

Answer: The first thing you should do is to check to see if your association is still an actively registered corporation with the Division of Corporations. You can check by going to the web at www.sunbiz.org.

If the association is not active, it can be reinstated by paying past years' filing fees and probably an administrative penalty of a couple hundred dollars.

You should also look at whether your deed restrictions have been extinguished by Florida's Marketable Record Title Act. Restrictions recorded in 1967, unless properly preserved or recited in individual transactions, may well be extinguished by MRTA.

If your association is voluntary, you cannot make it mandatory without unanimous approval of all members.

Some associations in your situation look at creating special taxing districts to assist in maintaining commonly utilized facilities, such as your boat basin. This may also be a viable option for you. Good luck.

Question: Could you please explain to me the rationale for the recent change to the Florida Statutes, Chapter 720, regarding employee records. The new law states that association members do not have access to an employee's employment and personnel records. Isn't the association the employer? T.W. (via e-mail)

Answer: Prior to the new law taking effect (which was October 1, 2004), HOA members were severely limited by the law in terms of what records they had the right to inspect. The intention of the change in the law was to provide home owners with much broader inspection rights, similar to what exists for condominiums.

However, it was felt that certain types of records are normally considered to enjoy some element of privacy, such as an employee's personnel records, or

using another example, health insurance claims the employee may have filed. For this reason, employee records were not made available to inspection by members.

The association members are not the employer, the association is the employer. The executive officers of the association would, for proper purposes, have access to these records.

Question: I recently became a part-time resident in Florida, and love it. I am thinking about running for my condominium association's board. However, one board member advised me that they have a policy which states that an owner who wishes to run for the board must agree to stay in residence year-round. This does not seem right to me. What is your opinion? D.B. (via e-mail)

Answer: In my opinion, the board's policy is invalid and unenforceable.

The Florida Condominium Act states that "any unit owner" is eligible to run for the board. There are only two recognized limitations on one's ability to run for a condominium association board. The first involves convicted felons who have not had their civil rights restored. The second exception involves associations where term limits are imposed by the bylaws. Florida's agency which governs condominiums has upheld term limits.

Other restrictions (including residency requirements, requirements that unit owners be current in assessments, etc.) are invalid.

Question: I am a board member in our condominium. Recently, the board adopted a budget which was \$20,000.00 lower than what we actually spent last year. I objected, since this was not a balanced budget. Are we required to adopt a balanced budget or can we engage in deficit spending? A.Y. (via e-mail)

Answer: If the association's board reasonably believes that it can operate on less money than was spent last year, then it would be entirely appropriate to adopt a budget for a lower amount. In fact, many associations will adopt budgets for 2005 involving less money than was spent in 2004, because of unexpected hurricane expenditures in 2004.

However, the board is not exercising its fiduciary duty if it is "low-balling" the budget, simply to make assessments seem lower than what they really need to be. The Florida Condominium Act specifically requires the association to assess not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses of the association, as well as the unpaid operating expenses previously incurred. ⚖️

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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