



Resolutions Helpful for Association

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

The New Year marks a chance to reflect on past successes and failures. Of course, the customary way to shoot for success in the upcoming year is the New Year's Resolution. Here are ten proposed New Year's Resolutions for community associations, five for owners and residents, five for the Board.

For the owners and residents:

- Remember that the association is not a landlord and the board members are not the building superintendent. They are volunteers. They are human beings who will make mistakes.
- Volunteer to do one thing for your community during the upcoming year. Whether it is typing up an edition of the community's newsletter, or serving on a committee, every little bit helps.
- The next time you get upset about something that has happened at the association, wait twenty-four hours to address it. It is amazing how a night's sleep sometimes puts a new perspective on things.
- Follow the rules. There is at least one rule in every community that some resident despises, or thinks is silly or outdated. However, that rule may be very important to your next door neighbor.
- Sit down and read the association's governing documents. In the flurry of activity involved in buying a new home, very few people have the time or inclination

to read through a thick stack of condominium or homeowner's association governing documents. One of the most common complaints I hear from boards when a dispute erupts in a community, is that the problem would have never happened if the owner would have read the documents.

Now, for the board:

- Remember that an owner questioning what is being done, or suggesting another approach, is not necessarily an attack on the board. Great ideas sometimes come from the most unexpected sources.
- Try to create an environment that encourages community participation. Sometimes it is easier and faster to just do things yourself. However, the more your association is perceived as a partnership, the smoother things will go.
- Read your governing documents. Owners are not the only ones guilty of not knowing the community's governing documents. If there are archaic or un-enforced rules, it is time to look at changing them.
- Review all of your relationships. Take a look at each vendor providing goods and services to your association. Are they meeting your expectations? Keeping in mind that you often get what you pay for, the cheapest is not always the best.

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- Don't sweat the small stuff. While board members should take their obligations seriously, some things just are not life and death matters. Keeping things in proper perspective and good balance (admittedly easier said than done), makes board service much more rewarding. If you are like most of us, it probably will not take long to break some of these resolutions, but it is worth a try. ■
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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.

Board Has Authority on Some Issues; Owners Others

Question: Can you provide a simple guideline on what actions of a condominium association can be taken by a board, and which actions require a vote of the association members? Our condominium consists of forty-six units, with a seven member board. Many of the votes on the board are four to three. The board addresses issues such as pets, leasing, whether to have a management company, auditing, and standards of elevator and foyer maintenance. Is there a simple answer to what the board can decide and what the owners must decide? J.F. (via e-mail)

Answer: There are certain decisions which the law states can only be made by a vote of the unit owners. These include election of the board, recall (removal) of the board, the waiver of reserves, and the waiver of required financial reporting standards, such as an audit.

There are other items that will usually require a vote of the owners, such as amendments to the declaration of condominium, articles of incorporation, or bylaws (I have seen a few sets of these documents which permit the board to amend them, but they are a rarity).

There are also certain actions which require a unit owner vote unless authority is delegated to the board. These would include material alterations to the common elements, and acquisition of real property by the association.

There are several decisions which the law specifically confers on the board, including the grant of easements and the decision to purchase bulk cable television as a common expense.

Therefore, the answer to your question is “it depends” on what the issue is. For example, you raised hiring a management company. In 99 cases out of 100, this is a decision solely vested in the board. A few sets of documents I have seen would require ownership approval, but this would be unusual. Likewise, maintenance standards are typically left to the Board.

Like any elected governing body or corporate board, your

association board is vested with relatively board authority under the law. That authority also carries fiduciary responsibility and the right of those who elected the board to remove board members, with or without cause, by majority vote.

Question: Do rules and regulations of an association have to be recorded in the public records in order to be valid? R.G. (via e-mail)

Answer: No.

Restrictions contained in a declaration of condominium (or declaration of covenants) and any amendments of those documents must be recorded in the public records of the County where the community is located in order to be valid.

There is nothing in the law which requires rules to be recorded. Some associations record their rules, some do not. In my opinion, if the association does record its rules, any changes to the rules should also be recorded.

The benefit of recording rules is that “constructive notice” is provided, and new owners cannot claim they were not told about the new rules, did not receive a copy, etc. The down-side of recording rules is that if the association records every change, it needs to keep track of amendments, plus there is typically an additional expense factor.

Question: Our condominium documents provide that covered parking spaces and under-building garage spaces are “limited common elements.” Not everyone has one of these spaces. They can be sold within the association for whatever the market will fetch. The County is now assessing these parking areas. Is this legal? T.W. (via e-mail)

Answer: Common elements of a condominium are not separate to subject ad valorem taxation.

However, if a particular limited common element (such as a boat dock, covered parking space, cabana, etc.)

is described as an “appurtenance” to the unit, it is included in determining the fair market value of the unit. Therefore, while a common element cannot be separately taxed, its value to a particular unit can be considered in determining the market value.

Question: Our association is a mobile home park corporation. Our annual meeting is approaching, at which time we vote on various items, including amendments to the bylaws and the budget. It is our understanding that proxies cannot be open or counted until the annual meeting. This makes for a very long meeting. Is there any way that proxies may be counted before the meeting?
R.M. (via e-mail)

Answer: It depends on which law applies to your association, the condominium law, the cooperative law, or the homeowner’s association law.

All three laws permit the opening of proxies before the annual meeting, and I recommend doing so to avoid dragging the meeting out. If the bylaws prohibit opening proxies until the meeting starts, then you would need to change your bylaws to be able to log the proxies in before the meeting.

Ballots for the election of directors cannot be opened in condominium or cooperative associations until the election takes place. The same rules does not apply in the homeowners’ association context, where the bylaws will control that question. ■

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