

Trade Show, Seminars of Interest to Associations

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As mentioned in last week's column, there are a variety of educational programs and opportunities available for volunteer board members, property owners within community associations, and their managers. On Thursday, February 9, 2006, one of the largest of such programs will be held in Fort Myers.

Beginning at 10:00 a.m. and running through 3:00 p.m., the South Gulf Coast Chapter of Community Associations Institute will hold its 12th Annual Conference & Trade Show. The trade show will take place at the Seven Lakes Auditorium. The Seven Lakes Condominium Community is located on U.S. 41, directly across from the Bell Tower shopping complex.

Over forty exhibitors will provide service and product information. Vendors who set up booths typically include various contractors (painters, roofing companies, etc.), as well as numerous service providers such as accounting firms, legal firms, insurance agencies, banks, and management companies.

In addition to the trade show, a series of educational seminars will be hosted throughout the day. At 8:00 a.m., Ms. Julie Adamen of Adamen's Inc. (Poulsbo, WA) will present "The Great Divide, Service vs. Board Member." This course has been certified for two hours of continuing education credit for licensed community association managers. Prior to Ms. Adamen's presentation, there will be a 7:30 a.m. free breakfast for registered attendees. Registration for

this course may be obtained by calling Robert Podvin, Executive Director of the South Gulf Coast Chapter of CAI at 239-466-5757.

At 9:00 a.m., a three-hour course entitled "Conflict Resolution" will be presented on behalf of the Florida Department of Business and Professional Regulation, in conjunction with CAI. This seminar focuses on the role of condominium and cooperative association board members in creating and enforcing rules and regulations, how to enforce them, and how rules ultimately impact residents within the community association. I will present this course. This course is not certified for manager credits, and is geared primarily toward board members and condominium or cooperative board members and unit owners. Registration is not required, but in the event of space limitations, preference will be given to registrants. Interested parties may register by calling Mr. Podvin (number listed above) or registering online through CAI, the contracted course provider for the DBPR. For online registration, contact Laura Hagen at FLeducation@caionline.org.

At 10:00 a.m., a two-hour course entitled "2006 Legal Update" will be presented by Fort Myers attorney Richard D. DeBoest II. This is a required course for managers, as part of their continuing education reporting cycle. This program focuses on changes to the laws affecting community associations that took place in 2005. Those desiring to attend this session should also register with Mr. Podvin.

At 1:00 p.m., CAI's Florida Legislative Alliance will host a program reviewing potential legislation for 2006 affecting community associations (condominiums, cooperatives, and homeowners' associations) as well as legislative issues affecting community association managers. The Florida Legislative Alliance is a committee which recommends changes to the laws affecting community associations, and also provides comment and analysis regarding other legislative initiatives.

From 3:00 p.m. to 6:00 p.m., Comcast will be hosting a networking reception for exhibitors, speakers, and attendees at the trade show or affiliated educational programs. All events taking place at the Annual Conference & Trade Show are free of charge to members of condominium associations, cooperative associations, and homeowners' associations.

Set aside some time on Thursday, February 9, 2006 for this event. ■

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.

Documents Probably Follow One Lot, One Vote Scheme

Question: We live in a small homeowners' association, and some of us are becoming concerned because one party owns a number of unbuilt lots, and does not seem to have the best interest of the rest of the community in mind. Presently, all owners get one vote per piece of property, regardless of whether they have built a home on or it or not. We are considering an amendment to our governing documents which would state that only built homes get a vote. What are the legalities of such an amendment? W.T. (via e-mail)

Answer: It depends on how the governing documents for your HOA are written. If your documents are like most others, there is a direct link between "taxation" and "representation", usually one lot-one assessment-one vote.

I suspect that your governing documents, as originally recorded, follow the one lot-one vote-one assessment scheme. Section 720.306(1)(c) of the statute applicable to homeowners' associations provides that unless the original documents say otherwise, no amendment may "adversely alter the proportionate voting interests appurtenant to a parcel." Therefore, unless you have a very unusual set of original documents, you likely cannot pass this change without unanimous approval of all lot owners. It seems unlikely that the owner of the multiple lots would agree to such a change.

Question: Chapter 718, the Florida Condominium Act states that the election of directors must be conducted by secret ballot. I am told that even if there is no election for directors, the proxy by itself must be a secret ballot. Is this true? H.U. (via e-mail)

Answer: No. Limited proxies are required to be used in condominiums for most votes that are taken, other than the election of directors. To be legal, a proxy must be signed. Therefore, by its nature, a proxy is not a secret vote. Proxies must be kept as part of the official records of the Association for one year from the date of the meeting to which the proxy pertains, and are therefore an open record.

Question: We are a small condominium that has been in existence for thirty-five years. About forty of the units have shutters on their balcony sliding glass doors, but no one has been able to put them on the windows due to the design of our building. The bedroom windows are about 108 inches wide, with a hollow column right next to each side of the windows. We have been told that a roll-down shutter would be too heavy with no support in the middle. Additionally, we have been told that three separate roll-down shutters for the three windows together would not work either because the tracks would be on the windows themselves, and the side track would be on the hollow column. Apparently, an accordion shutter also will not work because the weight on each side could not be held by the hollow columns. New owners moved in and want to put shutters on even though they have the new code impact windows. They are insisting that we cannot refuse their request to install hurricane shutters due to Florida Statutes. What do you suggest we do? S.K. (via e-mail)

Answer: The Florida Condominium Act requires boards to adopt hurricane shutter specifications for each building operated by the association. The specifications adopted by the board are to include color, style, and other factors deemed relevant by the board. If an owner's request to install hurricane shutters conforms to the board-adopted specifications, the installation request cannot be denied.

I do not know what your association's current hurricane specifications provide for. If the board has structural concerns, I suggest that an engineer be consulted to help develop appropriate hurricane shutter specifications, and to review any concerns regarding the soundness of your buildings. I believe it would be a unique situation where, after consulting with an engineer, it was determined that no hurricane shutters could be installed because of structural problems with the building. Once the association obtained appropriate expert advice, proper hurricane shutter specifications could be put in place.

In your case, however, an owner has already made a request to install shutters in a structurally questionable

manner. Therefore, the board should act quickly in obtaining an engineer's opinion. If the engineer's opinion showed that the requested hurricane shutters would not be structurally sound, the board can arguably deny the installation request (but should consult with its attorney, bearing in mind any time deadlines to either approve or disapprove the owner's request).

Question: One of the shareholders at our cooperative has given a Power of Attorney to a relative to handle all association matters on his behalf. In our bylaws, the qualifications for a board member are "all members of the Board shall be Unit Owners." Since the individual holding the Power of Attorney is not a unit owner, is he eligible to serve on the Board? Thank you for your time. S.A. (via e-mail)

Answer: I believe the first issue the board needs to address is whether the Power of Attorney has been properly

executed, and what powers have been granted to the individual holding the Power of Attorney. A properly executed Power of Attorney, in some circumstances, could give certain rights to a non-owner, such as the right to attend and participate in board and members' meetings.

This is different, however, from a properly executed "proxy" which could allow a non-owner proxy holder to vote at members' meetings (at least to the extent that voting by proxy is allowed). Associations' documents, though, will sometimes limit who may hold a valid proxy, and often will exclude non-owners/members from holding a proxy.

With regard to the specific question of whether a non-owner who holds a Power of Attorney may serve on the board, I do not believe the Power of Attorney would allow a non-owner to serve in that capacity where your governing documents require board members to be owners. ■

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