

Condo Ombudsman Outlines his Vision for Job

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In 2004, the Florida Legislature created the "Office of the Condominium Ombudsman" as a measure intended to avoid day-to-day frictions in condominium living becoming full-scale legal battles.

The Ombudsman is appointed by the Governor, and serves at the pleasure of the Governor. In October of 2004, Governor Jeb Bush appointed Virgil Rizzo as Florida's Condominium Ombudsman. Rizzo, a retired physician and attorney, has been on the job for about three months. I took the opportunity to interview Dr. Rizzo for this column to obtain his insight and his visions for the Ombudsman's post. Here are some of the highlights.

Adams: The 2004 Legislature created the Ombudsman's office, but did not provide any funding for the program. I believe the politicians call that an unfunded mandate. Has this been a problem for you?

Rizzo: Not really. I was not involved in the creation of the statute or the original budget process. Of course, my office will need adequate staff and funding to operate. I am working on a business and organizational plan which is going to be submitted to the House Appropriations Committee next week. It is currently a work in progress. Ideally, I would like to start with a staff of six, with three in Tallahassee, and three serving the Tri-County area (Dade, Broward, and Palm Beach counties), where most of the condominium problems occur.

Adams: That is a nice lead in to my next question. According to most observers, the vast majority of Florida's condominium disputes emanate from the so-called Gold Coast: Dade, Broward, and Palm Beach counties. Other regions of the State, such as Southwest Florida, the Panhandle, mid-Florida (Tampa and Orlando) and the Space Coast area (Jacksonville, Daytona, St. Augustine, etc.) complain that they are the step-children when it comes to making condominium policies. How does the Ombudsman plan to reach out to these regions?

Rizzo: I am not sure yet. We are only into the third month of operation. Most of the publicity about my office has come from East Coast media. At least ninety percent of the inquiries the office has received to this point are from Dade, Broward, and Palm Beach counties.

Adams: How can unit owners or board members reach your office?

Rizzo: Our phone number in Tallahassee is 850-922-7671. I can be reached by e-mail at Virgil.Rizzo@dbpr.state.fl.us.

Adams: What percentage of your inquiries involve unit owners with complaints against their associations, and what percentage involve boards seeking your assistance?

Rizzo: I cannot say with precision at this point, I am working on those statistics right now. My best estimate is that approximately 60% of calls come from unit owners who have issues with their associations or boards. About thirty percent come from board members who are looking for help. The other ten percent involve miscellaneous inquiries, such as complaints against managers.

Adams: Could you break down, generally, the substance of the inquiries you receive?

Rizzo: Elections is a big one. The other general categories involve fiscal management/mismanagement, assessments (regular and special assessments), rule enforcement procedures, and material alterations of common property. Many of the contacts are informational, seeking information about how the laws or regulations apply to their particular situation.

Adams: One of the purposes of your office, as specified by the Legislature, is to provide unit owners and board members with the widest possible access to educational opportunities. What is your plan to get the job done on this front?

Rizzo: I am still working on it. The most ideal situation would be a website where people could plug in a key word and any possible issue they might have would be addressed, with information on how to proceed. Right now, I am using a staff of volunteers to assist. I have three volunteers, whom I have trained.

Adams: According to media reports, you come to your post with no prior experience in condominium law or operations, except a well publicized legal battle between you and the board of directors which operates the condominium where you reside. What has surprised you most about Florida's condominium living experience?

Rizzo: Every day is a surprise. What I find most daunting is the lack of consistency in the laws applicable to condominiums, Chapter 718. The administrative rules conflict with the statute, and the case decisions and arbitration decisions conflict with both the rules and the statutes.

Adams: A significant portion of the legislation involving your position, and also a topic of frequent discussion involves insuring fairness in condominium elections. Do you think the current election system is too complicated, and if so, how would you change it?

Rizzo: No, it is not too complicated, but it is incomplete. I have been to about eight contested condominium elections so far, where I have served as an election monitor. It seems that every manager, attorney, and law firm handles things a bit differently. For example, some disregard election ballots that are not placed in the inner envelope, while others count them.

The biggest problem with elections is that the ballots are returned to the board. This provides opportunity for mischief when the person handling the ballots is also a candidate.

Next week, excerpts from the interview with the Ombudsman will continue.

Community Associations Day Set for March 30, 2005 in Tallahassee

Several groups interested in condominium association legislation have organized a "Community Associations Day" for March 30, 2005 in Tallahassee. The event is being coordinated through the Community Association Leadership Lobby (CALL) which is administered by the law firm of Becker & Poliakoff, along with other participating groups including Community Associations Institute and the Space Coast Condominium Association. The purpose of Community Associations Day is to permit those directly affected by the laws, homeowners and board members, to meet their Legislator and personally participate in the shaping of policies involving the governance of community associations. All members of condominium associations and homeowners' associations, whether or not board members, are encouraged to participate. This year's hot topics in the Legislature are likely to include government regulation of homeowners' associations and mandatory training for condominium association board members. For more information, log into CALL's website at www.callbp.com or telephone Donna Berger, CALL Executive Director at 1-800-432-7712. ⚖️



Question: We live in a relatively new development, still being managed by the developer. The community includes a golf course. About two-thirds of the homeowners are golfing members of the Club, and the other third are called social members. There are different dues structures for the different types of members. Several golf members convinced the manager to allow them to put signs on two prime parking places, reserving the spaces for the men's and women's golf champion. This parking area is used for the pool and fitness centers, which is available to the social members as well. This would appear to infringe on the

common area rights of the social members, and was done without the consent of the owners. What is your opinion? C.B. (via e-mail)

Answer: I believe that the management of a homeowner's association, under the circumstances you describe, would be given some degree of latitude in the assignment of parking, so long as the assignments are not permanent and do not purport to create property rights.

For example, I think it would be appropriate to set aside a reserved space for the Club's "employee of the month" and I likewise see no legal problem with recognizing others who have achieved accomplishments within the Community.

Question: Our homeowner's association recently attempted to hold an annual meeting. Because the required majority quorum

was not present, the meeting could not be held. Our bylaws state that an annual meeting must be held in January of each year. Our management company said it was not necessary to hold a meeting. What is your opinion? J.P. (via e-mail)

Answer: The law for homeowners' associations was amended several years ago to lower the quorum requirement so that the maximum quorum permissible in an HOA is thirty percent. Many older bylaws still contain the majority threshold, although I believe associations can reasonably rely on the new law when setting quorums. The courts, however, have not addressed retroactive application of the new statute.

I think it is important to have an annual meeting, especially for the purpose of electing members of the board. It is not uncommon for associations, particularly homeowners' associations, to have difficulty in getting a quorum for the annual meeting. That is why the Legislature lowered the required quorum threshold.

Under Robert's Rules of Order, if a quorum is not established, the members can vote to adjourn the meeting for the purpose of gathering more proxies and establishing a quorum. This is what I typically recommend. I also recommend that the association make at least two good faith efforts to hold the annual meeting. If, after that effort, a quorum still cannot be established, I do not think anyone can accuse the incumbent board of shirking its legal duty.

Question: cent series on the sunshine laws. I wanted to look at the actual law. Do you know where I could get a copy of the law, including the sunshine laws? B.M. (via e-mail)

Answer: The "sunshine" rules for condominium associations is found in Section 718.112(2)(c) of the Florida Statutes. For HOAs, look at Section 720.303(2)(c). There are a number of websites where you can easily find the Florida Statutes. I find www.leg.state.fl.us, the website of the Florida Legislature, to be one of the more user-friendly sites on the Internet.

Question: Is there any state law requiring a homeowner's

association management company or board to be bonded against potential theft of association funds? L.B. (via e-mail)

Answer: No. The Florida law contains detailed requirements for "fidelity bonds", which is typically an insurance policy called "employee dishonesty", "crime coverage", and similar names, but there is no equivalent in the HOA statute.

Although the law for HOAs does not require bonding, in my opinion it is extremely important that members of the board, managers, and anyone with access to association funds be covered by a fidelity bond. In my view, the bond should cover all amounts that are potentially subject to theft. Also, be careful when relying on a management company's bond. It often will not provide coverage to the association.

Your board should sit down with your insurance agent and understand available coverage, and make the appropriate purchase of insurance.

Question: Our condominium was established in the late 1970's. There are a number of provisions which conflict with the current version of Chapter 718. Which controls? C.F. (via e-mail)

Answer: It depends. The courts have generally held that "substantive" provisions contained in a declaration of condominium are not changed by changes to the law. For example, the law was amended in 1992 to state that a condominium association could only assess for maintenance fees either equally, or based upon square footage. Many older condominiums contain different formulae for assessment, and those formulae remain legally valid.

On the other hand, "procedural" or "remedial" changes to the law are generally considered applicable to existing condominiums. For example, most of the "sunshine" requirements of the law, that pertain to board procedures, would be applicable to existing associations, even if the bylaws provided differently. ⚖️

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.