



Hurricanes May Reshape Condo Laws

Fort Myers The News-Press, January 5, 2006

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

In 2004, the Florida Legislature created the Advisory Council on Condominiums. The Council was empanelled to listen to concerns expressed by affected parties, primarily condominium unit owners and board members, and to make recommendations for improvement in the existing system.

The Council organized on January 6, 2005 and during the 2005, conducted eight public meetings. Three meetings were held in Tallahassee, one in Fort Myers, one in Miami, one in Dania Beach (Fort Lauderdale area) and one in Panama City (Florida Panhandle).

Approximately 200 members of the public appeared before the Council to express concerns, make comments, and suggest improvements in the existing legal framework for resolving disputes between associations and condo dwellers.

The Council issued its Report in December of 2005, summarizing the public testimony which was given and making eleven specific recommendations. The Council's Report can be found at http://www.myflorida.com/dbpr/lcs/condominiums/advisory_council.

Here's the first six of the 2005 recommendations from the Florida Advisory Council on Condominiums:

- **Emergency Board Powers:** The Council found that the current provisions of the condominium statute are inadequate to guide board members and unit owners after a catastrophic event, such as a hurricane.

The Council has specifically recommended that the law permit the use of statutory reserve funds for post-catastrophe purposes, if such use is authorized in the bylaws.

- **Duties Of Directors:** The Council concluded that the current generic standard of "fiduciary duty" found in the Florida Condominium Act provides insufficient guidance to board members as to what is expected of them. The Council has recommended adopting specific standards for condominium association directors in discharging their fiduciary duty.
- **Reserves:** The Council concluded that further detailed study of condominium reserve funding is in order. The Council heard many stories of associations which seriously underfunded their reserves (or never funded them at all), occasionally resulting in staggering special assessments. In a couple of cases, some people were driven from their homes, since they could not afford to pay a six-figure special assessment.
- **Education Programs:** The Council recommended that the Division of Florida Land Sales, Condominiums and Mobile Homes broaden the menu of educational programs and resources available to condominium board members and unit owners.
- **Complaints Against Associations:** At least one member of the public asserted that when he

filed a complaint against his association, the board “buried” the matter, and that the other owners were not aware of the association’s alleged wrongdoing. The Council recommended that when an association receives an official communication from the state’s enforcement agency, that such communications be officially noted in the minutes of a board meeting.

- **Theft Against Associations:** Although the Council did not hear one first-hand account of an association which had been victimized by theft, there appears to be a gray area between what violations of the condominium laws may constitute criminal activity, and what violations constitutes mere civil violations. Theft of association funds and kickbacks are clear examples of criminal violations.

Election misdeeds and “sunshine” law violations are clearly not criminal, but civil violations. Gray areas include undisclosed conflicts of interest, self-dealing, and secret contracts between associations and board members (or their families). The Council recommended that pilot programs be considered which would assist the various State Attorneys (Florida’s prosecutors) around the State in understanding some of the unique aspects of condominium governance, so that violations of criminal law occurring in the condominium setting can be appropriately prosecuted.

Next week, we will conclude with the remaining five recommendations of the Advisory Council, which have been forwarded for consideration by the Governor and the Florida Legislature. ■

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: In one of your recent columns, you answered a reader's question about recall (removal) of the board. You stated that a "majority vote" is required to recall board members. Does this mean a majority of those who vote, or majority of all members? J.T. (via e-mail)

Answer: Both the statutes applicable to condominium associations and homeowners' associations state that a majority of the entire voting interests may remove a director from office, with or without cause. There is

typically one "voting interest" per assessable "unit" or "parcel" which may also be referred to as a "lot", "home", and the like. The answer then, is that a majority of all members must vote in favor of recall in order for a director to be removed.

In my opinion, the bylaws for an association cannot impose a higher or lower standard for recall, the majority standard, based upon the entire membership, is imposed by state law. ■

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.