



Homeowner Groups Face Troubling Requests

Fort Myers The News-Press, June 30, 2005

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During the past two decades, community associations have proliferated in Florida. In addition to the condo boom, virtually every new housing development includes mandatory membership in a homeowners' association.

As with any form of government, the balance of powers, rights, and responsibilities is a subject of constant debate. Numerous advisory groups and task forces have been empanelled to study the laws and make recommendations for improvement.

Undoubtedly, one of the most frequently debated issues, and one of the greatest sources of contention in associations, involves access to the books and records of a community association. Today's column is the third part of our review of this issue. (See, Records Access Set by Statute, June 16, 2005 and Records Laws Have Some Similarity, June 23, 2005). Today's focus, do's and don'ts for boards of directors when dealing with troublesome inspection requests.

In the vast majority of the cases, a parcel or unit owner's request to look at association books does not create tremendous burden on the association, nor portend that the owner is spoiling for a fight. Rather, most people who live in association-operated communities have invested their life's savings in their property. They have a legitimate (not to mention legal) right to look, if they choose, at the details involving the association's operations, and how their money is spent.

However, like in all issues involving associations, there are exceptions to the norm. Common points of friction occur when owners abuse their statutory inspection privileges for purposes of harassing the association, going on a "witch-hunt" for honest mistakes, or simply diverting attention from some other problem between the association and the owner, such as a dispute over the owner's violation of some rule or restriction.

Let's take a look at those areas where the board may establish regulations regarding records inspection in an effort to head off some of these problems:

- **Manner of Request.** Both the condominium and HOA laws require the owner's request to be in writing, and there is therefore no doubt that such a requirement by a board is reasonable. I recommend that every board require records access requests to be in writing. While it may seem reasonable to respond to a "nice" owner's verbal request for a few pages of documents, the association needs to treat all owners equally, and needs to be in a position to insist that the "not-so-nice" owner submit his or her inspection requests in writing.
- **Place of Inspection.** In most cases, association inspection rules require that records be inspected at the location where they are kept, typically the condominium office or, at the office of the management company. Sometimes,

official records are kept by a number of different parties (such as the manager, the accountant, and the attorney), and it usually makes sense to require that all records be reviewed at the same location. The place of inspection can be a troublesome issue for associations that are self-managed, particularly smaller groups with many seasonal residents. Even if the board's secretary "goes up north" for the summer, the owners' inspection rights do not take a vacation. As mentioned in last week's column, records must be kept in the State of Florida and made available within a fairly short time-frame. Self-managed associations should make adequate arrangements for inspections under such circumstances.

- **Frequency and Duration of Inspections.** The most frequent source of contention in records inspections involves how much of its time and resources an association must expend to permit the inspection of records. In my experience, most associations do not want their members "rummaging through" the records, and therefore will typically have a board officer, manager, or association staff person on hand while the records are being inspected. This also helps to guard against the malicious or unin-

tentional alteration of records, their becoming lost or stolen, and the like. This is one area where the law for HOA's is a bit clearer than its condominium cousin. Specifically, Section 720.303(5)(c) of the homeowners' association statute states that an association may not limit a parcel owner's right to inspect records to less than one eight-hour business day per month. For condominiums, the law simply states that limitations on the frequency and time of inspection must be "reasonable". There is one decision rendered by Florida's condominium arbitration group which suggested that a rule limiting a condominium owner to twelve hours per month (three inspection periods of four hours each per month) would be upheld. In either case, the limit needs to be contained in a written rule.

Associations have been described by the courts as "democratic sub-societies". Thus, like our other elected levels of government, there is little tolerance in the law for secrecy in association affairs, and the law clearly favors the rights of the owner. Next week, we will conclude this series by reviewing protocol for an owner's copying of records, and challenges occasionally faced by associations when corporate records are copied. ■

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.

Question: We have been advised that one of the members of our homeowners' association plans to bequeath his lot to the association when he dies. What are the legal requirements of our association in accepting a donation of this type? B.C. (via e-mail)

Answer: Every day, I am bombarded by e-mails and articles, written by self-appointed experts, claiming that there is nothing good about community associations. Their basic tenet, everyone hates community association life, but there is nowhere else to go. Your owner's gesture is a great response to these nay-sayers. What more meaningful statement could a resident make about all that is good with association living.

The Florida Homeowners' Associations Act, Chapter 720, Florida Statutes, does not specifically address your issue. However, almost every homeowners' association is incorporated under the Florida Not For Profit Corporation Act, Chapter 617, Florida Statutes. Section 617.0302(9) specifically authorizes a not for profit corporation to "purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use or otherwise deal in and with real or personal property, or any interest therein, wherever situated." This authority exists for the association unless the articles of incorporation or bylaws of the association provide otherwise. So it would appear, absent a limitation in the governing documents, that the association can receive the bequest.

The more interesting question concerns the permitted range of uses of the property once received by the association. The governing documents of the association, which include the declaration of covenants and restrictions, the articles of incorporation, the by-laws, and the rules and regulations, must be consulted to determine if there are restrictions on the association's authority to choose what is done with the property. For example, most declarations of covenants and restrictions require approval of the members of the association, in the form

of an amendment, before lots can be used for any purpose other than a single family residence. Therefore, if the association proposes to retain ownership of a gifted lot in order to put it to some use for the benefit of the association, the approval by the members may be required.

In the absence of some restriction on the board of directors' authority in the governing documents, or the bequest itself, the board would be free to sell the gifted property and apply the proceeds for the community's benefit. The association's accountant should also be consulted for tax planning.

Question: Our condominium association requires that only specific types of window hurricane protection be used by the condominium owners. These cost from \$6,000.00 to \$10,000.00 and are currently unavailable for 10 to 20 weeks. An owner has requested permission to put plywood up the day a hurricane warning is issued, and take the plywood down within a day after the warning or storm is over. The association refused this owner's request. Can an association refuse to allow an owner to protect his property in this manner? J.C. (via e-mail)

Answer: Before one of the 2004 hurricanes hit, a condominium association in Palm Beach County was dragged through the mud by the press because it refused to allow owners to put up plywood when the storm was threatening. Hindsight being 20-20, it may have made sense to allow owners to risk physical injury to themselves and damage common element property, when the condominium was in the bulls-eye of a Category 4 hurricane.

The problem, of course, is that Florida's coastal condominiums are subject to fairly frequent hurricane and tropical storm advisories, and chaos would reign if every owner could decide when, and in what manner, it is time to protect the building.

That is why the Condominium Act requires an association's board to adopt hurricane shutter specifications for each building within each condominium operated by the association, which specifications are to include color, style, and other factors deemed relevant by the Board, and which specifications must comply with the applicable building code.

It appears that your association has adopted such hurricane shutter specifications. If the association's documents require an owner to obtain approval to install hurricane shutters, the board cannot refuse to approve the installation or replacement of hurricane shutters that conform to the specifications adopted by the board. On the other hand, an owner cannot install hurricane shutters that do not conform to those specifications.

Question: We need to hire a condominium association manager. This is a first for our current board. Our condominium association was self managed from 1970 until about 1990. It hired a management company and has retained the same company for over 15 years. We have agreed to disagree with our current provider over a number of issues and are now in search of new management. Are there public resources that we could access that would give us an "outline" of the types of questions

to ask prospective managers and information to obtain from these companies? M.I. (via e-mail)

Answer: Community association management is an occupation regulated by the Department of Business and Professional Regulations. As a regulated industry, the DBPR maintains information as to the role of a community association managers. This information may be obtained by visiting the DBPR website at <http://www.state.fl.us/dbpr/>

Choosing a CAM is an important, and occasionally difficult decision for associations. The association will want to check the credentials of any CAM to ensure the CAM is properly licensed. The association can confirm that the CAM is licensed on the DBPR website. Additionally, the association can review whether complaints have been filed against a particular community association manager, as complaints regarding Community Association Managers are also public record.

Alexandria-based Community Associations' Institute, a national organization involved with association operations, publishes several resources may be of help. Go to CAI's online bookstore at www.caisecure.net. Two possible resources include "Choosing a Management Company" and "On-Site Manager". Good luck. ■

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