

Shedding More Light on Laws of Sunshine

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Florida's courts have referred to community associations as "democratic sub-societies." At least in theory, American democracy requires the governmental decision-making process to be conducted in the open. Not surprisingly, Florida's "sunshine" laws have imposed open-government requirements on association boards.

Today's column is the second installment of a primer on sunshine laws which I have dubbed "Community Association Sunshine Law, Course 101" (See Time to let in a little sunshine, January 20, 2005).

Chapter 2: The Do's and Don'ts of Noticing Meetings

As with meetings of governmental bodies, the right to attend and speak at meetings is of little benefit to the governed if they do not know when or where the meetings are going to be held. While governmental entities normally advertise meetings through newspapers, association advertisement is generally handled through physical posting of the notice.

Section 718.112(2)(c) of the Florida condo statute provide that notice of all board meetings, which must incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting, except in an emergency. Further, written notice of any board meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered must be mailed, delivered, or electronically transmitted to the unit owners, and posted conspicuously on the condominium property not less than 14 days prior to the meeting.

If there is no condominium property upon which notices can be posted, notices of all board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit. In lieu of or in addition to the physical posting of notice of any meeting of the board, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on

a closed-circuit cable television system serving the condominium association. Certain rules must be followed in both condos and HOA's when television notice is used in lieu of posted notice.

Section 720.303(2)(c) of the law applicable to HOAs likewise provide that notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. Unlike the law for condos, there is no requirement that an agenda be posted. As an alternative to posting, notice of board meetings can be mailed or delivered to each member at least 7 days before the meeting. For communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association.

An assessment may not be levied at a homeowner's association board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

In general, both laws require that notice of all board meetings be posted in the community at least 48 hours before the meeting. Both laws also require that if assessments are to be considered, or if rules regarding use of the units or parcels (as opposed to common element or common area rules) are to be considered, notice must actually be given to the owners by mail (or hand delivery with written receipt or electronic notice where the owner has so consented to receiving electronic notice) 14 days before the meeting. Notices in these cases must also be posted fourteen days in advance.

The location requirement for posted notices often causes some confusion and potential legal complications. The Florida condominium law requires the board to adopt a rule stating where official notice may be posted. The board may specify more than one official location, but there must at least be one location in a conspicuous place on the condominium property, where the notices must be posted. The notices can also be posted in other locations. If the association does not have a location where notices can be physically posted, notices must be mailed out fourteen days in advance, for all board meetings.

For homeowners' associations, the law simply states that the notices must be posted "in a conspicuous place" in the community. While there is no requirement that the HOA board adopt a posting location, it is a good idea to do so. Also, in lieu of posting notice of regular or special board meetings, the HOA can mail out the notices seven days in advance, which is slightly more liberal than the condominium notice requirement.

Next week's lesson will move on to Chapter 3, which will address the rights of owners to speak at, and participate in, meetings of the board. ⚖️

Annual Association Trade Show

The Community Associations Institute will be holding its 11th. Annual Conference & Trade Expo 2005 at the Seven Lakes Association Auditorium on Thursday, February 3, 2005. The Expo is open to the public from 10AM through 3:30PM.

Over 40 exhibitors providing product and information to residents of community associations. At 7 AM CAI will provide a two hour forum for CAM licensed managers and community association board of directors on "Stress Management" given by CAI President Mr. Paul Gruzca.

At 9 AM the State of Florida's Department of Business & Professional Regulation in conjunction with CAI will conduct a three hour seminar on "Condominium Operations". This seminar focuses on the core responsibilities of community associations.

At 10 AM a two hour CAM Manager continuing education seminar, "2005 Legal Update" with Joseph E. Adams, Esq. and Richard D. DeBoest II, Esq.

From 1PM a two hour "Attorney One-On-One Forum for condominium and homeowner association members.

At 2PM "A ROAD TO EFFECTIVE LEGISLATION Forum" will be conducted with CAI-FLA representatives, CAI's Andy Krakowski, Sr. Director of Government & Public Affairs, and state legislatures.

All events provided to condominium and homeowner association members free of charge.



Question: Our condominium association is contemplating charging a one hundred dollar "processing fee" when an owner rents out his or her condominium unit. We are questioning whether there are any "hidden responsibilities" which might come into play. W.M. (via e-mail)

Answer: Great question. Section 718.112(2)(i) of the Florida condominium statute states that an association may not charge any fee in connection with the lease

of a unit unless the association is granted the right to approve rentals, and the fee is authorized by the condominium documents. The maximum fee is one hundred dollars per applicant. No fee may exceed one hundred dollars per applicant, members of the same family are treated as one applicant, and no fees can be charged in connection with renewal of a lease. The only other fee an association can charge is a security deposit against damage to common elements, and again that fee must be authorized by the condominium documents and cannot exceed one month's rent.

Therefore, you must first check your condominium documents to see if they authorize the association to approve leases, and if so, whether they also authorize the transfer approval fee. If both of those conditions

are not met by the current documents, an amendment may be necessary. If an amendment is considered, you will also need to consider the grandfathering issue created by the 2004 amendments to the statute, which I have consistently criticized in this column as being antithetical to the proper operation of associations.

If the association is already entitled to approve leases and charge the fee, or achieves that right through amendment, then you will need to begin to process lease applications, which many associations do. This often includes getting basic information about the proposed tenant (for example to make sure that their vehicles or pets will not violate your condominium rules) and in many cases, conducting some level of a background investigation, such as a criminal record check.

Your inquiry raises the question of whether an association could be held liable if, for example, it failed to note that a rental applicant was a habitual sex offender, and some further similar crime occurred on association property. I am not aware of any court which has ever held an association to this standard, but the argument could certainly be made that to the extent the association takes on the duty to investigate proposed tenants, it needs to do so competently.

Question: Our association administers various types of units, including condominiums, duplexes, and some single family homes. We are told that our liability insurance would cover most accidents that occurred on the multi-family areas, but that the insurance does not cover the single family homes. Our question is whether we should require the single family homeowners to show the association that their contractors (such as the person who cleans their pool) has all of the appropriate insurance, and also have the association named as an additional insured under those policies. R.F. (via e-mail)

Answer: In theory, that sounds great. In reality, it is almost impossible to enforce or police.

First, to the extent your association has no responsibility over an individual's property, I do not know why the association would be liable for injuries on that property. Of course, in today's society, many lawsuits take the "shotgun" approach, which goes after the "deep pockets", often including the association. However, your association's liability insurance policy

should include a duty to defend these claims, and if the association is for some reason liable, also pay any judgment or settlement.

I always recommend that anybody who hires a contractor in Florida require proof of licensure and insurance. However, particularly in a larger association where a single homeowner may do business with a dozen different contractors (pool company, lawn company, pest control company, security alarm monitoring company, etc.), it is difficult at best for an association to obtain this information and/or keep up with changes in individual owners' contracting arrangements.

Likewise, while being an "additional insured" under an insurance policy permits you to make a direct claim against the policy, it is not something many contractors would be willing to do, and would likewise be difficult to enforce.

Your association should encourage (and arguably legislate) that individual property owners use licensed and insured contractors, but I am not a personal proponent of monitoring compliance with such a requirement. I know of others who see it differently.

Question: Our condominium association is refurbishing our lanais for the third time. In each previous instance, all of the owners were assessed the same amount, even though the larger units have twice the square footage because they have two lanais, or their lanais are double-wide. Is this legal? It does not seem fair that the smaller units should be charged to improve the property this way. M.M. (via e-mail)

Answer: This is a common source of contention. The correct answer will depend upon a close reading of your condominium documents. The first thing that needs to be determined is whether the lanai area is part of the "common elements" and is therefore the responsibility of the association.

Although many condominium documents define the lanai as either part of the "unit" (privately owned by the individual) or perhaps "limited common elements" (for which only the affected unit owner pays), most "concrete restoration" involves the super-structure of the building, often the concrete slabs and the exterior elements.

