



Condo Panel Hears Full Range of Concerns

Fort Myers The News-Press, July 21, 2005

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

On June 25, 2005, Florida's newly created Advisory Council on Condominiums held its fourth meeting. One of the primary functions of the Advisory Council is to take public input regarding issues and challenges faced by condominium communities, and make recommendations regarding changes to the laws which will address problems identified by the Council.

The June 25 meeting was held in Miami, which obviously contains a significant population of condominium residents. Approximately one hundred condo dwellers showed up for the meeting, with about one-quarter of those providing public input.

It is difficult to pigeon-hole the concerns expressed by those who address the Council, each had their own story. One man's discontent with his board of directors involved his rental car being towed from the community parking lot, while his car was being fixed at the repair shop. A couple of speakers were embroiled in disputes with their associations regarding pet rules.

One common theme was the tremendous hardship created, particularly in older buildings, where proper maintenance is not performed. Unlike Southwest Florida, where most condo construction is less than 25 years old (and most is much newer than that), several of those who addressed the Council in Miami were dealing with problems in buildings which had been in service for more than 40 years, and in one case, a 70 year old building.

There were several speakers who supported their boards, and the status quo in general. Both groups (pro-board speakers, and those who felt that current law places too much power in boards) appeared to agree that educational opportunities need to be enhanced.

Several speakers felt that the Division of Florida Land Sales, Condominiums, and Mobile Homes, the state agency responsible for implementation of the condominium laws should be more aggressive in punishing boards who have violated the laws. The levy of personal fines against board members, as a matter of standard practice, was suggested by at least one speaker, while another suggested that errant board members "should be taken away in handcuffs."

In other business, the Council engaged in a lengthy dialogue with Virgil Rizzo, Florida's Condominium Ombudsman. Mr. Rizzo apprised the Council of the activities undertaken by his office since its inception six months ago.

The Council voted to focus further study to ways by which the Ombudsman's office could be better integrated into the current regulatory scheme. The ombudsman program, the first of its type in the country for condominiums (Nevada has an ombudsman for homeowners' associations) is intended to provide a resource where both boards and unit owners can try to head off problems before they turn into costly legal disputes.

The next meeting of the Advisory Council is set for the first week of August in Orlando. The Council has set its sights on preparing a report of findings and recommendations by the end of 2005. The minutes of past Council meetings, and other information, can be obtained from the Council's website at www.state.fl.us/dbpr/lsc/condominiums/advisory_council. Input by e-mail to the council is also encouraged. Comments can be sent to CondominiumAdvisoryCouncil@dbpr.state.fl.us. ■

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: I recently discovered that our mobile home association is not registered with the County. The president of our homeowners' association says that we are registered with the state, and that the state registration is good enough. Can you shed some light on this? S.L. (via e-mail)

Answer: Your president is correct. So called "55 and over" communities must register with the Florida Commission on Human Relations, and must renew their FCHR registration every two years. A Lee County association may verify its registration on-line by going to <http://fchr.state.fl.us>.

However, registration with the FCHR is not all that is required to maintain your status as a "55 and over community." First, your deed restrictions need to be worded in a manner that requires at least one person age 55 or over to be the occupant of a home, in at least 80 percent of the homes. This usually requires an amendment to the deed restrictions which must be filed with the County Clerk, although not with the state.

The association must also verify by census that at least 80 percent of the homes are occupied by at least one person age 55 or older, and update that census at least every two years. There are other steps the association should take to retain "housing for older persons" status. For example, the association's letterhead, the community's entry signs, and other written materials should designate the park as a 55 and over community.

Question: Our condominium association board does not like the appearance created in the community when people who leave Florida for the summer put their hurricane shutters down. We are thinking of adopting a rule which would state that owners must leave their shutters in the "up" position unless a certain level of storm advisory has been issued, such as a tropical storm watch. Is this legal? J.C. (via e-mail)

Answer: Tough question, I can see both points of view. The condominium statute does not address your question, nor has any court issued a ruling on this point of law.

The condominium law does state that the board of directors can adopt "reasonable" rules regarding hurricane shutters. One could argue that it is reasonable for the association to limit hurricane shutters to their intended use, that being protection of the property when a hurricane is imminent. On the other hand, the reality of the matter is that a significant percentage of our condo dwellers reside elsewhere during the summer months which coincides with hurricane season. In the pandemonium that usually precedes a major storm, who is going to make sure the shutters have been set in place?

I am not the final arbiter of reasonableness. However, having lived through the devastation wreaked on local condominium communities by Hurricane Charley, I would personally err on the side of maximizing protection of the property.

Question: If a condominium association needs operating funds immediately, can the board of directors borrow from the reserve account for a short time until a special assessment can be levied or until an increased budget with increased assessments is approved? E.B. (via e-mail)

Answer: Section 718.112(2)(f)2 of the Florida Condominium Act requires that the funding of reserve accounts be part of the annual budget of a condominium association, unless the members of the association have previously voted to waive this requirement. The reserve accounts are earmarked for expenses that are certain to be incurred in the future, such as roof replacement and painting. In the absence of reserve accounts, unit owners may face a financial crisis in the future when it becomes necessary to collect a large special assessment for the replacement or repair of condominium property.

Because the reserve accounts serve this important purpose, Section 718.112(2)(f)3 prohibits removing funds from a reserve account for any reason other than for the specific, designated purpose. However, this same statute does allow the board to borrow from the reserve accounts and use reserve funds for other purposes if approved in advance by a majority of the unit owners.

Therefore, the board cannot “borrow” from statutory reserve funds unless there is a vote of the owners. The only exceptions would be if a reserve fund is not restricted (such as a general contingency fund), or if the association uses pooled reserves, and the money is used for an item in the pool. ■

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.