



Condo Council Coming to Area

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The Florida Advisory Council on Condominiums will be coming to Fort Myers on Monday, October 24, 2005.

The Council was created by the Florida Legislature during the 2004 legislative session, and held its first meeting in January of this year. The Council consists of 7 members, 3 of whom are appointed by the Governor, two being appointed by the Speaker of the Florida House of Representatives, and two appointed by the President of the Florida Senate.

Council members serve two year terms, with seats taking effect on October 1 and ending on September 30. Council seats are staggered, so that 3 members are appointed in odd numbered years (2005, 2007, etc.) and 4 members are appointed in even numbered years (2006, 2008, etc.)

The Advisory Council was an idea that was tried in the early 1990's, and was abolished by the Legislature as its meetings were poorly attended by condo dwellers. Because of all of the recent focus on the balance of rights and responsibilities between association members and boards, the legislature apparently felt the idea was worth another go.

The Council has held 5 meetings so far. The first two were held in Tallahassee and were organizational in nature. Subsequent meetings have been held in Panama City Beach, Miami, Orlando, and Fort Lauderdale. The Council has

held its "public input meetings" at times that will enable working people to attend, either Saturdays or evenings.

The October 24th meeting in Fort Myers will begin at 5:00 P.M., and will run until 10:00 P.M., or until all public input has been heard. The meeting will be held in the Seven Lakes Condominium Community, which is located in South Fort Myers, on U.S. 41, directly across from the Bell Tower shopping complex.

Members of local legislative delegations are typically notified of and invited to attend Council meetings, and 5 of the 6 meetings have been attended by at least one member of the Legislature. Turnout at Council meetings so far has been sporadic, with Miami's meeting drawing a crowd of nearly a hundred, while the Orlando meeting only attracted about 10 participants.

The Council's purpose is to listen to what members of the public have to say about condominium living, and make recommendations to the Legislature as to whether the laws need to be changed, and if so, how. The Council is specifically tasked with reviewing the role of the Division of Florida Land Sales, Condominiums, and Mobile Homes, the state agency that is responsible for enforcement of the law. Among other responsibilities, the Council is to determine if the Division's education of its condominium constituents, both unit owners and board members, can be improved.

There are many opposing points of view about the best way to encourage peace and harmony in condo living. The so-called “consumer advocates” typically rail for a more punitive regime, such as the levy of personal fines against board members if the law (or their interpretation of it) has been violated. On the other end of the spectrum, some feel that homeowners’ associations seem to get along just fine without mandatory government regulation, and that condominium associations would be less fractious if governed like most corporations, under the law of contract.

The Council has focused much of its effort on the appropriate role for the new Office of Condominium Ombudsman, which was established by the same law that created the Advisory Council. The Council has met with the Ombudsman twice, and has also reviewed his legislative recommendations, which in-

clude four year term limits for all board members, and a proviso that no person could hold the same office, such as serving as president of the board, for more than one year.

The Council has voted to issue a report of recommendations to the Legislature in late November or early December of 2005. So the Fort Myers meeting may be the last chance for public input before the Council’s recommendations are made. Whether you are for more laws, less laws, different laws, or no laws at all, this is your chance to be heard.

The Council will also be meeting the following day, Tuesday October 25, 2005 at 10:00 a.m., to work on its report. The meeting will be held at 14241 Metropolitan Avenue, Suite 100, Fort Myers, Florida. This meeting is also open to the public, although no public testimony will be taken at the Tuesday meeting. ■

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.

Focus on Correct Terminology to Understand Budgets

Question: Our manager has suggested that our board switch over to what she refers to as “cash flow” reserves. I think we should keep high reserves, and do not favor reducing them. We have many elderly owners in our condo who cannot afford large special assessments, and that is why we keep a healthy reserve fund. Our manager says that we can lower our monthly maintenance fee, but still have a full reserve fund. I don’t understand this, could you please explain. (A.L., via email).

Answer: With the exception of “sunshine law” questions, I get more inquiries about budgets and reserves than any other topic. The laws are a bit complicated, but manageable to understand, if you focus on the correct terminology.

Your association’s annual budget has two parts, the operating side and the reserve side. The operation budget covers insurance, professional fees, payroll, management, and other day to day expenses. In most associations, the board adopts the operating budget, without the need for approval from the association members.

The reserve side of the budget is for items that are usually addressed less than annually, called deferred maintenance and capital expenditures. The condominium statute requires that reserves be set up for building painting, roof replacement, pavement resurfacing, and any other capital expense or deferred maintenance item that exceeds \$10,000.00.

Each reserve account must be funded based on a mathematical formula which takes into account the useful life and replacement cost of the item. The board must “fully fund” each of these reserve accounts through the annual assessment, unless the owners vote to reduce or waive the funding of the accounts. Such accounts, when fully

funded, are known as “straight line funding”. By law, the reserves can only be used for the purpose for which they have been accrued unless a vote of the owners is taken.

The “cash flow” or “pooling” method of reserves is still theoretically a fully funded account. Instead of segregating each reserve item, the accounts are “pooled”. The association attempts to predict in a given year when a capital asset will need to be replaced, and funding is adjusted each year. Unlike the straight line method, money in the “pool” can be used for any proper reserve purpose, without a vote.

The cash flow law is fairly new, so it remains to be seen if it is all it is cracked up to be. One benefit for the board is greater flexibility.

The board has the authority to switch from straight line funding to cash flow funding, as long as the proper disclosures are made in the reserve schedules. However, existing funds in straight line accounts cannot be moved over to the pooled fund unless a vote of the association members is taken.

Question: We are having a debate in our homeowners association as to whether the law requires minutes of our board meetings to be mailed out. Our board meets when many of our residents are at work, and the records are kept in the Secretary’s home, since we do not have a management company. I say that the minutes must either be posted or mailed out to our members. Is that correct? (M.L., via email).

Answer: No.

Chapter 720 of the Florida Statutes, the law applicable to homeowners’ associations, requires minutes to be kept of all board meetings, and maintained for at least 7 years (I recommend maintaining board min-

utes perpetually). The minutes are part of the “official records” of the association, and are available for inspection and copying by any homeowner, on 10 days written notice to the association.

However, there is no requirement in the law that the minutes be mailed out or posted. Obviously, boards should strive to keep the association members informed of the community’s business, and mailing out minutes is a good way to do so. However, this entails both expense and the need for volunteer labor, which are often both stiff challenges in associations, particularly smaller communities and self-managed associations.

Posting the minutes is inexpensive, if there is a place to do so. Setting up a website is an alternative, as is an email list so the minutes can be sent out. A newsletter is another alternative.

You might consider volunteering to help your board by getting the minutes published in one of these manners. In my experience, they would likely jump at the chance for some help

Question: Are the documents created by a professional property management company employed by

a homeowners’ association board subject to the same “official records” rules as those created by the board itself? (R.F., via e-mail).

Answer: Section 720.303(4)(a) through (l) of the Florida Homeowners’ Association Act defines “official records”. Subsections (a) through (k) of that section identify items such as plans and specifications, articles and bylaws, meeting minutes, contracts and financial records, all of which are undeniably records of and pertaining to the association. Such items are clearly official records of the association, regardless of their authorship.

Subsection (l) of section 720.303(4) includes, “All other written records of the association not specifically included in the foregoing which are related to the operation of the association.” The question then becomes, “what documents created by a management company are “related to the operation of the association?” Because a management company is an agent of the association, any documents not subject to confidentiality under the statute that are created by a management company on behalf of the association are clearly included within the definition of “official records”. ■

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