



Colleague Made Difference in SW Fla.

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By Joe Adams

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For the past two months, this column has been dedicated to a study of common issues confronted by community associations when updating the constituent legal documents for their association. Today's column was supposed to continue that series, with a discussion of insurance issues.

However, that topic seems rather unimportant to me today.

This column runs every Thursday. My weekly routine usually consists of drafting an outline for the following week's column on Friday, writing it over the weekend, editing it on Monday morning, and submitting it to The News-Press editors by Monday afternoon for my deadline.

This past Friday, before I dove into my typically hectic workday, I received an early-morning telephone call. I was told that my dear friend and partner, E. Austin White, passed away unexpectedly the previous evening, at the age of 56.

Like me, Austin was a community association lawyer, primarily focusing his practice on assisting condominium and homeowners' associations in their daily operations. Austin practiced in both the Naples and Fort Myers offices of Becker & Poliakoff, and served as counsel and trusted adviser to many local community associations.

Austin had practiced law in Florida since 1976, relocating his family and his practice to Naples in 1999.

During the past six years, I came to know Austin as an immensely talented attorney, a caring and compassionate man, and one of the world's truly good guys. Austin had an uncanny knack for engendering confidence and trust, qualities that are sadly becoming more scarce in my profession.

In addition to his association clients, Austin was also greatly regarded for his skills in land use and real estate development law, a craft he plied for some of Florida's largest developers.

Austin took great pride in drafting documents for developers that would not only address the developer's business objectives, but also work for the community after the developer had sold out the project and moved on. His legacy will live on in many local communities, such as Reflection Lakes and Spanish Wells, where his legal work serves as the constitution for the community.

I knew Austin well enough to know that while he would be proud to be remembered for his legal talents, it is more important to remember him as a person. The center of Austin's world was his young son, Robert Jackson White, whom he leaves behind to cherish his memories.

Austin was raised in Bethesda, Md., and graduated from Gonzaga High School in Washington, D.C., in 1967. He was an outstanding athlete and was later inducted into the Gonzaga High School Football Hall

of Fame. He received a degree in criminology from the University of Maryland in 1972 and obtained a law degree from Stetson University College of Law in 1976.

He is survived by his son, Robert Jackson White, his mother, Joan White, sister Nettie White and her daughter Emily Rose White. Austin loved life and cherished the time he spent with his beloved son,

Jackson. He'll be greatly missed by many friends and family and all those touched by his fun-loving spirit.

Austin was one to look for the positive side of all things. Since this column is intended to give practical advice, my advice is to keep things in perspective when sweating the small stuff, take time to smell the roses, and tell those you should that you love them, every day. ■

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.

Condominium Leasing Rights Frequently Amended

Question: Our community consists of 1,200 homes. There are 20 housing clusters, each with its own association. The overall project is governed by a “Community Services Association,” with an elected board of directors, to whom the general manager reports directly. My question is whether we are entitled, under Florida laws, to know the salaries of the general manager, and those who are employed by the master association. — N.B. (via e-mail)

Answer: I am assuming that your master association is a “homeowner’s association” governed by Chapter 720 of the Florida Statutes. In this regard, Section 720.303(4)(j)4 of the law states that any records which “identify, measure, record, or communicate financial information” are part of the “official records” of the association, and therefore subject to inspection by any homeowner, after 10 days’ written notice. Employee salary information would appear to fall within that category.

However, there is also a list of documents that are specifically exempted from the definition of “official records,” and which are not available for inspection. These include attorney-client privileged documents, information the association obtains in connection with the approval of a sale or lease of a parcel, and certain medical records. Further, the law exempts “disciplinary, health, insurance, and personnel records of the association’s employees.”

The law does not define what is meant by “personnel records.” In my opinion, the definition of “personnel records” is broad enough so as to include employee salary information, at least on an employee-by-employee basis. Therefore, I believe those records are not to be made available by the association. However, the law is not entirely clear on this point.

Conversely, if all of the clusters in your development are made up of condominiums, then your master association

is what is known as a “condominium master association.” In that case, there is no exemption in the governing law (Chapter 718) for personnel records, and the salary information would need to be made available.

Question: My question involves how you define a quorum for a “meeting” of our association’s board, which entitles owners to attend a board meeting. Are board members allowed to send e-mails to each other discussing association business? Stated otherwise, does e-mail constitute a “meeting” of the board of directors? — B.D. (via e-mail)

Answer: I would refer your attention to a series of columns I wrote called “Community Association Sunshine Law, Course 101,” which are available on the Internet. The articles ran in a seven-part series, starting on Jan. 20, 2005. The series was also produced into a written booklet, which is available at various educational seminars.

As stated on Page 3 of the booklet, this is definitely a gray area in the law.

In the days of old, if Director A wrote a letter to Directors B, C, D and E, that letter was not a meeting because there was no “gathering” of the board. If Director B replied with a letter to Director A, and copied Directors C, D, and E, that letter was likewise not a “meeting,” although the letters would be considered part of the “official records” and would need to be retained in the association’s files.

Now, correspondence which used to take a couple of days to be received is received within a couple of seconds. We know that many board members set up board e-mail groups, and items of association business can be debated by e-mail ad infinitum, to the point where not only does the development of ideas occur, decisions may actually be made.

To throw a bit more sauce into that mix, there are also situations where an agent or executive officer of the association (such as a board president or community association manager) may already have the authority to do something, but would like to “poll” the other board members for support. If the president already has the authority to take a specific action (for example, counseling an employee about perceived problems), does getting e-mail support for that action turn it into a vote?

These are all questions that will need to be sorted out by the courts, the relevant enforcement agency, or preferably through further guidance in the governing statutes. In my view, until the law is written otherwise, e-mail interactions are not technically “meetings.” However, I am aware of at least one case where a condominium association received a stiff fine for conducting all of the association’s business through e-mail, and never holding board meetings.

Therefore, discretion is clearly the better part of valor (not to mention legal protection) when in doubt.

Question: I live in a condominium association with an annual budget of more than \$1 million. The 2004 audit

has still not been received. Am I correct in believing that the law requires this to be done by March 31 of each year. What are the consequences for non-compliance with the statute? — N.P. (via e-mail)

Answer: Section 718.111(13) of the Florida Condominium Act requires an association with receipts in excess of \$400,000 to produce an annual audit. The only exception permitted by the law is if your members have, by majority vote, voted to waive the audit and permit a lower-level financial report. This vote must take place before the end of the fiscal year.

Assuming that no waiver vote was taken, the report must be made available no later than 120 days from the end of the fiscal year. The association is not required to mail out the audit, but instead can mail out a notice that the audit is available, free of charge, for those who want it.

Failure to comply with the association can result in administrative action against the association by the Division of Florida Land Sales, Condominiums and Mobile Homes. The association could be subject to a fine of up to \$5,000 for repeated violations of the statute. ■

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