

Earthquake Ruling has Impact Here

FORT MYERS THE NEWS-PRESS, JANUARY 6, 2005



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Over the next several months, millions of Americans will be busy adding up figures and digging up records in order to square up their 2004 taxes with Uncle Sam. Although most community associations are not-for-profit corporations, contrary to popular belief, associations are generally obligated to file tax returns, and in many cases pay taxes.

For community associations with a fiscal year ending December 31, federal tax returns must be filed by March 15 of each year, unless an extension has been granted. The association's tax rate will either be 15% or 30 % of certain types of net income, depending upon the association's tax filing situation.

Recently, the Internal Revenue Service issued a private Revenue Ruling involving whether insurance proceeds received by a condominium association, for earthquake damage, were taxable. This Ruling may be of interest to condominium associations in Florida which receive hurricane insurance settlements, as well as to unit owners who need to keep track of their "basis" in the unit, which will affect how much of a gain the owner realizes when the property is sold.

In the case which was subject to the Revenue Ruling, the association filed suit against the insurance company because they felt that not enough money had been offered to repair the damages to the common areas. An out-of-court settlement was reached two years after the earthquake

Several owners had made repairs in the interim, and the association intended to distribute portions of the settlement proceeds to reimburse such owners.

The IRS concluded that the funds received by the association, in its capacity as agent for the owners, were not taxable to the association.

The IRS also ruled that under the facts of that case, every unit owner would be required to reduce his or her basis in the unit by the proportional amount of recovery received by the association attributable to the common areas and the unit. The unit owners would likewise be entitled to increase their basis in the unit by their proportional share of the amounts used or retained by the association for the repair or restoration of common areas, plus the amounts expended by the owner to repair damages to the unit resulting from the earthquake.

While Revenue Rulings are not binding on parties other than the taxpayer involved, they are the best indication of the IRS' position on a point of tax law. Associations and individuals should consider the effect of settlements received from the 2004 hurricanes in both the association's tax picture, as well as the individual owners' taxable basis in the unit. See I.R.S. Revenue Ruling 2004-39017...Release Date 9/24/04

Law Firm Sponsors Legal Seminar, Including Hurricane Legal Issues

The Law Firm of Becker & Poliakoff, P.A. will be holding two seminars in Southwest Florida involving condominium, cooperative, and homeowners' association law. Topics include review of court cases and legislative changes during the past year, as well as disaster planning and recovery, and post-disaster legal issues.

The Fort Myers seminar will run from 8:30 a.m. - 12:00 p.m. at the Barbara B. Mann Performing Arts Center, on Saturday, January 8, 2005.

The Naples seminar will run the same hours and will be held at the Naples Bath & Tennis Club on January 22, 2005. Both seminars are free of charge, and open to the public.

For registration call (239) 433-7707 or e-mail cquinones@becker-poliakoff.com. ☎



Question: Is it correct that the “official records” for a condominium association must be on paper or in a form which is easily transferred to paper? (A.B., via e-mail)

Answer: Yes. The list of “official records” is contained in section 718.111(12) of Florida’s condo statute. Most of the records listed in the law refer to “a copy” or a “photocopy” of the record, such as the condominium documents, meeting minutes, a current roster of unit owners, current insurance policies, etc.

If the documents that are specifically listed as an official record are not contained on “paper,” the association would still need to maintain those records in a form that could be inspected or copied by unit owners. Section 718.111(12)(a)15 of the law also states that “all other records” of the association which are not specifically mentioned in the statute, but which are related to the operation of the association, are an official record too.

Therefore, records related to the operation of the association, if kept in a manner other than on paper (such as electronically) would still need to be made available to the owners in a manner in which they can be inspected and copied.

Question: Our association is getting ready for our upcoming annual meeting. We are not sure how to determine the officers, once the directors are elected. Do the directors nominate among themselves who takes which office, or is another meeting of the homeowners held? (F.P., via e-mail)

Answer: The procedure for electing both directors and officers should be set forth in the association’s by-laws.

In the vast majority of cases, the association members (if it is a condominium, they are called “unit owners;” if it is a homeowners association, they are “parcel owners”) elect the board of directors at the annual meeting.

Typically, the by-laws require the board to then hold an organizational meeting within a set time of the annual meeting, usually ten days, for the purpose of electing officers. Many boards hold their organizational meeting immediately after the members’ annual meeting, although that is not required by law.

At the organizational meeting, the directors elect their officers, typically a president, vice-president, secretary, treasurer, and perhaps assistant officers. The officers need not be directors, unless the by-laws require the officers to also be directors.

The board is entitled to vote for its officers by secret ballot. This is the only area where the law allows secret voting by board members, all other board votes must be recorded in the minutes by roll call.

Question: I live in a mobile home park, where the park is owned by a for-profit company to whom we pay rent. Are we subject to Chapter 720, the statute applicable to homeowners associations? (A.G., via e-mail)

Answer: No. Section 720.302(4) of the Florida Statutes expressly exempts mobile home park associations from the law. Your park is governed by Chapter 723 of the Florida Statutes.

Question: We live in a townhouse community, operated by an association. 26 of the units border one of the three ponds in our community. There are 100 units in total. It has been determined that all of the ponds need to be dredged. There is a question whether the units which border the pond should pay more (some argue that it increases their property value) or whether everyone should be equally assessed. (M.V., via e-mail)

Answer: A review of your governing documents would be necessary to give a definitive answer. I assume that the lakes are either the “common areas” (if the community is operated by a homeowners association) or “common elements,” if the community is a condominium.

In almost every case, man-made lakes (ponds) within residential developments are part of the surface water drainage system, and are the responsibility of the association. Typically, all owners share equally in the

maintenance of common area surface water drainage installations, even if their individual property is not “on the water.”

Therefore, although your governing documents may provide a different twist, typically all

owners would be responsible to share the cost of maintaining the lakes, including dredging. The costs would likely be shared on a 1/100 basis, unless the documents provided for weighted assessments based on unit size, and then the weighted formula would control. ⚡

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.