



Dispute Resolution Outlined

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As the common interest development form of housing continues to grow by leaps and bounds, more people are sharing less space, and contractually agreeing to be bound by a code of conduct that they may have never read. As interpersonal conflict is part of our being human, it is no surprise that community associations present especially fertile soil for germinating seeds of discontent.

Our system of law favors an orderly and predictable means of resolving disputes. For well over 200 years, the American system of dispute resolution has focused on resort to the courts, the branch of government created by the Constitution to adjudicate contract disputes.

Historically, disputes within community associations have been treated no differently than any other contract or property dispute, necessitating resort to the courts when problems could not be solved through agreement of the parties. However, it became apparent that court trials are often not the most efficient or rational forums in which to hash out parking squabbles, pet fights, and various other disputes that occasionally arise in the community association context.

There has been a great deal of study, task forces, and legislative proposals all geared toward better alternative dispute resolution (“ADR”) for associations. ADR has eased crowded court dockets in matrimonial disputes, securities claims, and a variety of other typically

contentious areas. ADR in community associations takes three basic forms, arbitration, mediation, and fining.

The law for condominiums requires mandatory arbitration before filing a lawsuit with respect to most internal condo disputes. By contrast, the law for homeowners’ associations (“HOAs”) requires mediation prior to suit. There are proponents of both arbitration and mediation as the best form of ADR, but both require intervention by outside parties, and typically involve the use of legal counsel.

The levy of fines is permissible as a means of ADR for both condominiums and homeowners’ associations. Today’s column, and the next couple of editions will focus on the pros and cons of the fining process as a means of alternative dispute resolution in community associations, and examine the details of the fining process.

As always, there are two primary sources that must be considered, the law and the provisions of the governing documents. Let’s look at the law. As we all know, condominiums are governed by Chapter 718 of the Florida Statutes, while HOAs are governed by Chapter 720. Both statutes specifically empower an association to levy fines, yet there are subtle (but important) distinctions between the two laws.

Section 718.303(3) of the Florida Condominium Act states that if the declaration or bylaws so provide, the

association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee to comply with the condominium documents, including the rules and regulations. No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of continuing violation with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$100. No fine can be levied except after giving reasonable notice and opportunity for a hearing to the unit owner, and if applicable, a licensee or invitee of the unit owner. The hearing must be held before a committee of unit owners who do not serve on the board, and the committee must agree with the proposed fine, or it cannot be levied.

The law applicable to HOAs addresses fines at Section 720.305(2) of the Florida Statutes. The HOA law is similar to the condominium counterpart in that the authority to levy the fine must be contained in the governing documents, and the maximum fine is \$100 per violation. The aggregate fine of \$100 also

applies “unless otherwise provided in the governing documents”, suggesting that the documents may impose a higher or lower aggregate fine. Likewise, the homeowners’ association statute requires the opportunity for a hearing. The composition of an HOA fining committee is more specific, the law specifically states that the committee must consist of at least three members appointed by the board, and that the members of the fining committee cannot be officers, directors, or employees of the association, nor related to such parties.

The law for HOAs also permits the suspension of use rights for common areas (except ingress and egress), subject to the same requirements for the levy of a fine.

In the next edition of this column, we will take a look at conducting the fining hearing and the “due process” requirements of the law. We will also explore how to collect a fine once it has been levied, and I will share my opinion on those situations where fining is useful, and those where it is not. ■

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.

Meetings on Budget Proposals Open to All Owners

Question: Our condominium association sends out the annual proposed budget with a comparison to the last year's budget. A list is attached of where our monies are allocated and a list of the major items we allot reserve monies for. There is also a list of the life expectancy of these items. Each unit owner received a copy of the proposed budget and attached lists like we always have in the past. However, the meeting was not posted on our bulletin boards in front of each building. Is the board required to post a meeting announcement on the property prior to a meeting taking place? V.E. (via e-mail)

Answer: Any meeting where a proposed annual budget will be considered by the board, or by the unit owners, is open to all owners, and the board is required to either hand deliver, mail, or electronically transmit a notice of the meeting and a copy of the proposed annual budget at least 14 days prior to the meeting.

On the issue of posting notice of the meeting, it really depends on whether the board is adopting the annual budget at a board meeting, or the unit owners are adopting the annual budget at the annual members meeting. You will need to look to your condominium documents to determine if the board has the right to adopt the budget, or whether a vote of the owners is required.

In the case where the board adopts the budget at a board meeting, notice of that board meeting must be posted conspicuously on the condominium property at least 48 hours prior to the meeting. In the case where the owners are voting on the budget at the annual members meeting, notice of that meeting must be posted in a conspicuous place on the condominium property at least 14 days prior to the meeting. In either case, the board is to adopt a rule designating a specific location on the condominium property or association property upon which all notices of board and unit owner meetings are to be posted. Such a rule does not need to require that the notice be posted at each building.

Question: In an election year, two board of director seats, each for three-year terms, need to be filled. No "Notice of Intent to be a Candidate" forms were submitted, and the President appointed two persons to fill these positions. The question is, do the appointed directors hold office for three years or only until the next, regularly scheduled election? The current bylaws address only vacancies caused by death, disqualification or resignation. F.J. (via e-mail)

Answer: Because of your reference to a "Notice of Intent to be a Candidate", which is part of the process initially mandated by the Condominium Act for electing directors, I assume your association is a condominium association governed by Chapter 718, Florida Statutes.

Section 718.112(2)(d)(8) of the Florida Condominium Act provides that, unless otherwise provided in the bylaws, vacancies on the board can be filled by a majority of the remaining directors, or even by just one director if that is all that remain. This statute also provides that, unless otherwise provided by the bylaws, a board member appointed under this section shall fill the vacancy for the unexpired term of the seat being filled. Therefore, if your bylaws are silent on this point, the appointed directors will sit for the remainder of the three-year term for which they were appointed. However, the replacements should be appointed by the board of directors, not the association's president.

Question: Our recently elected association board was told by the outgoing board that we should avail ourselves to all of the various seminars and programs that are held in the area. Could you tell us when the next seminar is going to be held. J.M. (via e-mail)

Answer: A free course on Florida condominium association operations will be held on Wednesday, March 8, 2006 from 9:00 am to 12:00 noon at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Fort Myers. The course will be taught by Community Associations Institute (CAI), a contracted

condominium and cooperative educational provider of the State of Florida's Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes.

The 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. Course seating may be limited to one owner occupant per condominium or cooperative unit based on space availability. To see a complete list of classes offered through this program, go to www.caionline.org/florida. ■

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