



Programs Provide Education

Fort Myers The News-Press, November 17, 2005

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Residents of local community associations are hungry for knowledge and education. While much is said about the need for more and better educational opportunities, the truth of the matter is that many board members, owners, and managers are unaware of existing programs.

Here's a look at some free programs and events available in Southwest Florida.

Edison College

For the past five years, the adult continuing education arm of Edison College has run a program in Naples aimed at condominium unit owners and board members. This year, Edison has decided to bring the program to Fort Myers as well.

A series of five classes are slated over the next several months. The first class was already held, and focused on the so-called "cash flow" or "pooling" method of establishing condominium reserves.

Here's a list of the remaining classes:

Disaster Planning and Recovery: Responsibilities of the Board of Directors

December 6, 2005 - Holiday Inn Bell Tower, Fort Myers: 9:00 a.m. - 11:00 a.m.

December 7, 2005 - Collier County Athletic Club, Naples: 9:00 a.m. - 11:00 a.m.

Human Relations For Board Members

January 3, 2006 - Holiday Inn Bell Tower, Fort Myers: 9:00 a.m. - 11:00 a.m.

January 4, 2006 - Collier County Athletic Club, Naples: 9:00 a.m. - 11:00 a.m.

Growing Green: Obtaining the Best Value for the Landscaping Dollar

January 31, 2006 - Holiday Inn Bell Tower, Fort Myers: 9:00 a.m. - 11:00 a.m.

February 1, 2006 - Collier County Athletic Club, Naples: 9:00 a.m. - 11:00 a.m.

A Legal Update: What's New? What's Coming?

February 28, 2006 - Holiday Inn Bell Tower, Fort Myers: 9:00 a.m. - 11:00 a.m.

March 1, 2006 - Collier County Athletic Club, Naples: 9:00 a.m. - 11:00 a.m.

The courses are free, but prior registration is required. For further information, please call Beth Hagan at 239-947-8085 or e-mail at BHagan7@aol.com.

Condominium Courses through CAI and DBPR

The Department of Business and Professional Regulation, through its Division of Florida Land Sales, Condominiums and Mobile Homes, is tasked with providing educational opportunities to condominium unit owners and board members. The DBPR's main educational pro-

gram is a series of courses which are provided through a contract with Alexandria, Va.-based Community Associations Institute.

The CAI/DBPR courses focus on condominium operations, regulation, financial management, and conflict resolution. There are parallel courses designed for cooperatives.

The next class to be held in Fort Myers will take place on Wednesday, December 7, 2005 from 9:00 am to 12:00 pm at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Ft. Myers.

This course focuses on the core responsibilities of associations. It touches on practical operational needs such as self-management, the bidding process for outside service providers, maintenance issues, accounting and legal services, and how to plan for and conduct board meetings. Please note that this course does not count for manager CEUs for community association managers.

Registration is not required, but space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail FLeducation@caionline.org.

Florida Advisory Council on Condominiums

My October 20, 2005 column announced a meeting of the Florida Advisory Council on Condominiums to be held in Fort Myers on October 24, 2005. As we all know, Wilma decided to visit on that day, so the meeting was cancelled.

The Advisory Council's Fort Myers visit has been rescheduled to December 5, 2005 (Monday evening) and December 6, 2005 (Tuesday).

The December 5, 2005 meeting will run from 5:00 p.m. to 10:00 p.m. at Seven Lakes Condominium, located in South Fort Myers, directly across from the Bell Tower shopping complex. The December 6, 2005 (Tuesday) will take place at 14241 Metropolis Avenue, Suite 100, Fort Myers, FL. The Tuesday meeting is also open to the public, but public input and comment will be limited to the Monday evening 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.

Changes in Expense Sharing Need Unanimous Approval

Question: The developer of our condominium built the project in three phases. There are three different unit types, ranging from 1,305 square feet to 1,817 square feet, for a total of 116 units. Our declaration of condominium states that assessments are shared on a 1/116 basis. Many of us feel that the larger apartments should be sharing a greater share of the expenses. Our declaration of condominium states that no amendment can increase the owner's share in common expenses. My basic question is whether that clause can be changed so that we can share expenses on a square footage basis? E.C. (via e-mail)

Answer: The Florida Condominium Act was amended in 1990 to provide that common expenses of a condominium association can only be shared in one of two different ways. First, sharing can be done a proportionate basis, based upon the relative square footage of the units to each other. The only other legally permissible alternative is for equal sharing of common expenses.

Your developer obviously chose the equal sharing method. Section 718.110(4) of the Florida Condominium Act states that no amendment may change the manner in which unit owners share common expense without one hundred percent approval, plus the approval of all lienholders, such as mortgage companies. The only exception is if the declaration of condominium, as originally recorded, provides otherwise.

The language you have quoted in your declaration specifically controls this question. Therefore, you could not change from equal sharing to a square footage-based formula without unanimous approval of all unit owners and their mortgage holders and other recorded holders of liens. I would place your odds at successfully getting unanimous approval for such a measure to be zero, if not lower.

Question: You recently wrote that a board-made rule banning the use of generators after a hurricane may not be upheld as being "unreasonable." Our condominium association was advised by our local fire department that generators should not be used on lanais or walkways, as the fumes could be dangerous to other condo dwellers. What do you think? J.W. (via e-mail)

Answer: As stated in my previous column, any board-made rule would need to be reasonable. I think there is little doubt that running generators on lanais would cause potential fume problems, and that an association ban on using generators on lanais would be upheld.

As to other out-of-door areas, it depends on the physical configuration of the condominium. Obviously, if a condominium is constructed so that its walkways would not safely permit the escape of carbon monoxide, there is no doubt that a board-made rule prohibiting use of generators there would be upheld.

As with most things in the law, there is no one-size-fits-all answer. For example, there is probably nowhere in a high-rise building with interior hallways where a generator could be safely operated. Conversely, in a condominium consisting of detached, single-family dwellings, another set of circumstances may apply. Again, the entire picture will be looked at for reasonableness. Life-safety factors will be paramount, but noise factors will be relevant as well. It seems that every association, in connection with its disaster-preparedness plan, ought to have a policy on this issue. Thank you for your input.

Question: Our condominium consists of detached, single-family homes, but the roofs are under the association's responsibility. After Hurricane Wilma, a number of the board members, who are retired

people, got up on ladders to trim fallen trees and inspect the roofs for damages. I am concerned about two things. First, no one asked to climb onto the roof of my home. Secondly, I was worried that someone would fall and create liability. What do you think?
L.F. (via e-mail)

Answer: While it may have been more polite for the board members to ring your doorbell and let you know they were going onto the roof, there would be no legal obligation for them to do so if the roof area is described as a common element in your governing documents, as it appears to be.

I would share your liability concern. While condominium associations cannot function without volunteer services, I think it is prudent to draw a line as to what services are acceptable to be provided by volunteers.

I do not recommend that volunteers engage in inherently dangerous activities, the use of power tools, cutting trees, climbing on ladders, or going onto roofs. The Association is best advised to require that such tasks only be performed by properly licensed and insured contractors. While there will be extra costs involved, there will be greater protection against potential liability.

Question: Recently our condo board voted to “oust” a sitting board member who happened to be our treasurer. This action is being contested by the supposedly ousted treasurer, and remains unresolved and in dispute. There does not seem to be any reason for his removal other than the president and treasurer just

don't like each other. In the meantime, I volunteered to help out on the board and was appointed to finish the term of the ousted treasurer. Over the last three weeks, I have asked our president and management company several times, in writing, for information regarding our finances, books, contracts, checks, etc, as related to the role of the treasurer. I am getting no response, yet the management company has posted an announcement in our complex stating that I am the new treasurer. How can this be, when the existing treasurer is contesting his ouster, and I, as the supposed replacement, have been given no information about our finances? What should I do? Thanks for any response. M.E. (via e-mail)

Answer: It is important to understand the distinction between removal of an officer and a director.

In general, the board of directors appoints officers (usually a president, vice president, secretary, and treasurer). The board of directors has the right to remove officers from office, with or without cause.

Conversely, directors can only be removed from the board by a vote of a majority of the entire membership. Further, certain legal procedures must be followed to remove a director from office.

It is also important for your association to check its bylaws and confirm that the board can appoint officers who are not also directors. If your association's bylaws permit non-directors to serve as officers, the board has the right to appoint you as the treasurer, without regard to any “contest” from the former treasurer. ■

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.